

fishing with the Ruhle Trawl under a Category A DAS in the Eastern U.S./Canada Area are subject to the same gear performance incentives (i.e., bycatch possession restrictions) that currently apply to vessels fishing with the haddock separator trawl. The performance incentives limit possession of flounders (all species combined), monkfish, and skates to 500 lb (226.8 kg) (whole weight) each (i.e., no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and prohibits possession of lobsters. Possession limits for other species are the same as those for any vessel fishing under an A DAS in the Eastern U.S./Canada Area.

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)(3)(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 prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. This action would allow fishermen additional flexibility by authorizing an additional gear type for all NE multispecies DAS vessels using trawl gear in the Eastern U.S./Canada Area through April 30, 2009, to facilitate the harvest of the TAC for Eastern GB haddock while ensuring that the TAC will not be exceeded during FY 2008. This will likely result in increased harvest of Eastern GB haddock, decreased regulatory discards of Eastern GB cod and GB yellowtail flounder by vessels targeting Eastern GB haddock, increased revenue for the NE multispecies fishery, and an increased chance of achieving optimum yield (OY) in the groundfish fishery.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to facilitate achieving the U.S./Canada Area TACs. It is important to take this action immediately because the current restrictive gear requirements have prevented the NE multispecies fishery from effectively harvesting the Eastern GB haddock TAC at a rate that would result in complete harvest by the end of FY 2008. Delay in the implementation of this action would likely result in underharvest of the Eastern GB haddock TAC, wasteful discards of Eastern GB cod and GB yellowtail flounder by vessels targeting Eastern GB haddock, and potentially the premature closure of the Eastern U.S./Canada Area due to the harvest of either the GB yellowtail

flounder TAC or Eastern GB cod TAC, resulting in decreased economic opportunity for vessel owners, and a decreased likelihood of achieving OY.

The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent NE multispecies DAS vessels from efficiently targeting Eastern GB haddock in the U.S./Canada Area. The Regional Administrator's authority to authorize additional gear types in the Eastern U.S./Canada 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 both Amendment 13 and Framework Adjustment 42. Further, the Ruhle Trawl is currently permissible gear in all other parts of the NE multispecies trawl fishery under an A DAS and was recently approved as an additional gear in the Regular B DAS Program and in the Eastern U.S./Canada Haddock Special Access Program, two programs that allow the use of Category B DAS. Its use in the Eastern U.S./Canada Area is consistent with the New England Fishery Management Council's publicly stated intention to promote the use of this gear. Therefore, any negative effect of 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, 2008.

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 679

[Docket No. 071106671-8010-02]

RIN 0648-XK53

Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels

using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the 2008 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 11, 2008, through 1200 hrs, A.l.t., October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 800 metric tons as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), for the period 1200 hrs, A.l.t., January 20, 2008, through 1200 hrs, A.l.t., October 1, 2008. The 2008 Pacific halibut bycatch allowance for the deep-water species fishery was reduced because 170 mt of this apportionment was allocated to vessels participating in the Rockfish Pilot Program, as listed at <http://www.fakr.noaa.gov/sustainablefisheries/goarat/08rppallocations.xls>.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the 2008 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would

delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 9, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of

prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 10, 2008.

James P. Burgess,

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

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