

year. Current rules already establish trip limits for April 1–end of February, so this amendment only applies to March.

This proposed rule does not contain a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act.

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 27, 2007

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.44, paragraph (b)(1)(ii)(A) is revised to read as follows:

#### § 622.44 Commercial trip limits.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) From March 1 through November 30, in amounts exceeding 3,500 lb (1,588 kg).

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 071004577-7578-01]

RIN 0648-AW13

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for Eastern Georges Bank Cod, Eastern Georges Bank Haddock, and Georges Bank Yellowtail Flounder in the U.S./Canada Management Area for Fishing Year 2008

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

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

**SUMMARY:** NMFS proposes 2008 fishing year (FY) Total Allowable Catches (TACs) for Eastern Georges Bank (GB) cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area, as recommended by the New England Fishery Management Council (Council). These TACs may be adjusted during FY 2008, if NMFS determines that the harvest of these stocks in FY 2007 exceeded the TACs specified for FY 2007. NMFS is also considering for the Eastern U.S./Canada Area, postponing the FY 2008 opening until August 1, 2008, allowing longline gear vessels during the May through July period, and setting a cap on the cod caught by such vessels during this period at 5 percent of the cod TAC. 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 February 4, 2008.

**ADDRESSES:** You may submit comments, identified by 0648-AW13, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the 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 U.S./Canada TACs."
- Fax: (978) 281-9135.

Instructions: All comments received are 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 publically 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 formats only.

Copies of the Transboundary Management Guidance Committee's 2007 Guidance Document and copies of the Environmental Assessment (EA) of the 2008 TACs (including the Regulatory Impact Review and Regulatory Flexibility Analysis (IRFA)) may be obtained from NMFS 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 (NE) Multispecies Fishery Management Plan (FMP) specifies a procedure for setting annual hard TAC levels (i.e., the fishery or area closes when a TAC is reached) for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area. 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 (i.e. non-binding) 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 Council, the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Transboundary Resources Steering Committee (§ 648.85(a)(2)(i)). In September 2007, the TMGC approved the 2007 Guidance Document for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder, which included recommended U.S. TACs for these stocks. The recommended 2008 TACs were based upon the most recent stock assessments (Transboundary Resource Assessment Committee (TRAC) Status Reports for 2007), and the fishing mortality strategy shared by both the United States and Canada. The strategy is to maintain a low to neutral (less than 50 percent) 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 Eastern GB cod, the TMGC concluded that the most appropriate combined Canada/USA TAC for Eastern Georges Bank cod for the 2008 fishing year is 2,300 mt. This corresponds to a low risk (less than 25%) of exceeding the  $F_{ref}$  of 0.18 in 2008 and that stock biomass will not increase from 2008 to 2009, though that increase is estimated to be nominal. The annual allocation shares between countries for 2008 are based on a combination of historical

catches (20% weighting) and resource distribution based on trawl surveys (80% weighting). Combining these factors entitles the USA to 29% and Canada to 71%, resulting in a national quota of 667 mt for the USA and 1,633 mt for Canada.

For Eastern GB haddock, the TMGC concluded that the most appropriate combined Canada/USA TAC for Eastern Georges Bank haddock for the 2008 fishing year is 23,000 mt. This represents a low risk (less than 25%) of exceeding the  $F_{ref}$  of 0.26. Adult biomass is projected to peak at 159,000 mt in 2008, reflecting the recruitment and growth of the exceptional 2003 year class, and then decline to 146,000 mt in 2009. The annual allocation shares between countries for 2008 are based on

a combination of historical catches (20% weighting) and resource distribution based on trawl surveys (80% weighting). Combining these factors entitles the USA to 35% and Canada to 65%, resulting in a national quota of 8,050 mt for the USA and 14,950 mt for Canada.

For GB yellowtail flounder, the TMGC concluded that the most appropriate combined Canada/USA TAC for the 2008 fishing year is 2,500 mt. This corresponds to an  $F$  of 0.17, lower than the  $F_{ref}$  of 0.25. With a catch of 2,500 mt in 2008, the age 3+ biomass is expected to increase by 22%. The annual allocation shares between countries for 2008 are based on a combination of historical catches (20% weighting) and resource distribution

based on trawl surveys (80% weighting). Combining these factors entitles the USA to 78% and Canada to 22%, resulting in a national quota of 1,950 mt for the USA and 550 mt for Canada.

On September 18, 2007, the Council approved, consistent with the 2007 Guidance Document, the following U.S. TACs recommended by the TMGC: 667 mt of Eastern GB cod, 8,050 mt of Eastern GB haddock, and 1,950 mt of GB yellowtail flounder. The Council, in a letter dated September 27, 2007, requested that NMFS implement these TACs. The proposed 2008 Fishing Year TACs represent an increase for all three stocks from the 2007 TAC levels (Tables 1 and 2).

TABLE 1: 2008 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	2,300	23,000	2,500
U.S. TAC	667 (29)	8,050 (35)	1,950 (78)
Canada TAC	1,633 (71)	14,950 (65)	550 (22)

TABLE 2: 2007 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,900	19,000	1,250
U.S. TAC	494 (26)	6,270 (33)	900 (72)
Canada TAC	1,406 (74)	12,730 (67)	350 (28)

The 2008 TACs are based upon stock assessments conducted in June 2007 by the TRAC. The proposed TACs are consistent with the results of the TRAC and the TMGC's harvest strategy and, therefore, NMFS proposes that they be implemented through this action.

