

requirements, Superfund, Water pollution control, Water supply.

Dated: July 20, 2010.

**Judith A. Enck,**

*Regional Administrator, USEPA, Region 2.*

■ For the reasons set out in this document, 40 CFR Part 300 is amended as follows:

#### **PART 300—[AMENDED]**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing “SMS Instruments, Inc,” “Deer Park”, “NY.”

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### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 0910051338–0151–02]

**RIN 0648–XX64**

#### **Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trip Limit Reduction and Trawl Gear Restriction**

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

**ACTION:** Temporary rule; inseason adjustment of landing limits and gear requirements.

**SUMMARY:** This action decreases the landing limit for Gulf of Maine (GOM) cod and implements a restriction on the use of certain types of trawl gear in parts of the U.S./Canada Management Area to reduce the harvest of Georges Bank (GB) yellowtail flounder for Northeast (NE) multispecies vessels fishing under common pool regulations for the 2010 fishing year (FY). This action is authorized by the regulations implementing Amendment 16 and Framework Adjustment 44 (FW 44) to the NE Multispecies Fishery Management Plan (FMP) and is intended to decrease the likelihood of harvest exceeding the subcomponent of the annual catch limit (ACL) allocated to the common pool (common pool sub-ACL) for each of these stocks during FY 2010 (May 1, 2010, through April 30,

2011). This action is being taken to ensure that common pool sub-ACLs for these stocks are not exceeded, thereby optimizing the harvest of NE regulated multispecies under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective July 30, 2010 through April 30, 2011.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, (978) 281–9341, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing possession and landing limits for vessels fishing under common pool regulations are found at 50 CFR 648.86. The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies day-at-sea (DAS), or fishing under a NE multispecies Small Vessel or Handgear A or B category permit, to fish for and retain NE multispecies, under specified conditions. The vessels fishing in the common pool are allocated a sub-ACL equivalent to that portion of the commercial groundfish ACL that is not allocated to the 17 approved NE multispecies sectors for FY 2010. The final rule implementing FW 44 (75 FR 18356, April 9, 2010) established ACLs for FY 2010. A subsequent action published on May 26, 2010 (75 FR 29459), adjusted allocations based on final rosters of vessels participating in sectors for FY 2010. For FY 2010, the common pool has been allocated sub-ACLs of 240 mt (529,109 lb) for GOM cod and 23 mt (50,706 lb) for GB yellowtail flounder.

The regulations at § 648.86(o) authorize the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) to increase or decrease the trip limits for vessels in the common pool to prevent over-harvesting or under-harvesting the common pool sub-ACL. Exceeding the common pool sub-ACL prior to April 30, 2011, would require drastic trip limit reductions and/or imposition of differential DAS counting for the remainder of FY 2010 to minimize the overage, and would trigger accountability measures (AMs) in FY 2011, including differential DAS counting, to prevent future overages.

GB yellowtail flounder is a transboundary stock whose Total Allowable Catch (TAC) is negotiated under the U.S./Canada Resource Sharing Understanding (Understanding). The regulations implementing the Understanding at § 648.85(a) grant the RA additional authority to implement gear requirements in the U.S./Canada

Management Area to prevent over- or under-harvest of the TAC. The regulations also require that, if any sector or the common pool exceeds its allocation of a TAC, that group is prohibited from fishing in the Eastern U.S./Canada Area, and any TAC overage at the end of the FY is deducted from the corresponding allocation in the following FY. Therefore, if the common pool exceeds the FY 2010 GB yellowtail flounder sub-ACL, vessels in the common pool will be prohibited from fishing in the Eastern U.S./Canada Area for the remainder of FY 2010, and the FY 2011 common pool sub-ACL would be reduced by the amount of any overage.

A previous inseason action published in the **Federal Register** on May 27, 2010 (75 FR 29678), reduced the common pool trip limits for five stocks: GOM haddock, GB haddock, GOM winter flounder, GB winter flounder, and GB yellowtail flounder.

Initial Vessel Monitoring System (VMS) and dealer reports indicate that approximately 66.5 percent of the GOM cod and 70.9 percent of the GB yellowtail flounder common pool sub-ACLs have been harvested as of July 15, 2010. Based on the rate of catch for GOM cod to date, the Regional Administrator has determined that, unless a reduction in trip limit is implemented, the common pool fishery will exceed its sub-ACL for GOM cod by early August 2010, well before the end of the FY.

Based on this information, the Regional Administrator is reducing the trip limit for GOM cod, effective July 30, 2010 through April 30, 2011, from 800 lb (362.9 kg) per DAS, not to exceed 4,000 lb (1,814.3 kg) per trip; to 200 lb (90.7 kg) per DAS, not to exceed 1,000 lb (453.6 kg) per trip. This action is intended to prevent common pool vessels from exceeding their sub-ACL and to allow these vessels to fish for other NE multispecies. Vessels with a Small Vessel category permit will be proportionally limited to not more than 75 lb (34.0 kg) of cod within their trip limit of 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined. The regulations at §§ 648.82(a)(6) and 648.88(a)(1) require that the cod trip limit for vessels with a limited access Handgear A or open access Handgear B permit change proportionally (rounded up to the nearest 25 lb (11.3 kg)) with any change to the landing limit for DAS vessels. Therefore, trip limits are reduced from 300 lb (136.1 kg) per trip to 75 lb (34.0 kg) per trip, for Handgear A vessels; and from 75 lb (34.0 kg) trip, to 25 lb (11.3 kg) trip, for Handgear B vessels.

