

whales are no longer at risk in that particular DAM zone. If NMFS were to provide prior notice and an opportunity for public comment upon the reopening of a DAM restricted zone, the fishermen would continue to endure unnecessarily adverse economic impacts because right whales the DAM zone was implemented to protect had moved on to another location, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to reopen a DAM restricted zone to commercial lobster trap/pot and anchored gillnet gear.

For the same reasons, the AA finds good cause to waive the 30-day delay in effectiveness for action. If NMFS were to delay for 30 days the effective date of this action, the anchored gillnet and lobster trap/pot fishermen affected by the DAM zone would be required to comply with restrictions even though subsequent surveys of the area indicated that right whales have moved to another location, thereby rendering the action obsolete and unnecessary for reducing the risk of entanglement of endangered right whales in that area. NMFS recognizes the need for fishermen to resume normal fishing operations in a DAM zone once subsequent surveys or other credible evidence indicates that right whales have left the vicinity. Thus, NMFS makes this action effective on the date of filing of this notice in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as possible.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative

Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

**Authority:** 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: October 18, 2007.

**Samuel D. Rauch III,**

*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. 040112010-4114-02]

RIN 0648-XD40

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Opening of the Eastern U.S./Canada Area and Trip Limit Change

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

**ACTION:** Temporary rule; reopening and trip limit change.

**SUMMARY:** NMFS announces a temporary reopening of the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock Special Access Program (SAP), to limited access NE multispecies days-at-sea (DAS) vessels through November 30, 2007. This action also implements a 1,000-lb (454-kg) trip limit for Georges Bank (GB) cod for all limited access NE multispecies DAS vessels fishing in the Eastern U.S./Canada Area. This action is being taken to allow NE multispecies DAS vessels increased access to the substantial Eastern U.S./Canada Area GB haddock total allowable catch (TAC), and provide increased opportunities to achieve optimum yield

in the groundfish fishery. The intended effect is to maximize the utility of the remaining GB cod TAC by opening the Eastern U.S./Canada Area when the relative abundance of GB haddock in relation to GB cod is highest.

**DATES:** The temporary reopening of the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, to all limited access NE multispecies DAS vessels and the 1,000-lb (454-kg) GB cod trip limit for the Eastern U.S./Canada Area is effective 0001 hr October 20, 2007, through 2400 hr local time, November 30, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Mark Grant, Fishery Management Specialist, (978) 281-9145, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

Regulations governing fishing activity in the U.S./Canada Management Area are found at § 648.85. These regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the Eastern U.S./Canada Area under specific conditions. The GB cod TAC for the 2007 fishing year (FY) was specified at 494 mt on May 7, 2007 (72 FR 25709). The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to modify the gear requirements, modify or close access, modify the trip limits, or modify the total number of trips into the U.S./Canada Management Area, for all limited access NE multispecies DAS vessels to prevent over-harvesting or to facilitate achieving the U.S./Canada Management Area TACs.

On June 20, 2007, NMFS temporarily closed the Eastern U.S./Canada Area to all NE multispecies DAS vessels because of the substantial increase of fishing activity in the Eastern U.S./Canada Area beginning June 1, 2007, and the small GB cod TAC. The temporary closure was necessary in order to prevent the closure of the Eastern U.S./Canada Area through the end of FY 2007, on April 30, 2007. A closure for the remainder of FY 2007 would have limited access to the available Eastern U.S./Canada Area GB haddock TAC.

Particularly concerning at the time of the temporary closure was the high proportion of GB cod being discarded by vessels targeting GB haddock and GB yellowtail flounder. Observer data showed that discards of GB cod exceeded the amount of GB cod kept, with a discard to kept ratio for GB cod of approximately 2:1. When the Eastern U.S./Canada Area closed on June 20, 2007, a total of 70.1 percent of the GB cod TAC had been harvested, leaving

