

Personal protective equipment, Railroad employees, Railroad safety.

### The Interim Final Rule

■ In consideration of the foregoing, FRA amends part 214 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

#### PART 214—[AMENDED]

■ 1. The authority for part 214 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Section 214.107 is revised to read as follows:

#### § 214.107 Working over or adjacent to water.

(a) Bridge workers working over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists, shall be provided and shall use life vests or buoyant work vests in compliance with U.S. Coast Guard requirements in 46 CFR 160.047, 160.052, and 160.053. Life preservers in compliance with U.S. Coast Guard requirements in 46 CFR 160.055 shall also be within ready access. This section shall not apply to bridge workers using personal fall arrest systems or safety nets that comply with this subpart or to bridge workers who are working under the provisions of § 214.103(b)(2), (c) or (d) of this subpart.

(b) Prior to each use, all flotation devices shall be inspected for defects that reduce their strength or buoyancy by designated individuals trained by the railroad or railroad contractor. Defective units shall not be used.

(c) Where life vests are required by paragraph (a) of this section, ring buoys with at least 90 feet of line shall be provided and readily available for emergency rescue operations. Distance between ring buoys shall not exceed 200 feet.

(d) Where life vests are required, at least one lifesaving skiff, inflatable boat, or equivalent device shall be immediately available. If it is determined by a competent person that environmental conditions, including weather, water speed, and terrain, merit additional protection, the skiff or boat shall be manned.

Issued in Washington, DC, on February 2, 2005.

**Robert D. Jamison,**

*Acting Federal Railroad Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 040112010-4114-02; I.D. 020705A]

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Reduction of the Yellowtail Flounder Trip Limit for the U.S./Canada Management Area

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

**ACTION:** Reduction of the Yellowtail Flounder Trip Limit for the U.S./Canada Management Area.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has projected that the total allowable catch (TAC) for Georges Bank (GB) yellowtail flounder allocated for harvest from the U.S./Canada Management Area will be fully harvested prior to the end of the fishing year if the rate of GB yellowtail flounder harvest remains at the current level. The Regional Administrator, therefore, is reducing the GB yellowtail flounder trip limit from 15,000 lb (6,408 kg) per trip to 5,000 lb (2,268 kg) per trip for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area, effective February 9, 2005.

**DATES:** Effective 0001 hrs local time, February 9, 2005, through April 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Karen Tasker, (978) 281-9273, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the yellowtail flounder trip limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C). 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 under specific conditions. The TAC allocation for GB yellowtail flounder for the 2004 fishing year was specified at 6,000 mt in the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) (April 27, 2004, 69 FR 22906). Section 648.85(a)(3)(iv)(D) authorizes the Regional Administrator to modify certain conditions regarding the

harvesting of fish from the U.S./Canada Management Area, including trip limits for GB yellowtail flounder harvested from that area.

On October 1, 2004 (69 FR 59815), upon determination by the Regional Administrator that 85 percent of the GB yellowtail flounder TAC had been harvested, NMFS closed the Eastern U.S./Canada Area to all NE multispecies DAS vessels and prohibited all NE multispecies vessels from harvesting, possessing, or landing GB yellowtail flounder from the U.S./Canada Management Area, because of concerns that the yellowtail flounder TAC would be fully harvested or overharvested prior to the end of the fishing year. Full harvest of the TAC was anticipated due to the amount of yellowtail flounder harvested by vessels targeting yellowtail flounder in the U.S./Canada Management Area, and because of concerns regarding anticipated yellowtail flounder bycatch by vessels targeting groundfish other than yellowtail flounder within the U.S./Canada Management Area. Additional concern was raised by the potential impact that may be caused by scallop vessels fishing in Closed Area II under the Sea Scallop Access Program implemented under Frameworks 16/39 to the Atlantic Sea Scallop/NE Multispecies FMPs. Because of these potential sources of yellowtail flounder harvest, this action was necessary to ensure that the GB yellowtail flounder TAC would not be exceeded during the 2004 fishing year.

On January 14, 2005 (70 FR 2820, January 18, 2005), under the authority of § 648.85(a)(3)(iv)(D), NMFS re-opened the Eastern U.S./Canada Area; removed the prohibition on the harvest, possession, and landing of GB yellowtail flounder by all NE multispecies vessels within the entire U.S./Canada Management Area; and established a trip limit of 15,000 lb (6,804 kg) for GB yellowtail flounder for vessels fishing in the U.S./Canada Management Area. In addition, the daily poundage limit for yellowtail flounder and cod were removed to allow vessels additional flexibility, should they need to end a trip prematurely due to an unexpected event; i.e., vessels would have the ability to retain their entire catch onboard when entering port and on their subsequent trip. This action was taken in response to data indicating that the amount of GB yellowtail flounder harvested under the Sea Scallop Access Program and the amount of GB yellowtail flounder bycatch caught by vessels targeting groundfish other than yellowtail flounder within the U.S./Canada Management Area

would likely not result in the overharvest of the TAC.

Vessel Monitoring System (VMS) reports and other information collected since the re-opening of the U.S./Canada Management Area indicate that many more vessels than initially anticipated are directly targeting GB yellowtail flounder in the U.S./Canada Management Area, and are thereby harvesting more yellowtail flounder than NMFS initially anticipated they would. Based on this information, and the rate at which GB yellowtail flounder is being harvested, NMFS is reducing the trip limit for GB yellowtail flounder to 5,000 lb (2268 kg) per trip, effective February 9, 2005, for NE multispecies DAS vessels fishing in the U.S./Canada Management Area. By reducing the trip limits for GB yellowtail flounder at this time, the fishing industry is more likely to achieve the full harvest of the GB yellowtail flounder TAC and other TACs for this region without a substantial risk of overharvesting the resource. To allow the fishery to continue at its current trip limit could necessitate closure of the Eastern U.S./

Canada Area before the full harvest of the GB haddock and GB cod TACs in place for this area, in order to ensure that the yellowtail flounder TAC is not exceeded.

Yellowtail flounder landings will be closely monitored through VMS and other available information and, if 100 percent of the TAC allocation for GB yellowtail flounder is projected to be harvested, the Eastern U.S./Canada Area will be closed to NE multispecies DAS vessels and the harvesting, possession, and landing of yellowtail flounder by NE multispecies vessels in the U.S./Canada Management Area would be prohibited, in accordance with the regulations § 648.85(a)(3)(iv)(C)(3).

#### **Classification**

This action reduces the trip limit for GB yellowtail flounder in the U.S./Canada Management Area in order to allow vessels to fully harvest the GB cod and GB haddock TACs while ensuring that overharvesting of GB yellowtail flounder does not occur. To allow the higher trip limit for GB yellowtail flounder to continue during the period necessary to publish and receive

comments on a proposed rule could necessitate that NMFS close the Eastern U.S./Canada Area before the fishing industry achieves the available TACs of GB cod and GB haddock for the area, and before a final rule to lower the trip limit could be implemented. Such a delay, therefore, would create an unnecessary burden on the fishing industry. Based on this possibility, under 5 U.S.C. 553(b)(3), proposed rulemaking is waived because it would be impracticable and contrary to the public interest. Furthermore, for the same reason, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: February 7, 2005.

**Alan D. Risenhoover,**

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

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