

Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the LAGC fishery to all IFQ scallop vessels is effective 0001 hr EST, September 15, 2009, through November 30, 2009.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, (978) 281-9221, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Regulations governing fishing activity in the LAGC fishery are found at §§ 648.59 and 648.60. Regulations specifically governing IFQ scallop vessel operations in the LAGC fishery are specified at § 648.53(a)(8)(iii). These regulations authorize vessels issued a valid IFQ scallop permit to fish in the LAGC fishery under specific conditions, including a TAC. The TACs were established by the final rule that implemented Framework 19 to the FMP (73 FR 30790, May 29, 2008) and included a TAC of 688,504 lb (312,300 kg) that may be landed by IFQ vessels during the third quarter of the 2009 fishing year. As required by regulation, the third quarter LAGC TAC was reduced from 688,504 lb (312,300 kg) to 309,320 lb (140,305 kg) due to an overage of 379,184 lb (171,995 kg) in the first quarter. The regulations at § 648.53(a)(8)(iii) require the LAGC fishery to be closed to IFQ vessels once the NMFS Northeast Regional Administrator has determined that the TAC is projected to be landed.

Based on the number of IFQ vessel trips, dealer reporting and vessel pre-landing reports through Vessel Monitoring Systems (VMS), and other information, a projection concluded that, given current activity levels by IFQ scallop vessels in the area, 309,320 lb (140,305 kg) will have been landed on September 14, 2009. Therefore, effective 0001 hours on September 15, 2009, no IFQ scallop vessel fishing under LAGC regulations may declare its intent to enter the fishery and may not fish for, possess, or retain any scallops. IFQ scallop vessels will not be allowed to fish for, possess, or retain scallops, or declare, or initiate, a scallop trip following this closure for the remainder of the 2009 third quarter, ending on November 30, 2009. Therefore, in accordance with the regulations at § 648.53(a)(8)(iii), the LAGC scallop fishery is closed to all IFQ vessels as of 0001 hr local time, September 15, 2009. The LAGC scallop fishery will re-open to IFQ scallop vessels on December 1, 2009.

Classification

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

This action closes the LAGC scallop fishery to all IFQ scallop vessels until December 1, 2009. The regulations at § 648.53(a)(8)(iii) require such action to ensure that IFQ scallop vessels do not exceed the 2009 third quarter TAC. The LAGC scallop fishery opened for the third quarter of the 2009 fishing year at 0001 hours on September 1, 2009. Data indicating the IFQ scallop fleet has landed all of the 2009 third quarter TAC have only recently become available. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest to allow a public comment period. If implementation of this closure is delayed to solicit prior public comment, the quota for this quarter will be exceeded, thereby undermining the conservation objectives of the FMP. Also, if the magnitude of any overage is significant, it would warrant a decrease in the fourth quarter quota. This would have a negative economic impact on vessels that fish seasonally in that period. The AA further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30-day delay in effectiveness for the reasons stated above.

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

Dated: September 10, 2009.

James P. Burgess,

Acting 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. 080521698-9067-02]

RIN 0648-XR42

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Modification of the Gear Requirements for the U.S./Canada Management Area

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

ACTION: Temporary rule; gear restriction.

SUMMARY: This action modifies the gear requirements for the U.S./Canada Management Area to prohibit all limited access Northeast (NE) multispecies vessels fishing on a NE multispecies day-at-sea (DAS) with trawl gear in the Eastern U.S./Canada Area from using flounder trawl nets. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP), and is intended to decrease the likelihood of exceeding the total allowable catch (TAC) for Eastern Georges Bank (GB) cod and GB yellowtail flounder during the 2009 fishing year (FY). This action is being taken to optimize the harvest of transboundary stocks of GB yellowtail flounder, haddock, and cod under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective September 17, 2009, through April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281-6341, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Regulations governing the gear requirements for the U.S./Canada Management Area under the 2009 interim final rule (74 FR 17030, April 13, 2009) are found at § 648.85(a)(3)(ix). The regulations require that trawl vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS in the Eastern U.S./Canada Area, as defined at § 648.85(a)(1)(ii), fish with a Ruhle trawl, a haddock separator trawl, or a flounder trawl net. The Eastern U.S./Canada Area GB cod TAC for FY 2009 (May 1, 2009 - April 30, 2010) was specified at 527 mt, and the TAC for the entire U.S./Canada Management Area for GB yellowtail flounder was specified at 1,617 mt, by the 2009 interim final rule. Once the available TAC for Eastern GB cod, Eastern GB haddock, or GB yellowtail flounder is projected to be caught, the Administrator, Northeast Region, NMFS (Regional Administrator) is required to close the Eastern U.S./Canada Area to all NE multispecies DAS vessels for the remainder of the fishing year, pursuant to § 648.85(a)(3)(iv)(E).