20.9 percent of the GB cod TAC available for harvest during the remainder of FY 2007. Analysis of GB cod landings from the Eastern U.S./Canada Area for fishing years 1999 through 2003 (the most recent years the area was not subject to in-season management) shows that GB cod are proportionally less abundant than co-occurring GB haddock during the months of October and November than in other months. Therefore, reopening the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, through the month of November will allow NE multispecies DAS vessels increased access to the substantial Eastern U.S./Canada Area GB haddock TAC, and provide increased opportunities to achieve optimum yield in the groundfish fishery. Data indicate that reopening the Eastern U.S./Canada Area through November with a 1,000-lb (454-kg) GB cod trip limit will not likely result in the overharvest of the GB cod TAC. The 1,000-lb (454-kg) GB cod trip limit is consistent with the trip limit for the SAP and is intended to discourage the targeting of GB cod.

Therefore, based on the historical seasonal stock abundance data and the available GB cod TAC, and pursuant to the regulations at § 648.85(a)(3)(iv)(D), effective 0001 hr October 20, 2007, through 2400 hr local time, November 30, 2007, the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, is open to all NE multispecies DAS vessels and the GB cod possession limit for all NE multispecies vessels fishing in the Eastern U.S./Canada Area is 1,000 lb/trip (454-kg/trip). GB cod landings will continue to be monitored through VMS and other available information. If 100 percent of the TAC allocation for GB cod is projected to be harvested prior to the end of November, the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, will be closed to all NE multispecies DAS vessels for the remainder of the fishing year (i.e., through April 30, 2008).

#### 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 relieves a restriction by opening the Eastern U.S./Canada Area, including the Eastern U.S./Canada Area Haddock

SAP, to all NE multispecies DAS vessels through November 30, 2007, to allow access to the substantial GB haddock TAC (6,270 mt).

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to facilitate achieving the U.S./Canada Management Area TACs. It is important to take this action immediately because GB cod, which has a relatively small TAC (494 mt), are proportionally less abundant than co-occurring GB haddock during the months of October and November than in either prior or subsequent months. Any delay in the implementation of this action would decrease the opportunity available for vessels to selectively target haddock in the Eastern U.S./Canada Area while cod bycatch rates are expected to be low. Once the GB cod TAC is achieved, the regulations require the closure of the Eastern U.S./Canada Area for the remainder of FY 2007, preventing access to the GB haddock TAC. This action is being taken at this time to take advantage of the seasonal variation of relative stock abundance in order to allow access to the abundant GB haddock stock with minimized GB cod bycatch.

The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent the agency from taking immediate action, preventing NE multispecies DAS vessels from efficiently targeting GB haddock in the Eastern U.S./Canada Area when GB haddock can be targeted with minimal bycatch of GB. The Regional Administrator's authority to open and close this 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 and FW 42. Further, the potential of reopening of the Eastern U.S./Canada Area was announced to the public at closure of the Eastern U.S./Canada Area in June. 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: October 18, 2007.

**Emily H. Menashes,**

*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. 0612242903-7445-03; I.D. 112006I]

RIN 0648-AU48

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Bering Sea and Aleutian Islands Management Area; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** NMFS is correcting a final rule that appeared in the **Federal Register** on September 4, 2007. The final rule implemented Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) as partially approved by NMFS, and implemented recent changes to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 85 modified the current allocations of Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod total allowable catch, and seasonal apportionments thereof, among various harvest sectors. The final rule also included the congressionally mandated increase in the allocation of BSAI Pacific cod to the Community Development Quota (CDQ) Program.

**DATES:** Effective January 1, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Becky Carls, 907-586-7228 or [becky.carls@noaa.gov](mailto:becky.carls@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

A final rule published on September 4, 2007 (72 FR 50788), implemented Amendment 85 to the FMP by modifying the current allocations of BSAI Pacific cod total allowable catch (TAC) among various harvest sectors and seasonal apportionments thereof. The rule also established a hierarchy for reallocating projected unharvested amounts of Pacific cod from certain sectors to other sectors, revised catcher/processor (CP) sector definitions, modified the management of Pacific cod incidental catch that occurs in other groundfish fisheries, eliminated the Pacific cod nonspecified reserve, subdivided the annual prohibited