

sales requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RA with an application for the changed permit.

(6) NMFS will not reissue a commercial vessel permit for king mackerel if the permit is revoked or if the RA does not receive an application for renewal within one year of the permit's expiration date.

\* \* \* \* \*

■ 3. In § 622.30, paragraph (b)(2) is revised, and paragraph (b)(3) is added to read as follows:

**§ 622.30 Fishing years.**

\* \* \* \* \*

(b) \* \* \*

(2) *Gulf migratory group Spanish mackerel*—April through March.

(3) *South Atlantic migratory group king and Spanish mackerel*—March through February.

\* \* \* \* \*

■ 4. In § 622.44, paragraph (a)(2)(ii)(A) is revised to read as follows:

**§ 622.44 Commercial trip limits.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) *Gillnet gear.* (1) In the southern Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued, as required under § 622.4(a)(2)(ii), in amounts not exceeding 25,000 lb (11,340 kg) per day, provided the gillnet fishery for Gulf group king mackerel is not closed under § 622.34(p) or § 622.43(a).

(2) In the southern Florida west coast subzone:

(i) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial vessel permit for king mackerel and a king mackerel gillnet permit.

(ii) King mackerel from the southern west coast subzone landed by a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(2)(j).

(iii) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 050331089-5172-02; 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:** Final rule.

**SUMMARY:** The following Total Allowable Catches (TACs) in the U.S./Canada Management Area are implemented for the 2005 fishing year (FY): 260 mt of Georges Bank (GB) cod, 7,590 mt of GB haddock, and 4,260 mt of yellowtail flounder. This action is intended to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** This rule is effective July 7, 2005, through April 30, 2006.

**ADDRESSES:** Copies of the Transboundary Management Guidance Committee's (TMGC) 2004 Guidance Document and copies of the Environmental Assessment of the 2005 TACs (including the Regulatory Impact Review and Regulatory Flexibility Analysis (FRFA)) may be obtained from: Sustainable Fisheries Division, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930; telephone (978) 281-9315.

NMFS prepared a summary of the FRFA, which is contained in the Classification section of this final rule.

**FOR FURTHER INFORMATION CONTACT:** Thomas Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135, e-mail Thomas.Warren@NOAA.gov.

**SUPPLEMENTARY INFORMATION:** A proposed rule for this action was published on April 14, 2005 (70 FR 19724), with public comments accepted through May 16, 2005. A detailed description of the administrative process used to develop the TACs was contained in the preamble of the proposed rule and is not repeated here. The Northeast (NE) 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, GB haddock, and GB 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. The TACs apply to the shared GB groundfish resources. The shared stocks of GB cod and haddock in U.S. waters represent portions (subsets) of the stocks of GB cod and haddock managed in the U.S. Exclusive Economic Zone under the FMP. The shared stock of GB yellowtail flounder in U.S. waters represents the entire stock of GB yellowtail flounder managed by the FMP.

On September 16, 2004, the New England Fishery Management Council recommended the following U.S. TACs for FY 2005: 260 mt of GB cod, 7,590 mt of GB haddock, and 4,260 mt of GB yellowtail flounder. These 2005 TACs are based upon stock assessments conducted in June 2004 by the Transboundary Resource Assessment Committee (TRAC). 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. The percentage shares of these stocks for 2004 and 2005 between the U.S. and Canada are presented in the following tables:

## 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)

## 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)

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. 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.

#### Comments and Responses

Three comments on the proposed rule were received by the close of business on May 16, 2005.

*Comment 1:* Two commenters fully supported the proposed FY 2005 TACs, one of whom felt that the TACs were appropriate because they were calculated by taking into account many factors and represented a fair allocation.

*Response:* NMFS has approved the TACs as proposed.

*Comment 2:* One commenter believed that the proposed TACs were too high, and was concerned about the status of the stocks.

*Response:* NMFS believes that the FY 2005 TACs are set at the correct level, based on the best available science, the FMP, and the U.S./Canada Understanding, as explained in detail in the preamble to the proposed rule. The TAC levels are consistent with stock rebuilding, as required by the FMP.

#### Classification

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

NMFS prepared a FRFA, which incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**) and is summarized as follows:

The specification of hard TACs is necessary 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 full description of the objectives and legal basis for the proposed TACs is contained in the preamble of the proposed rule. No public comments received specifically addressed the IRFA or the potential economic impacts of the TACs.

Under the Small Business Administration (SBA) size standards for small fishing entities (\$3.5 million in gross receipts), all permitted and participating vessels in the groundfish fishery are considered to be small entities and, therefore, there are no disproportionate impacts between large and small entities caused by this action. The maximum number of small entities that will be affected by the FY 2005 TACs is approximately 1,000 vessels, i.e., those vessels 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 will be subject to the associated restrictions, including hard TACs, will be substantially less.

