

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

[Docket No. 04011-2010-4114-02; I.D. 041707E]

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; landing limit.

SUMMARY: NMFS announces a decrease in the Georges Bank (GB) yellowtail flounder trip limit to 3,000 lb (1,361 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 and is intended to prevent over-harvesting of the Total Allowable Catch (TAC) for GB yellowtail flounder during the 2007 fishing year. This action is being taken to provide additional opportunities for 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 May 1, 2007, through April 30, 2008.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Management Specialist, (978) 281-9273, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at § 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 2007 fishing year (May 1, 2007 - April 30, 2008) is proposed to be 900 mt (72 FR 10967, March 12, 2007); a 43-percent reduction from the TAC for the 2006 fishing year. The

regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to increase or decrease the trip limits in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation. Based upon the reduced 2007 TAC for GB yellowtail flounder, and projections of harvest rates in the fishery, the current trip limits could result in the over-harvest of the GB yellowtail flounder TAC during the 2007 fishing year, and reduce the opportunities to fish for Eastern GB cod and haddock in the Eastern U.S./Canada Area. Based on this information, NMFS is decreasing the current 10,000-lb (4,536-kg) trip limit in the U.S./Canada Management Area to 3,000 lb (1,361 kg), effective May 1, 2007, through April 30, 2008. Accordingly, there is a 3,000 lb (1,361 kg) trip limit on the amount of GB yellowtail flounder that can be harvested or landed for the 2007 fishing year for vessels subject to these regulations. This will allow for the fishery in the Eastern U.S./Canada Area to remain open longer, and increase the opportunities to target Eastern GB cod and haddock during the 2007 fishing year. NE multispecies vessels fishing in the Eastern U.S./Canada Area under a NE multispecies DAS with trawl gear must use either a haddock separator trawl or a flounder trawl net, as specified at § 648.85(a)(3)(iii). GB yellowtail flounder landings will be closely monitored through the Vessel Monitoring System (VMS) and other available information. Should 100 percent of the TAC allocation for GB yellowtail flounder be projected to be harvested, the Eastern U.S./Canada Area will close to all limited access NE multispecies DAS vessels, and all vessels will be prohibited from harvesting, possessing, or landing yellowtail flounder from the entire U.S./Canada Management Area for the remainder of the fishing year. Conversely, if the TAC is projected to be under-harvested by the end of the fishing year, inseason adjustments to increase the trip limit may be considered.

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)(B) and (d)(3), the Assistant Administrator finds 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 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. Given that there is a relatively small GB yellowtail flounder TAC of 900 mt, the time necessary to provide for prior notice, opportunity for public comment, or delayed effectiveness could prevent the agency from ensuring that the TAC is not exceeded. If implementation of this action is delayed, the NE multispecies fishery could fully harvest the TAC for GB yellowtail flounder prior to the end of the 2007 fishing year. Over-harvesting the GB yellowtail TAC would result in an overage deduction in fishing year 2008, and increase economic impacts to the industry and social impacts beyond those analyzed for Amendment 13. A delay in the effectiveness of the trip limit modification in this rule could prevent the agency from meeting its management obligation and ensuring the opportunity for the 2007 TACs for GB cod, haddock, and yellowtail flounder specified for the U.S./Canada Management Area to be harvested at a level that approaches optimum yield. Any such delay could lead to the negative impacts to the fishing industry described above. The decision to take this action could not be made earlier due to the delayed recommended specifications of the 2007 fishing year TACs in the U.S./Canada Management Area from the Transboundary Management Guidance Committee and the New England Fishery Management Council. The proposed 2007 TACs were published in the **Federal Register** on March 12, 2007, and the public comment period closed on April 11, 2007. Therefore, the final decision to implement a 900 mt TAC for GB yellowtail flounder, and a precautionary, reduced trip limit for the 2007 fishing year, could not be made until after that comment period closed.

The rate of harvest of the GB yellowtail flounder TAC in the U.S./Canada Management Area is updated weekly on the internet at <http://www.nero.noaa.gov>. Accordingly, the public is able to obtain information that would provide some advanced notice of a potential action to provide additional opportunities to the NE multispecies industry to fully harvest the TAC for GB yellowtail flounder, as well as Eastern GB cod and haddock, during the 2007 fishing year. Further, the potential for this action was considered and open to public comment during the development of Framework 42.

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: April 19, 2007.

James P. Burgess,

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

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