

30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: October 24, 2013.

**Kelly Denit,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 130219149-3397-02]

RIN 0648-BC97

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Rule Extension, Georges Bank Yellowtail Flounder and White Hake Catch Limits and GOM Cod Carryover Revisions

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

**ACTION:** Temporary final rule; emergency action extended.

**SUMMARY:** This rule extends, pursuant to NMFS's emergency authority in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Georges Bank (GB) yellowtail flounder and white hake specifications for fishing year (FY) 2013 and the GOM cod sector carryover reduction that were published on May 3, 2013, which were implemented as emergency actions concurrently with the Framework Adjustment (FW) 50 final rule under the Northeast (NE) Multispecies Fishery Management Plan (FMP). These measures were scheduled to expire on October 30, 2013. Specifically, this temporary rule maintains the current Acceptable Biological Catch (ABC) and Annual Catch Limit (ACL) for GB yellowtail flounder and white hake, and the 1.85-percent allowable carryover of unused FY 2012 GOM cod Annual Catch Entitlement (ACE) for sectors for an additional 183 days, i.e., through the end of FY 2013 (May 1, 2013, through April 30, 2014). The need for the emergency measures is unchanged, which is to establish FY 2013 catch limits for GB yellowtail flounder and white hake based upon the best available scientific information, and to reduce available carryover of unused FY 2012 GOM cod ACE for sectors. The

intended effect of the emergency measures is to prevent overfishing on GB yellowtail flounder and GOM cod, and to incorporate the best available science into the management of white hake.

**DATES:** This rule is effective October 30, 2013, through April 30, 2014.

The expiration date of the emergency measures for GB yellowtail flounder and white hake specifications, and GOM cod carryover in the preamble of the final rule published May 3, 2013, (78 FR 26172) is extended through April 30, 2014.

**ADDRESSES:** Copies of Framework 50, associated emergency rules, and other measures, the environmental assessment (EA), its Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Act (FRFA) analysis prepared by the New England Fishery Management Council (Council) and NMFS are available from John K. Bullard, Regional Administrator, NMFS Northeast Regional Office (NERO), 55 Great Republic Drive, Gloucester, MA 01930. The FRFA analysis consists of the FRFA, public comments and responses, and the summary of impacts and alternatives contained in the final rule for Framework 50, Associated Emergency Rules, and Other Measures. The EA/RIR/FRFA is also accessible via the Internet at: <http://www.nero.noaa.gov/sfd/sfdmulti.html>.

**FOR FURTHER INFORMATION CONTACT:** Melissa Hooper, Fishery Policy Analyst, (978) 281-9166, fax (978) 281-9135.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This temporary final rule extends the revised GB yellowtail flounder and white hake catch limits and GOM cod carryover implemented through emergency authority in the Magnuson-Stevens Act, as published in the Framework 50 final rule on May 3, 2013, to maintain those measures through the end of FY 2013 (April 30, 2014). The May 3, 2013, final rule (78 FR 26172) included detailed information on the background, reasons, and justification to revise through emergency action, the GB yellowtail flounder and white hake catch limits from those originally proposed in the Framework 50 proposed rule (78 FR 19368; March 29, 2013) and from the standard 10-percent allowable carryover for GOM cod. That information is not repeated here.

Section 305(c) of the Magnuson-Stevens Act allows for the extension of an emergency action, which is otherwise effective for up to 180 days, for up to another 186 days, provided

that certain criteria are met: (1) The public has had an opportunity to comment on the emergency regulation, and (2) in the case of a Council recommendation for emergency action, the Council is actively developing an FMP amendment or regulations to address the emergency or overfishing on a permanent basis. NMFS accepted public comment on the emergency measures in the final rule through June 17, 2013, but no comments were submitted. Because these extensions do not change the measures already in place, we are not accepting additional public comment on their extension. NMFS has determined that all the necessary criteria have been met and, therefore, is extending these emergency measures.

##### *1. FY 2013 GB Yellowtail Flounder ABC*

The emergency specifications extended through this final rule are the revised GB yellowtail flounder catch limits for FY 2013, as follows: A U.S. Overfishing Limit (OFL) of 882 mt; a U.S. ABC of 215 mt; a total ACL of 208.5 mt; a groundfish sub-ACL of 116.8 mt; a scallop fishery sub-ACL of 83.4 mt; a small-mesh fisheries sub-ACL of 4.0 mt; and an Other ACL sub-component of 4.3 mt. The initial emergency action modified GB yellowtail flounder catch limits from those originally proposed based on a determination that the Framework 50 proposed catch limits were not based upon the Council's Scientific and Statistical Committee (SSC) recommendation, were not consistent with the best available scientific information, and had a high likelihood of resulting in overfishing.

Although the Framework 50 final rule contained preliminary information regarding the more specific components of the groundfish sub-ACL (the division of the groundfish sub-ACL between sectors and the common pool and the Incidental Catch Total Allowable Catches for common pool vessels), it did not implement the final specification of these components (and this rule does not need to address those aspects of the FMP). The components of the GB yellowtail flounder groundfish sub-ACL are specified in the final rule that adjusted the FY 2013 groundfish sub-ACL components for all stocks (78 FR 34928; June 11, 2013).