The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to modify certain regulations governing the harvesting of fish from the U.S./Canada Management Area, including gear requirements, to prevent over-harvesting or under-harvesting the TAC allocations specified for Eastern GB cod, Eastern GB haddock, or GB yellowtail flounder in the U.S./Canada Management Area. Based upon Vessel Monitoring System

(VMS) reports and other available information, the TACs for Eastern GB cod and GB yellowtail flounder would be fully harvested before the end of FY 2009, resulting in the premature closure of the Eastern U.S./Canada Area and the potential under-harvest of the available TAC for Eastern GB haddock during FY 2009. Requiring trawl vessels to use either a haddock separator trawl or a Ruhle trawl is expected to reduce the catch rates of both cod and yellowtail flounder, reduce discards, and result in the achievement of the TACs, without exceeding them. Based on this information, the Regional Administrator is prohibiting the use of flounder trawl nets by any limited access NE multispecies vessel fishing in the Eastern U.S./Canada Area under a NE multispecies DAS, to reduce catches and discards of Eastern GB cod and GB yellowtail flounder, effective September 17, 2009, through April 30, 2010.

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), there is 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 § 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to modify gear requirements to prevent over-harvesting or underharvesting the TAC allocation. Because of the time necessary to provide for prior notice and opportunity for public comment, NMFS would be prevented from taking immediate action to slow the catch rate of GB cod in the Eastern U.S./Canada Area. Such a delay would allow the observed high catch rate of GB cod to continue and would result in excessive discards of GB cod, the premature closure of the Eastern U.S./Canada Area for the remainder of the fishing year, and the potential under-harvest of the available TAC specified for GB haddock. Excessive discards of GB cod caused by a delayed implementation of this action could potentially increase mortality on this overfished stock and undermine the conservation objectives of Amendment 13 to the FMP, and the Magnuson-Stevens Act. If implementation of this action is delayed, the NE multispecies fishery could be prevented from fully harvesting the TAC for GB haddock during FY 2009. Under-harvesting this TAC would result in increased economic impacts to the industry, and

social impacts beyond those analyzed in Amendment 13, as the full potential revenue from the available Eastern GB haddock would not be realized.

The rate of harvest of the Eastern GB cod and GB yellowtail flounder TACs in the U.S./Canada Management Area are updated weekly on the internet at <http://www.nero.noaa.gov>. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action to provide additional opportunities to the NE multispecies industry to fully harvest the TAC for any species during FY 2009. Further, the Regional Administrator's authority to modify gear requirements in the U.S./Canada Management Area to help ensure that the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 13 to the FMP and Framework Adjustment 42 to the FMP. 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: September 10, 2009.

Alan D. Risenhoover,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 080304370-91192-02]

RIN 0648-AW52

Fisheries in the Western Pacific; Compensation to Federal Commercial Bottomfish and Lobster Fishermen Due to Fishery Closures in the Papahānaumokuākea Marine National Monument, Northwestern Hawaiian Islands

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

ACTION: Final rule.

SUMMARY: This final rule describes how NMFS will compensate eligible and interested Northwestern Hawaiian Islands (NWHI) commercial lobster permit holders who were, and commercial bottomfish permit holders who will be, displaced by fishery

closures with the establishment of the Papahānaumokuākea Marine National Monument (Monument). Congress mandated that the compensation be based on the economic values of fishing permits. NMFS estimated the net present value of permits using a proxy based on a multiple of annual gross revenues. Permit holders who voluntarily accept compensation must immediately surrender their permits and leave the fisheries.

DATES: This final rule is effective October 15, 2009.

ADDRESSES: Eligible participants in the permit compensation program may contact William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

FOR FURTHER INFORMATION CONTACT: Toby Wood, Sustainable Fisheries Division, NMFS PIR, 808-944-2234.

SUPPLEMENTARY INFORMATION: This final rule is also available at www.gpoaccess.gov/fr.

Public Law 110-161, the Consolidated Appropriations Act of 2008, authorized the Secretary of Commerce (Secretary), through NMFS, to compensate commercial lobster permit holders who were, and commercial bottomfish permit holders who will be, impacted with establishment of the Monument on June 15, 2006 (Proclamation 8031, 71 FR 3644, June 26, 2006, as amended by Proclamation 8112, 72 FR 10031, March 6, 2007). Regulations governing the Monument require that any commercial lobster fishing permit be subject to a zero annual harvest limit, permanently closing the NWHI lobster fishery. The NWHI commercial bottomfish fishery is allowed to operate until June 15, 2011, when it will be closed permanently (see 71 FR 51134, August 29, 2006, and 50 CFR 404.10).

Congress authorized funding for the compensation in the amount of \$6,697,500, and directed the Secretary to initiate rulemaking for a voluntary capacity-reduction program. This final rule establishes a process to implement the Act.

A future voluntary vessel and gear buyout may be developed once the permit compensation is complete, but only if funds authorized by the Act are available. NMFS would publish a separate proposed rule to describe and seek public comment on any future vessel and gear buyout program, as appropriate.

Eligible Participants

The Act defines "eligible participants" as individuals holding commercial Federal fishing permits for