Because the regulatory regime in FY 2005 is similar to that in place in FY 2004, it is likely that the number of

vessels that choose to fish in the U.S./Canada Management Area during FY 2005 will be similar to the number of vessels that fished in the U.S./Canada Management Area during FY 2004 (155 different vessels). Preliminary NMFS monitoring data supports the assertion that similar numbers of vessels will fish during the 2005 fishing year as fished during the 2004 fishing year. During the time period from May through the third week of June (2004), 109 different vessels had fished in the Eastern U.S./Canada Area. This fishing year, the data indicates that for the period May 2005 through the third week of June, 108 different vessels fished in this area. The total numbers of vessels fishing in the U.S./Canada Management Area on a fishing year basis, will likely be less than during the 2004 fishing year, due to the fact that the Closed Area II Yellowtail Flounder Special Access Program, which occurred in 2004, will not be open this year (70 CFR 37057).

The economic impacts of the 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 TACs), 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 FY 2005

U.S./Canada TACs will likely be similar to the economic impacts of the TACs specified for the 2004 fishing year.

A downward adjustment to the TACs specified for FY 2005 could occur after these TACs are implemented, if it is determined that the U.S. catch of one or more of the shared stocks during FY 2004 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 was proposed because the process involving the TMGC and the Council yields only one proposed set of TACs. The implemented TACs will 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 reflect the best available scientific information. 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 fish mortality level (i.e., consistent with the Understanding and the FMP). The appropriate fishing mortality enables consistent management between the U.S. and Canada and therefore the full benefits of U.S. conservation actions are more likely to be realized. The no action alternative would likely provide fewer economic benefits to the industry in the long term than the implemented alternative, and likely result in fishing mortality levels that are inconsistent with the fishing mortality levels of the Canadian portions of the shared stocks.

Two of the three FY 2005 TACs (cod and yellowtail flounder) represent reductions from the FY 2004 level and could, under certain circumstances, constrain fishing opportunity on haddock (for which the TAC is increasing). The FY 2005 TACs implemented by this final rule do not modify any collection of information, reporting, or recordkeeping requirements. The FY 2005 TACs do not duplicate, overlap, or conflict with any other Federal rules.

There is good cause under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date because doing otherwise may compromise full and effective management of the GB stocks of cod, haddock, and yellowtail flounder. Because of recent unanticipated high

catch rates of GB cod in the Eastern U.S./Canada Area, it is crucial that the TACs are implemented as soon as possible in order to ensure that the fishing mortality objective for the shared stock of cod is not exceeded. The timeline for the development of the EA that analyzed the TACs and publication of the proposed rule for the TACs, prior to the 2005 fishing year, did not anticipate a high catch rate of cod during the 2005 fishing year (based upon the 2004 fishing year information). The FMP provides authority to the Regional Administrator to make modifications to various rules associated with the U.S./Canada Management Area, once 30 percent of any of the TACs has been harvested. If the delay is not waived it is highly possible that the TAC for the most depleted stock, GB cod, could be reached and exceeded during the 30 day delay period, and the Regional Administrator will be unable to take action to stop fishing on this stock. Failure to stop fishing on this stock when the TAC is caught would severely undermine the conservation objectives of the groundfish FMP. Any resulting TAC overages are required to be deducted from the following year's TAC, which is already very small for GB cod. The consequences of any substantial overage that could occur if the effectiveness of the implementation of the 2005 TACs is delayed could be very severe for the industry in the 2006 fishing year. The high catch rate of cod created the need for regulatory action early in the fishing year, based on an implemented cod TAC.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of limited access DAS permits for the NE multispecies fishery. The guide and this final rule will be posted on the NMFS NE Regional Office web site at <http://www.nero.noaa.gov> and will also be available upon request.

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

Dated: June 30, 2005.

**Rebecca Lent,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No.050629171-5171-01; I.D. 070105A]

RIN 0648-AT51

#### **Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Haddock Incidental Catch Allowance for the 2005 Atlantic Herring Fishery; Emergency Fishery Closure Due to the Presence of the Toxin That Causes Paralytic Shellfish Poisoning; Correction**

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

**ACTION:** Final rule; correcting amendment; extension of comment period.

**SUMMARY:** NMFS is clarifying emergency regulations that closed portions of Federal waters of the Gulf of Maine, Georges Bank, and southern New England to the harvest of bivalve shellfish due to the presence of the toxin that causes Paralytic Shellfish Poisoning (PSP). This correction will allow for the collection and testing of samples for the toxin that causes PSP. In addition, this rule will correct the effective date for the definition of a "Category 1 herring vessel" and reinstate a prohibition on the sale of certain haddock that was inadvertently overwritten by the emergency rule.

**DATES:** Effective July 7, 2005, except for the amendment to § 648.14(a)(166) which is effective June 14, 2005, through September 30, 2005, and the amendment to § 648.14(a)(169) which is effective June 13, 2005, through December 10, 2005.

The comment period for the original emergency action published at 70 FR 35047, June 16, 2005, is extended from July 18, 2005, through August 1, 2005.