

Dated: September 29, 2005.

Matt Hogan,

Acting Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040804229-4300-02; I.D. 100305A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Closure of the Regular B Days-at-Sea Pilot Program

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

ACTION: Temporary rule; closure.

NMFS announces that 1,000 Regular Days-at-Sea (DAS) have been used under the Regular B DAS Pilot Program. Therefore, all Northeast (NE) multispecies DAS vessels are prohibited from using Regular B DAS under the Regular B DAS Pilot Program through the end of the current calendar quarter on October 31, 2005. The intended effect of this action is to prevent the quarterly DAS use limit of 1,000 Regular B DAS for this program from being exceeded.

DATES: Effective 0001 hr local time, October 6, 2005, through October 31, 2005. (See requirements under **SUPPLEMENTARY INFORMATION** for additional details).

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, phone (978) 281-9145, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: Regulations governing the Regular B DAS Pilot Program are found at 50 CFR 648.85(b)(6). These regulations authorize vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS, including vessels also issued a limited access monkfish Category C or D permit, to use a NE multispecies Regular B DAS throughout the NE multispecies regulated mesh areas outside of approved Special Access Programs under the conditions of the Regular B DAS Pilot Program. A total of 1,000 Regular B DAS may be used in this

program during each calendar quarter. According to the regulations at § 648.85(b)(6)(iv)(H), once 1,000 Regular B DAS have been used during the calendar quarter, the use of Regular B DAS shall be prohibited for the duration of the current quarter. The Regular B DAS Pilot Program expires, and the current calendar quarter ends, on October 31, 2005.

Based upon available information, the Regional Administrator has determined that 1,000 Regular B DAS will be used by October 6, 2005. Therefore, effective October 6, 2005, the use of Regular B DAS under the Regular B DAS Pilot Program is prohibited through the end of the current calendar quarter and the expiration of the Regular B DAS Pilot Program on October 31, 2005. A NE multispecies DAS vessel that has already declared its intent to fish in the Georges Bank Cod Stock Area under the Regular B DAS Pilot Program through VMS, departed on a trip, and crossed the VMS demarcation line prior to the effective date of this action (i.e. October 6, 2005) must either complete its trip under a Regular B DAS by crossing the vessel monitoring system (VMS) demarcation line on its return to port, or flip to fishing under a Category A DAS, before 0000 hours local time on October 6, 2005. This is the final quarter of the Regular B DAS Program; therefore, NE multispecies vessels are no longer authorized to fish under the B DAS Pilot Program unless otherwise notified by the Regional Administrator.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment for this action because any delay of this action would be impracticable and contrary to the public interest. The regulations at § 648.85(b)(6)(iv)(H) require the Regional Administrator to prohibit the use of Regular B DAS under the Regular B DAS Pilot Program for the remainder of the current quarter once 1,000 Regular B DAS have been used under the Regular B DAS Pilot Program. Accordingly, the action being taken by this temporary rule is non-discretionary. This action prohibits the use of Regular B DAS for the remainder of the current quarter (i.e., through October 31, 2005) to prevent the quarterly DAS use limit of 1,000 Regular B DAS for this program from being exceeded. The possibility of this closure was contemplated by Framework 40-A and commented on by the public. It is not practicable to allow

for additional public comment or a delayed effectiveness because of the need to take immediate action as soon as the data are available indicating that 1,000 Regular B DAS have been used. Information regarding Regular B DAS use in this program only recently indicated an increased rate of DAS use in this program. As a result, there has been insufficient time to provide prior notice and opportunity for public comment on this action. If implementation of this action is delayed, NMFS would be prevented from carrying out its function of preventing the quarterly limit on Regular B DAS use from being exceeded, thereby increasing the harvest of stocks of concern under the Regular B DAS Pilot Program. Opportunity for public comment would allow the use of Regular B DAS and, therefore, the harvest of stocks of concern to continue during this quarter, resulting in the likelihood of exceeding the quarterly DAS limit and the incidental catch TACs for stocks of concern. Exceeding the quarterly TAC for these species increases the chance that such additional mortality could further delay the rebuilding of these overfished stocks. Exceeding the mortality targets for these species could potentially lead to further effort restrictions in the future and, therefore, further negative economic impacts to the fishing industry. Thus, any delay caused by further opportunity for public comment would be impracticable and contrary to the public interest. For the above reasons, under 5 U.S.C. 553(b)(3), proposed rulemaking is waived because it would be impracticable and contrary to the public interest.

For the same reasons, the Assistant Administrator finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the entire 30-day delayed effectiveness period for this action. The effect of this waiver is mitigated to some degree because the public is able to obtain information from the NMFS Northeast Regional Office website at <http://www.nero.noaa.gov> which provides catch information indicating the need for this action.

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

Dated: October 3, 2005.

Alan D. Risenhoover,

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

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