

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

[Docket No. 080521698–9067–02]

RIN 0648–XV49

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 2009 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 24, 2010, through April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fishery Management Specialist, (978) 675–2153, 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 2009 fishing year (May 1, 2009–April 30, 2010) was set at 1,617 mt by the 2009 interim final rule (74 FR 17030, April 13, 2009).

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 of cod, haddock, and yellowtail flounder in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocations. On June 5, 2009, based upon the 2009 TAC for GB yellowtail flounder and projections of harvest rates in the fishery, the trip limit for GB yellowtail flounder was reduced to 2,500 lb (1,134 kg) for the 2009 fishing year (74 FR 27252, June 9, 2009) to slow the rate of harvest and to prevent a premature closure of the Eastern U.S./Canada Area and reduced opportunities to fish for Eastern GB cod and haddock in this area.

According to the most recent Vessel Monitoring System (VMS) reports and other available information, the cumulative GB yellowtail flounder catch is approximately 82 percent of the TAC as of March 18, 2010. 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 March 24, 2010, through April 30, 2010.

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, 2010, to facilitate the harvest of the TAC while ensuring that the TAC will not be exceeded during the 2009 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 2009 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 2009 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 24, 2010.

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

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