The regulations for the U.S./Canada Management Understanding, 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 2007, the pertinent TAC 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 2008 TACs for cod, haddock, or yellowtail flounder is necessary, the public will be notified through publication in the **Federal Register** and through a letter to permit holders.

NMFS is also notifying the public that it is considering adjusting the rules governing the Eastern U.S./Canada Area (Area) for FY 2008. The current regulations under 648.85(a)(3)(iv)(D) provide the Regional Administrator authority to implement in-season adjustments to various management measures in order to prevent over-harvesting or facilitate achieving the TAC. On November 7, 2007, the Council voted to postpone the FY 2008 opening of the Eastern U.S./Canada Area for vessels fishing with trawl gear (from May 1, 2008) until August 1, 2008, in order to reduce cod bycatch, while allowing vessels fishing with more selective longline gear access during the May through July period. Such vessels would be limited to a cod catch of five percent of the cod TAC, or 33.35 mt of cod. The Regional Administrator is considering implementing these measures based upon the Council's recommendation and pertinent information.

The objective of the in-season action is to prevent trawl fishing in the Area during the time period when cod bycatch is likely to be very high. The goal of the measure is to prolong access

to the Area in order to maximize the catch of available cod, haddock, and yellowtail flounder. During FYs 2005, 2006, and 2007, the Regional Administrator restricted management measures and access to the Area in June or July when a substantial percentage of the cod TAC had been harvested by trawl gear. When the Area closes vessels lose access not only to cod, haddock, and yellowtail flounder, but also to other valuable groundfish and non-groundfish species. When the Regional Administrator implements restrictions to slow the catch of cod, the profitability of trips may decline and there is reduced incentive to fish in the Area. Delaying access to the Area until August for trawl vessels would reduce the catch of cod because the availability of cod is high in the Area during the time period May through July, and historically, the cod catch has been almost all by trawl vessels. By limiting access to the Area to vessels fishing with hook gear only during the period May through July, it is likely that once the Area opens to trawl vessels on August 1, the length of time the Area will be open or unrestricted will be prolonged, and the catch of haddock and yellowtail

flounder, as well as other species will be maximized.

### Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule is exempt from review under Executive Order 12866 because this action contains no implementing regulations.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from the NMFS (see **ADDRESSES**).

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 and, therefore, there are no differential impacts between large and 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 NE multispecies days-at-sea (DAS) permits that have an allocation of Category A or B DAS. 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.

During fishing years 2004 through 2006, the number of vessels fishing in the U.S./Canada Area ranged from 161 to 184. Because the regulatory regime in FY 2008 will be similar to that in place in the past, and based on data from FY 2007, it is likely that the number of vessels that choose to fish in the U.S./Canada Area during FY 2008 will be similar to the past.

The economic impacts of the proposed TACs are difficult to predict due to numerous factors that affect the amount of catch, as well as the price of the fish. In general, the rate at which cod is caught in the Eastern U.S./Canada Area, and the rate at which yellowtail flounder is caught in the Eastern and Western U.S./Canada Area will determine the length of time the Eastern U.S./Canada Area will remain open. The length of time the Eastern U.S./Canada Area is open will determine the amount of haddock that is caught. During the 2004, 2005, and 2006 fishing years, the TACs were not fully utilized, and inseason changes to the regulations impacted the fishery.

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 2008 U.S./Canada TACs will likely be more positive than the economic impacts of the 2007 TACs due to increased TACs for cod, haddock, and yellowtail flounder, that will likely result in increased revenue. For example, based on the estimates in the EA revenues from cod caught in the Eastern U.S./Canada Area may increase by approximately \$ 786,000 and haddock revenue may increase by \$ 1,069,000.

It should be noted that the revenue associated with the cod, haddock, and yellowtail flounder represented about 2 %, 4 %, and 10%, respectively of the total revenue from trips to the U.S./Canada Area in FY 2006. Examples of other valuable species caught are winter flounder, witch flounder, and monkfish. If the proposed larger GB cod TAC and delayed opening of the Eastern U.S./Canada Area to trawl vessels result in a longer period of time that the Eastern U.S./Canada Area is open and

maximizes the catch of the available TACs, it may result in additional revenue from all species.

Although unlikely, a downward adjustment to the TACs specified for FY 2008 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 2007 fishing year exceeded the relevant TACs specified for FY 2007. The economic effects of this downward adjustment would likely result in a short term loss of revenue proportional to the magnitude of the adjustment.

Three alternatives were considered for FY 2008: 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 the Council yields only one proposed set of TACs. Accordingly, NMFS chooses to either accept or reject the recommendation of the Council. The proposed TACs would have a more positive economic impact as the status quo TACs. Adoption of the status quo TACs would not be consistent with the FMP because the status quo TACs do not represent the best available scientific information incorporated from the most recent TRAC. Although the no action alternative (no TACs) would not constrain catch in the U.S./Canada Management 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 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.

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.

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

Dated: December 27, 2007

**John Oliver,**

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

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