

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 080521698–9067–02]

RIN 0648–XP50

Fisheries of the Northeastern United States; Northeast 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; decrease of landing limit.

SUMMARY: This action decreases the Georges Bank (GB) yellowtail flounder trip limit to 2,500 lb (1,134 kg) for Northeast (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 decrease the likelihood of harvest exceeding the total allowable catch (TAC) for GB yellowtail flounder during the 2009 fishing year (FY). This action is being taken to optimize the harvest of transboundary stocks of GB yellowtail flounder, haddock, and cod under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective June 5, 2009, through April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341, 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 specified conditions. The TAC for GB yellowtail flounder for the 2009 fishing year (May 1, 2009—April 30, 2010) was set at 1,617 mt (3,564,774 lb) (74 FR 17030; April 13, 2009), a 17-percent decrease from the TAC for FY 2008. The same regulatory action for FY 2009 implemented a trip limit of 5,000 lb (2,268 kg) for GB yellowtail flounder, less than the default initial trip limit of

10,000 lb (4,536 kg). A 5,000 lb (2,268 kg) trip limit was implemented based on data from FY 2008, in order to allow harvesting of the TAC, and to minimize the likelihood that further restriction of catch rate through additional trip limits would be necessary.

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. According to the most recent Vessel Monitoring System (VMS) reports and other available information, the cumulative GB yellowtail flounder catch is approximately 16 percent of the TAC as of May 21, 2009. Of this total, approximately half is attributed to fish that have been discarded at sea. A previous analysis of fishing behaviour in fishing year 2007, found that vessels that fished in the U.S./Canada Management Area were more likely to direct effort onto species other than yellowtail flounder when the yellowtail flounder possession limit dropped below 5,000 lb (2,268 kg) per trip. Therefore, decreasing the trip limit from 5,000 lb (2,268 kg) to 2,500 lb (1,134 kg) is expected to reduce the number of trips made to the Western U.S./Canada Area to target yellowtail flounder, decrease landings of yellowtail flounder without increasing discards, and result in the achievement of the TAC during the fishing year without exceeding it. Attainment of the TAC prior to the end of the fishing year results in the loss of yield of other stocks caught concurrently with yellowtail flounder. Based on this information, the Regional Administrator is decreasing the current 5,000 lb (2,268 kg) yellowtail flounder trip limit in the U.S./Canada Management Area to 2,500 lb (1,134 kg) per trip, through April 30, 2010.

GB yellowtail flounder landings will continue to be closely monitored. Further inseason adjustment 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 caught, 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 comment 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 § 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 underharvesting the TAC allocation. This action will implement a more restrictive trip limit for yellowtail flounder in order to ensure that the TAC is not overharvested, and the biological and economic objectives of the FMP are met.

It is important to take this action immediately because, based on current data and a projection, continuation of the status quo trip limit of 5,000 lb (2,268 kg) will result reaching the GB yellowtail flounder TAC prior to the end of the fishing year. Attainment of the TAC prior to the end of the fishing year on April 30, 2010 (and closure of the Eastern U.S./Canada Area) would result in the loss of yield of other valuable species caught in the Eastern U.S./Canada Area.

The information that is the basis for this action is recent catch data. The time necessary to provide for prior notice and comment, and delayed effectiveness for this action would prevent NMFS from implementing a reduced trip limit in a timely manner. A resulting delay in the curtailment of catch rate of GB yellowtail flounder may cause closure of the Eastern U.S./Canada Area early in FY 2009. Such a closure would result in less revenue for the fishing industry and be counter to the objective of optimal yield.

The Regional Administrator's authority to decrease 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: June 3, 2009.

Kristen C. Koch,

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

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