

Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., state or Federal waters. The prohibition on sale/purchase during January through April does not apply to such species that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of such species harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting such fish;

(iii) The port and date of offloading from the vessel harvesting such fish, and;

(iv) A statement signed by the dealer attesting that such fish was harvested from an area other than the South Atlantic.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080521698-9067-02]

RIN 0648-XQ01

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 the total allowable catch (TAC) of

Georges Bank (GB) cod allocated to be harvested from the Eastern U.S./Canada Area from May 1, 2009, through July 31, 2009, would be harvested on or around June 24, 2009, if current catch rates continue. This action is being taken to prevent the Eastern U.S./Canada Area TAC specified for the first quarter of the 2009 fishing year from being exceeded. This area will be reopened on August 1, 2009, to provide access to the shared U.S./Canada Stocks of cod, haddock, and yellowtail flounder.

DATES: The temporary closure of the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels is effective 0001 hr June 26, 2009, through 2400 hr local time, July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Management Specialist, (978) 281-9122, 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 2009 Interim Rule published on April 13, 2009 (73 FR 17030) set the Eastern GB cod TAC allocation for the 2009 fishing year at 527 mt. The Interim Rule also delayed the opening of the Eastern U.S./Canada Area to trawl vessels until August 1, 2009, and set a TAC for the first quarter of the 2009 fishing year for fixed-gear vessels at 5 percent of the annual TAC (26.4 mt). To prevent over-harvesting the TAC allocations for the U.S./Canada Management Area, 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.

Based upon VMS daily catch reports and other available information, 79 percent of the first quarter 2009 Eastern GB cod TAC of 26.4 mt has been harvested. Assuming this catch rate continues, it is estimated that 100 percent of the 2009 Eastern GB cod TAC specified for the first quarter will be caught on or around June 24, 2009. Therefore, based on the available information described above, to ensure that the first quarter TAC for Eastern GB cod will not be exceeded, the Eastern U.S./Canada Area is temporarily closed to all limited access NE multispecies DAS vessels, effective 0001 hr June 26, 2009, pursuant to § 648.85(a)(3)(iv)(E). This area will reopen on August 1, 2009, to all NE multispecies DAS vessels fishing with approved gear, as well as to

vessels participating in the Eastern U.S./Canada Haddock Special Access Program, for the purpose of providing access to the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder, pursuant to the regulations at § 648.85(a)(3)(iv)(D).

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 26, 2009 may continue to fish for the remainder of their trip 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 26, 2009. Any vessel that leaves the Eastern U.S./Canada Area after 0001 hr June 26, 2009 is prohibited from reentering the Eastern U.S./Canada Area for the remainder of the fishing year, unless otherwise notified.

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), 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. The temporary closure of the Eastern U.S./Canada Area to NE multispecies DAS vessels is necessary to prevent the Eastern U.S./Canada Area GB cod TAC cap from being exceeded during the first quarter of the 2009 fishing year. It is projected that 100 percent of the GB cod TAC cap of 5 percent will be harvested if the Eastern U.S./Canada Area is closed immediately. This projection was not available until June 19, 2009.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to prevent over-harvesting 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 halt the catch of GB cod in the Eastern U.S./Canada Area and prevent the first quarter Eastern U.S./Canada Area GB cod TAC from being exceeded prior to the end of the first quarter, July 31, 2009. To allow vessels to continue fishing effort on Eastern GB cod during the period necessary to publish and receive comments on a proposed rule could allow the Eastern GB cod harvest to

exceed the Eastern GB cod TAC for the first quarter of the 2009 fishing year. Exceeding the first quarter 2009 Eastern GB cod TAC would necessitate that any overage of the Eastern GB cod TAC during the first quarter by fixed gear vessels be deducted from the Eastern GB cod TAC for all NE multispecies DAS vessels for the remainder of the 2009 fishing year. Reducing the 2009 TAC for the remainder of this fishing year due to exceeding the first quarter 2009 TAC 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 first quarter Eastern GB cod TAC via the NMFS Northeast Regional Office website (<http://www.nero.noaa.gov>), which provides at least some advanced notice of a potential action to prevent the first quarter TAC for Eastern GB cod from being exceeded during the 2009 fishing year. Further, the potential for this action was considered and open to public comment during the

development of the 2009 Interim Rule. 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 24, 2009.

Alan D. Risenhoover,

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

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