##### *2. FY 2013 White Hake ABC*

The emergency specifications extended through this final rule are the revised white hake catch limits for FY 2013, as follows: A U.S. OFL of 5,462 mt; a U.S. ABC of 4,177 mt; a total ACL of 3,974 mt; a groundfish sub-ACL of 3,849 mt; a state waters sub-component

of 42 mt; and an Other ACL sub-component of 84 mt. NMFS modified the white hake catch limits from those proposed and approved through Framework 50 at the request of the Council, because more recent assessment information became available during rulemaking that indicated an increase was warranted. The emergency action was intended to incorporate the best available scientific information into the management of white hake and to help mitigate some of the anticipated impacts of reductions to catch limits for other stocks. The specific emergency action to increase the white hake catch limits was at the request of the Council (Council motion April 24, 2013), because the Council could not act quickly enough to revise the catch limits on its own for FY 2013. The Council is currently developing Framework 51, which would address the emergency on a permanent basis by specifying white hake ABCs based on this recent assessment for FY 2014–2015.

As explained under Item 1, the Framework 50 final rule contained preliminary information regarding the more specific components of the groundfish sub-ACL and the final distribution of these components are as specified in the June 11, 2013, final adjustment rule.

### 3. FY 2013 Sector Carryover for GOM Cod

This temporary rule extends the emergency reduction to the amount of unused GOM cod ACE that sectors were allowed to carryover from FY 2012 to FY 2013 to 1.85 percent. NMFS determined, based on analysis, that if sectors carried over the full 10 percent of their unused FY 2013 ACE for GOM cod, it would increase the likelihood of overfishing on this stock. Thus, through the Framework 50 final rule, NMFS reduced the amount of allowable GOM cod carryover to 1.85 percent of the sectors' FY 2012 ACE to ensure the total potential catch (ACL + carryover) did not exceed the FY 2013 GOM cod OFL.

As described above, no comments were received on these measures.

### Classification

The Regional Administrator, Northeast Region, NMFS, has determined that the emergency measures extended by this temporary rule are necessary for the conservation and management of the NE multispecies fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

The Framework 50 final rule, including the emergency measures that

this temporary rule extends, was determined to be significant for purposes of E.O. 12866.

The Framework 50 final rule including the emergency measures that this temporary rule extends does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

Because the original emergency rule provided for public comment on these measures, it is not necessary to waive prior notice and comment procedures. Under 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries finds good cause to waive the 30-day delayed effectiveness of this action. Because the extension of these emergency measures merely continues regulations already in place, it would be contrary to the public interest to allow the expiration of the revised GB yellowtail flounder and white hake catch limits and reduced GOM cod carryover, or a gap in effectiveness of these measures after October 29, 2013. As described more fully in the original May 3, 2013, emergency action (78 FR 26172), the reasons justifying promulgation of the rule on an emergency basis make a delay in effectiveness contrary to the public interest. The revised catch limits and carryover are necessary to prevent overfishing on GB yellowtail flounder and GOM cod. If the revised GB yellowtail flounder ABC were allowed to expire, it would revert to the default ABC specified in Framework 47, which NMFS has determined would be likely to result in overfishing and severe harm to the stock. Similarly, if the allowable GOM cod carryover were to revert to the standard 10 percent of FY 2012 ACE, total potential catch could exceed the OFL by 12 percent. This would represent a serious conservation and management threat to the GOM cod stock. Furthermore, a gap in the revised GB yellowtail flounder catch limits and GOM cod carryover due to a delay of this temporary rule would severely disrupt the fishery. The revised white hake catch limits were intended to incorporate the most recent, best available scientific information into the management of this stock. Increasing this catch limit was also intended to mitigate the negative economic impacts to the fishing industry from substantial reductions in catch limits for other groundfish stocks that were necessary to prevent overfishing. If the revised white hake catch limits were to expire, they would default to the lower catch limits approved in Framework 50, which were based on outdated assessment information. This could cause some fishery components to temporarily

exceed their allocations. For some components of the fishery, this would trigger inseason accountability measures, temporarily closing productive fishing grounds to some vessels and resulting in foregone yield and economic losses that may negate any mitigating economic benefits of the original emergency action. Thus, even a temporary gap in effectiveness could have substantial economic impacts to the fishing industry and severely disrupt operations. For all of these reasons, a 30-day delay in the effectiveness of this rule is impracticable and contrary to the public interest.

A FRFA was prepared for the Framework 50 final rule and associated emergency measures as required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, and is not repeated here. The FRFA analyzed the effects of the emergency measures for the duration of the year in anticipation of this extension. A copy of the full analysis is available from NMFS (see **ADDRESSES**).

The EA prepared for Framework 50 analyzed the impacts of the emergency specifications for the duration of a full year. Therefore, the impacts of this emergency action extension have been analyzed, and are within the scope of the Finding of No Significant Impact.

### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 23, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the 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.*

#### § 648.87 [Amended]

- 2. Section 648.87 is amended by suspending paragraph (b)(1)(i)(C).

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