At-sea observer reports indicate that catch rates of yellowtail flounder on GB are higher south of 41° 40' N. lat than north of it. Requiring common pool trawl vessels that fish any part of a trip in the Western U.S./Canada Area south of 41° 40' N. lat. to use either a haddock separator trawl or a Ruhle trawl will reduce the catch rate of yellowtail flounder, reduce discards, and is likely to result in the achievement of the TAC, without exceeding it. The Regional Administrator has determined that, because the GB yellowtail flounder trip limit has already been reduced, it is sufficient to implement only a change in gear requirements in order to ensure that the common pool vessels do not exceed the sub-ACL for yellowtail flounder. Based on this information, the Regional Administrator is prohibiting the use of trawl gear, except for the haddock separator trawl and the Ruhle trawl, as specified at § 648.85(a)(3)(ix) and (b)(10)(iv)(J)(3), respectively, by any limited access NE multispecies common pool vessel that harvests, possesses, or lands fish from, or deploys its net during any part of a trip in, the Western U.S./Canada Area south of 41° 40' N. lat. under a NE multispecies DAS, to reduce catches and discards of GB yellowtail flounder, effective July 30, 2010 through April 30, 2011, or until modified by a subsequent action. For any such vessels, other gear may be on board the vessel but must be stowed according to the regulations at § 648.23(b) for the entire trip. For any limited access NE multispecies common pool vessel possessing, harvesting, or landing fish exclusively from the area north of 41° 40' N. lat., all trawl gear, except the haddock separator trawl or Ruhle trawl, must be stowed while transiting the Western U.S./Canada Area south of this line.

The FW 44 final rule (75 FR 18356, April 9, 2010) delayed the opening of the Eastern U.S./Canada Area for vessels using trawl gear until August 1, 2010. To prevent overharvest of yellowtail flounder from closing the Eastern U.S./Canada Area and preventing access to the transboundary stocks of GB cod and GB haddock, the Regional Administrator is prohibiting the use of a flounder net in the Eastern U.S./Canada Area by any limited access NE multispecies common pool vessel, effective August 1, 2010, through April 30, 2011. Common pool trawl vessels will be able to fish in the Eastern U.S./Canada Area only if they are using either a haddock separator trawl or a Ruhle trawl. Any other trawl gear must be stowed according to the regulations and not available for use.

The regulations at § 648.85(a)(3)(iv)(D) specify that, if the Regional

Administrator requires use of a particular gear type in order to reduce catches of stocks of concern, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg) (whole weight) each (i.e., no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited. Therefore, common pool vessels fishing any part of a trip in the Eastern U.S./Canada Area or in the Western U.S./Canada Area south of 41° 40' N. lat. are restricted to these catch limits for the duration of that trip.

If sufficient GB yellowtail flounder common pool sub-ACL remains available, the Regional Administrator may lift these gear restrictions before the end of FY 2010 to allow additional opportunity to achieve the FY 2010 common pool sub-ACLs for the transboundary stocks of GB yellowtail flounder, GB cod, and GB haddock.

Catch will be closely monitored through dealer-reported landings, VMS catch reports, and other available information. Further inseason adjustments to increase or decrease the trip limits, as well as differential DAS measures may be considered, based on updated catch data and projections.

#### 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 notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations at §§ 648.86(o) and 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to adjust NE multispecies trip limits and to implement gear restrictions in the U.S./Canada Management Area, respectively, to prevent over-harvesting or under-harvesting the common pool sub-ACLs. This action will implement a more restrictive trip limit for GOM cod and restrict the use of trawl gear in a portion of the U.S./Canada Management Area in order to ensure that the common pool sub-ACLs for GOM cod and GB yellowtail flounder are 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 projections, continuation of the status quo will result in reaching the

respective common pool sub-ACLs prior to the end of FY 2010. Attainment of any of the common pool sub-ACLs prior to the end of the FY on April 30, 2011, would result in lower trip limits and/or differential DAS counting for the remainder of FY 2010, and would result in end-of-the-year AMs to be put in place for the common pool in FY 2011. These restrictions could result in the loss of yield of other valuable species caught by vessels in the common pool.

The updated catch information that is the basis for this action only recently became available. 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 these stocks could result in less revenue for the fishing industry and be counter to the objective of optimum yield.

The Regional Administrator's authority to decrease trip limits and to implement gear restrictions in the U.S./Canada Management Area for the common pool to help ensure that the common pool sub-ACL for all NE multispecies are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 16 and FW 44. 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: July 26, 2010.

**James P. Burgess,**

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

[FR Doc. 2010-18785 Filed 7-27-10; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No.100218107-0199-01]

RIN 0648-XX18

### Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #1, #2, #3, and #4

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