

possible must be removed prior to release, using a line cutter as required by paragraph (c)(5)(i) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(5)(i) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title for additional information.

\* \* \* \* \*

(iii) \* \* \*

(C) \* \* \*

(3) If green-stick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. If green-stick gear is onboard, artificial bait may be possessed, but used only with green-stick gear.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(ii) *Charter/Headboat*. Rod and reel (including downriggers), bandit gear, handline, and green-stick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Harpoon gear is authorized for commercial Atlantic tuna fisheries on non-for-hire trips only. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

(iii) *General*. Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick.

\* \* \* \* \*

(V) *Longline*. Longline and green-stick.

\* \* \* \* \*

(g) *Green-stick gear*. Green-stick gear may only be utilized when fishing from vessels issued a valid Atlantic Tunas General, HMS Charter/Headboat, or Atlantic Tunas Longline category permit. The gear must be attached to the vessel, actively trolled with the mainline at or above the water's surface, and may not be deployed with more than 10 hooks or gangions attached.

6. In § 635.71, paragraph (a)(23) is revised to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(23) Fail to comply with the restrictions on use of pelagic longline, bottom longline, gillnet, buoy gear, speargun gear, green-stick gear, or

harpoon gear as specified in § 635.21(c), (d), (e)(1), (e)(3), (e)(4), (f), or (g).

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 080428607-8609-01]

RIN 0648-AW69

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Allocation of Trips to Closed Area II Yellowtail Flounder Special Access Program**

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

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

**SUMMARY:** NMFS proposes to allocate zero trips in the Closed Area (CA) II Yellowtail Flounder Special Access Program (SAP) during the 2008 fishing year (FY) (i.e., May 1, 2008, through April 30, 2009). This action is based on a determination that the available catch of Georges Bank (GB) yellowtail flounder is insufficient to support a minimum level of fishing activity within the CA II Yellowtail Flounder SAP for FY 2008. The intent of this action is to help achieve optimum yield (OY) in the fishery by maximizing the utility of available GB yellowtail flounder TAC throughout FY 2008.

**DATES:** Comments must be received on or before 5 p.m., local time, May 21, 2008.

**ADDRESSES:** You may submit comments, identified by 0648-AW69, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- Fax: 978-281-9341, attn: Douglas Potts, Fishery Management Specialist.
- Mail: Written comments (paper, disk, or CD-ROM) should be sent to Patricia A. Kurkul, Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on CA II YT SAP, 0648-AW69."

Instructions: All comments received are a part of the public record and will

generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**SUPPLEMENTARY INFORMATION:** The final rule implementing Framework Adjustment (FW) 40B (70 FR 31323; June 1, 2005), authorized the Administrator, Northeast Region, NMFS (Regional Administrator) to determine the allocation of the total number of trips into the CA II Yellowtail Flounder SAP based upon several criteria, including: GB yellowtail flounder total allowable catch (TAC) level, as established through the U.S./Canada Resource Sharing Understanding; and the amount of GB yellowtail flounder caught outside of the SAP. A formula was developed in FW 40B to assist the Regional Administrator in determining the appropriate number of trips for this SAP on a yearly basis. The formula is intended to allow the SAP to be adjusted for changing stock conditions to help achieve OY for GB yellowtail flounder.

FW 40B authorizes the allocation of zero trips to this SAP if the available GB yellowtail flounder catch (GB yellowtail flounder TAC projected catch of GB yellowtail flounder outside the SAP) is not sufficient to support 150 trips with a 15,000-lb (6,804-kg) trip limit (i.e., if the available GB yellowtail catch is less than 1,021 mt), as required. The U.S./Canada GB yellowtail flounder TAC for 2008, as recommended by the Transboundary Management Guidance Committee and the Council, is 1,950 mt (73 FR 16571; March 28, 2008). During FY 2007, vessels fishing outside of the SAP landed over 901 mt, 100 percent of the U.S./Canada GB yellowtail flounder TAC. However, this number does not reflect the potential catch outside of this SAP as the FY 2007 TAC of GB yellowtail flounder was caught by January 24, 2008, and possession was prohibited in the U.S./Canada Management Area for the remainder of the fishing year. The total catch of GB yellowtail flounder outside of this SAP in FY 2006 was 1,851 mt, 89 percent of the U.S./Canada GB yellowtail flounder TAC for that year. Using an average of these two years as a more realistic approximation of potential catch of GB

yellowtail flounder by all vessels outside of the SAP in FY 2008, there would be insufficient available catch to allocate to this SAP (1,950 mt 1,376 mt <1,021 mt) in FY 2008. Therefore, zero trips should be allocated to the CA II Yellowtail Flounder SAP for FY 2008.

#### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule is exempt from review under EO 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

The SBA size standard for small commercial fishing entities is \$ 4.0 million in gross receipts. Individuals that would be impacted by this proposed action include all limited access NE multispecies day-at-sea permit holders. All commercial fishing entities affected by this proposed rule would fall under the SBA size standard for small commercial fishing entities and there would be no disproportionate impacts between small and large entities. The proposed action would affect a substantial number of small entities, as approximately 66 percent of

the vessels affected by this action (i.e., 100 out of 150) had participated in the CA II Yellowtail Flounder SAP when it was open during FY 2004. However, the proposed action will not significantly reduce profit for affected vessels.

The proposed allocation of zero trips into the SAP would help ensure that the GB yellowtail flounder TAC is available throughout the fishing year, minimizing the impacts of depressed prices that could otherwise be caused by temporary floods of yellowtail flounder on the market, and therefore would help avoid the premature closing of the Eastern U.S./Canada Area due to catching the available GB yellowtail flounder TAC. This would enable vessels greater opportunity to fully harvest the available GB cod and GB haddock TAC allocated to the Eastern U.S./Canada Area and to achieve the full economic benefit from the U.S./Canada Management Area by more efficiently using the small GB yellowtail flounder TAC. Analysis prepared for FW 40B indicates that flexibility for vessels to target species other than yellowtail flounder is seen as critical to maintaining the profitability of vessel operations within the U.S./Canada Management Area, including the SAP, given the costs associated with fishing far offshore. Because the proposed action would maintain access to the Eastern U.S./Canada Area throughout the fishing year, this action attempts to preserve the flexibility for vessels to operate in an efficient and cost-effective manner that would maximize the profitability of vessel operations. Since the SAP was closed to fishing for FY 2007, there would be no change in profitability to individual vessels (compared to last year) resulting from

the proposed zero allocation, thus, no economic impact to affected small harvesters.

Two alternatives were considered for FY 2008: The proposed allocation of zero trips into the SAP and the no action alternative. The no action alternative would mean the default measures in the regulations become effective, allowing one trip per month per vessel with a yellowtail flounder trip limit of 10,000 lb (4,536 kg) per trip. Although the no action alternative would provide some additional fishing opportunity in the short term, the no action alternative is not a reasonable alternative because it is inconsistent with the trip allocation formula as specified in the FMP and would likely lead to the premature harvest of the GB yellowtail flounder TAC and the closure of the Eastern U.S./Canada Management Area as previously described. Such a closure would prevent vessels from fully harvesting the available GB cod and GB haddock TAC allocated to the Eastern U.S./Canada Area. As such, the no action alternative would likely provide less economic benefits to the industry in the long term than the proposed alternative.

This proposed rule does not contain any new, nor revised existing reporting, recordkeeping, and other compliance requirements.

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

Dated: April 30, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

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