

submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 31, 2005.

**Richard Greene,**

*Regional Administrator, Region 6.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No.050331089-5089-01; I.D. 031005A]

RIN 0648-AS74

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for Georges Bank Cod, Haddock, and Yellowtail Flounder in the U.S./Canada Management Area for Fishing Year 2005

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes 2005 fishing year (FY) Total Allowable Catches (TACs) for Georges Bank (GB) cod, haddock, and yellowtail flounder in the U.S./Canada Management Area, and provides notice that these TACs may be adjusted during FY 2005, if NMFS determines that the harvest of these stocks in FY 2004 exceeded the TACs specified for FY 2004. The intent of this

action is to provide for the conservation and management of those three stocks of fish.

**DATES:** Comments must be received by May 16, 2005.

**ADDRESSES:** You may submit written comments by any of the following methods:

- E-mail: [USCATAC@NOAA.gov](mailto:USCATAC@NOAA.gov).

Include in the subject line the following: Comments on the proposed TACs for the U.S./Canada Management Area.

- Federal e-rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the proposed TACs for the U.S./Canada Management Area."

- Fax: (978) 281-9135.

Copies of the Transboundary Management Guidance Committee's 2004 Guidance Document and copies of the Environmental Assessment of the 2005 TACs (including the Regulatory Impact Review and Regulatory Flexibility Analysis (IRFA) may be obtained from the National Marine Fisheries Service at the mailing address specified above; telephone (978) 281-9315. NMFS prepared a summary of the IRFA, which is contained in the Classification section of this proposed rule.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135, e-mail [Thomas.Warren@NOAA.gov](mailto:Thomas.Warren@NOAA.gov).

**SUPPLEMENTARY INFORMATION:** The Northeast Multispecies Fishery Management Plan (FMP) specifies a procedure for setting annual hard (i.e., the fishery or area closes when a TAC is reached) TAC levels for GB cod, haddock, and yellowtail flounder. The regulations governing the annual development of TACs (§ 648.85(a)(2)) were implemented by Amendment 13 to the FMP (69 FR 22906; April 27, 2004) in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal understanding between the United States and Canada that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution.

Annual TACs are determined through a process involving the New England Fishery Management Council (Council),

the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Transboundary Resources Steering Committee (§ 648.85(a)(2)(i)). On August 31, 2004, the TMGC approved the 2004 Guidance Document for GB cod, GB haddock, and GB yellowtail flounder, which included recommended U.S. TACs for these stocks. The recommended 2005 TACs were based upon the most recent stock assessments (Transboundary Resource Assessment Committee (TRAC) Status Reports for 2004), and the fishing mortality strategy shared by both the United States and Canada. The strategy is to maintain a low to neutral risk of exceeding the fishing mortality limit reference ( $F_{ref} = 0.18, 0.26, \text{ and } 0.25$  for cod, haddock, and yellowtail flounder, respectively). When stock conditions are poor, fishing mortality rates (F) should be further reduced to promote rebuilding.

For GB cod, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2005 is 1,000 mt. This corresponds to an F less than the  $F_{ref}$  of 0.18 in 2005 and represents a low risk of exceeding the  $F_{ref}$ . At this level of harvest there is a neutral or 50 percent chance, that stock biomass will decrease from 2005 to 2006. The annual allocation shares for FY 2005 between the U.S. and Canada are based on a combination of historical catches (35 percent weighting) and resource distribution based on trawl surveys (65 percent weighting). Combining these factors entitles the United States to 26 percent and Canada to 74 percent, resulting in a national quota of 260 mt for the United States and 740 mt for Canada.

For GB haddock, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2005 is 23,000 mt. This corresponds to an F of less than the  $F_{ref}$  of 0.26 in 2005 and represents a low risk of exceeding the  $F_{ref}$ . Adult biomass will increase substantially from 2005 to 2006 due to recruitment of the exceptional 2003 year class. The annual allocation shares for 2005 between countries are based on a combination of historical catches (35 percent weighting) and resource distribution based on trawl surveys (65 percent weighting). Combining these factors entitles the United States to 33 percent and Canada to 67 percent, resulting in a national quota of 7,590 mt for the United States and 15,410 mt for Canada.

For GB yellowtail flounder, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2005 is 6,000 mt. A catch of about 4,000 mt in 2005 corresponds to an F equal to the

$F_{ref}$  of 0.25. Alternative analyses, which make different assumptions about selectivity, indicate higher projected catch at  $F_{ref}$  in 2005, but still lower than the 2004 quota of 7,900 mt. The trend in stock biomass is increasing and recent recruitment has improved, but fishing mortality remains substantially above  $F_{ref}$ . A reduced catch of 6,000 mt in 2005 should result in moving toward  $F_{ref}$ . The annual allocation shares for 2005 between countries are based on a

combination of historical catches (35 percent weighting) and resource distribution based on trawl surveys (65 percent weighting). Combining these factors entitles the United States to 71 percent and Canada to 29 percent, resulting in a national quota of 4,260 mt for the United States and 1,740 mt for Canada.

On September 1, 2004, the 2004 Guidance Document was presented to the U.S./Canada Transboundary

Resources Steering Committee. On September 16, 2004, the Council approved the following U.S. TACs recommended by the TMGC: 260 mt of GB cod, 7,590 mt of GB haddock, and 4,260 mt of GB yellowtail flounder. The 2005 cod and yellowtail flounder TACs represent a decrease from 2004 TAC levels, and the 2005 haddock TAC represents an increase from the 2004 TAC.

#### 2005 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,000	23,000	6,000
U.S. TAC	260 (26)	7,590 (33)	4,260 (71)
Canada TAC	740 (74)	15,410 (67)	1,740 (29)

#### 2004 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,300	15,000	7,900
U.S. TAC	300 (23)	5,100 (34)	6,000 (76)
Canada TAC	1,000 (77)	9,900 (66)	1,900 (24)

The 2005 TACs are based upon stock assessments conducted in June 2004 by the TRAC. The proposed TACs are consistent with the results of the TRAC and the TMGC's harvest strategy.

The regulations implemented by Amendment 13, at § 648.85(a)(2)(ii), state the following: "Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.≥

Therefore, should an analysis of the catch of the shared stocks by U.S. vessels indicate that an overage occurred during FY 2004 the pertinent TACs will be adjusted downward in order to be consistent with the FMP and the Understanding. Although it is very unlikely, it is possible that a very large overage could result in an adjusted TAC of zero. If an adjustment to one of the 2005 TACs for cod, haddock, or yellowtail flounder is necessary, the public will be notified through a **Federal Register** notice and through a letter to permit holders.

#### Classification

This action is required by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities.

The specification of hard TACs is necessary in order to ensure that the

agreed upon U.S./Canada fishing mortality levels for these shared stocks of fish are achieved in the U.S./Canada Management Area (the geographic area on GB defined to facilitate management of stocks of cod, haddock, and yellowtail flounder that are shared with Canada). A description of the objectives and legal basis for the proposed TACs is contained in the SUMMARY of this proposed rule.

Under the Small Business Administration (SBA) size standards for small fishing entities (\$3.5 million), all permitted and participating vessels in the groundfish fishery are considered to be small entities. Gross sales by any one entity (vessel) do not exceed this threshold. The maximum number of small entities that could be affected by the proposed TACs are approximately 1,000 vessels, i.e., those with limited access Northeast multispecies days-at-sea permits, that have an allocation of Category A or B days-at-sea. Realistically, however, the number of vessels that choose to fish in the U.S./Canada Management Area, and that therefore would be subject to the associated restrictions, including hard TACs, would be substantially less.

From May 2004, through February 2005, 141 individual vessels fished in the U.S./Canada Management Area. Because the regulatory regime in FY 2005 will be similar to that in place in FY 2004, it is likely that the number of vessels that choose to fish in the area during FY 2005 will be similar to the

number of vessels that fished in the area during FY 2004 (141 vessels).

The economic impacts of the proposed TACs are difficult to predict due to several factors that affect the amount of catch, as well as the price of the fish. Furthermore, the economic impacts are difficult to predict due to the newness of these regulations (May 2004; Amendment 13 to the FMP). Therefore, there is relatively little historic data, and little is known about the specific fishing patterns or market impacts that may be caused by this hard TAC management system.

The amount of GB cod, haddock, and yellowtail flounder landed and sold will not be equal to the sum of the TACs, but will be reduced as a result of discards (discards are counted against the hard TAC), and may be further reduced by limitations on access to stocks that may result from the associated rules. Reductions to the value of the fish may result from fishing derby behavior and the potential impact on markets. The overall economic impact of the proposed 2005 U.S./Canada TACs will likely be similar to the economic impacts of the TACs specified for the 2004 fishing year.

Although unlikely, a downward adjustment to the TACs specified for FY 2005 fishing year could occur after the start of the fishing year, if it is determined that the U.S. catch of one or more of the shared stocks during the 2004 fishing year exceeded the relevant TACs specified for FY 2004.

Three alternatives were considered for FY 2005: the proposed TACs, the status quo TACs, and the no action alternative. No additional set of TACs are proposed because the process involving the TMGC and NEFMC yields only one proposed set of TACs. The proposed TACs would have a similar economic impact as the status quo TACs. Adoption of the status quo TACs, however, would not be consistent with the FMP because the status quo TACs do not represent the best available scientific information. Although the no action alternative (no TACs) would not constrain catch in the U.S./Canada Area,

and therefore would likely provide some additional fishing opportunity, the no action alternative is not a reasonable alternative because it is inconsistent with the FMP in both the short and long term. The FMP requires specification of hard TACs in order to limit catch of shared stocks to the appropriate level (i.e., consistent with the U.S./Canada Resource Sharing Understanding and the FMP). As such, the no action alternative would likely provide less economic benefits to the industry in the long term than the proposed alternative.

Two of the three proposed TACs would be reduced (cod and yellowtail

flounder), and could, under certain circumstances, constrain fishing opportunity on haddock (for which the TAC is increasing). The proposed TACs do not modify any collection of information, reporting, or recordkeeping requirements. The proposed TACs do not duplicate, overlap, or conflict with any other Federal rules.

Dated: April 8, 2005.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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