

Incidental permit category, and after up to 3 percent of the TAL is set aside for research purposes, should research TAL be set aside, the remaining TAL is distributed among the following three tilefish limited access permit categories: Full-time Tier 1 category (66 percent), Full-time Tier 2 category (15 percent), and the Part-time category (19 percent).

The TAL for tilefish for the 2005 fishing year was set at 1,995 million lb (905,172 kg) and then adjusted downward by 5 percent to 1,895,250 lb (859,671 kg) to account for incidental catch. There was no research set-aside for the 2005 fishing year. Thus, the Full-time Tier 2 permit category quota for the 2005 fishing year, which is equal to 15 percent of the TAL, is 284,288 lb (128,951 kg).

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial tilefish quota for each fishing year using dealer reports, vessel catch reports, and other available information to determine when the quota for each limited access permit category is projected to have been harvested. NMFS is required to publish notification in the **Federal Register** notifying commercial vessels and dealer permit holders that, effective upon a specific date, the tilefish TAL for the specific limited access category has been harvested and no commercial quota is available for harvesting tilefish by that category for the remainder of the fishing year, from within the Golden Tilefish Management Unit.

The Regional Administrator has determined, based upon dealer reports and other available information, that the 2005 tilefish TAL for the Full-time Tier 2 category has been harvested. Therefore, effective 0001 hrs local time, June 28, 2005, further landings of tilefish harvested from within the Golden Tilefish Management Unit by tilefish vessels holding Full-time Tier 2 category Federal fisheries permits are prohibited through October 31, 2005. The 2006 fishing year for commercial tilefish harvest will open on November 1, 2005. Federally permitted dealers are also advised that, effective June 28, 2005, they may not purchase tilefish from Full-time Tier 2 category federally permitted tilefish vessels who land tilefish harvested from within the Golden Tilefish Management Unit for the remainder of the 2005 fishing year (through October 31, 2005).

#### Classification

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

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

Dated: June 22, 2005.

**Alan D. Risenhoover,**

*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 648

**[Docket No. 050314072-5126-02; I.D. 062305E]**

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2005 Trip Authorization for Closed Area II Yellowtail Flounder Special Access Program

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

**ACTION:** Temporary rule; notification of maximum number of trips.

**SUMMARY:** NMFS announces that no trips are authorized into the Closed Area (CA) II Yellowtail Flounder Special Access Program (SAP) for the 2005 fishing year. The Administrator, Northeast Region, NMFS (Regional Administrator) has determined that the available catch of Georges Bank (GB) yellowtail flounder is insufficient to support a minimum level of fishing activity within the CA II Yellowtail Flounder SAP for the 2005 fishing year. This action is intended to help achieve optimum yield (OY) in the fishery by allowing Northeast (NE) multispecies days-at-sea (DAS) vessels to achieve, but not exceed, the GB yellowtail flounder total allowable catch (TAC) specified for the Eastern U.S./Canada Area throughout the 2005 fishing year, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Effective June 23, 2005 through April 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

Framework Adjustment (FW) 40B was developed by the New England Fishery Management Council (Council) primarily to improve the effectiveness of the effort control program implemented under Amendment 13 to the NE

Multispecies Fishery Management Plan (April 27, 2004; 69 FR 22906), including the opportunities developed to target healthy stocks and other measures to facilitate adaptation to the Amendment 13 effort reductions. The final rule implementing measures approved under FW 40B was published on June 1, 2005 (70 FR 31323). Detailed descriptions, justifications, and a summary of the impacts of all of the management measures proposed under FW 40B were included in the proposed and final rules for that action and are not repeated here.

FW 40B implemented several revisions to the CA II Yellowtail Flounder SAP intended to help better achieve OY for the fishery and ensure that the maximum benefits from the GB yellowtail flounder TAC are realized. Among other provisions, FW 40B provided the Regional Administrator with the authority, after consulting with the Council, to adjust the trip limit and determine the total number of trips allowed into this SAP each fishing year, if necessary, in order to adapt to changing stock and fishery conditions. The authority to adjust these measures is intended to ensure that the catch of GB yellowtail flounder within the SAP would not increase the likelihood that the Eastern U.S./Canada Area would be closed due to catching the GB yellowtail flounder TAC before the end of the fishing year. Such a premature closure would likely result in regulatory discards of GB yellowtail flounder and reduce the possibility of fully harvesting the GB cod and GB haddock TAC from the Eastern U.S./Canada Area.

When determining the total number of trips allowed into the CA II Yellowtail Flounder SAP, the Regional Administrator considers specific criteria outlined in FW 40B, including the available TAC for GB yellowtail flounder, recent discards, and the potential catch of GB yellowtail flounder by vessels fishing outside of the SAP. Using these criteria, a formula was developed in FW 40B to assist the Regional Administrator in determining the appropriate number of trips for this SAP on a yearly basis. The suggested formula in FW 40B is as follows: Number of trips = (GB yellowtail flounder TAC - 4,000 mt)/4.54 mt.

Note that 4.54 mt is equivalent to the 10,000-lb (4,536-kg) trip limit established for this SAP. This formula assumes that approximately 4,000 mt of GB yellowtail flounder would be caught by vessels operating in the U.S./Canada Management Area, but outside of the CA II Yellowtail Flounder SAP, based on recent catches by all fisheries. FW 40B authorizes the Regional Administrator to not allow any trips into this SAP if

the available GB yellowtail flounder catch (i.e., the GB yellowtail flounder TAC - 4,000 mt) is not sufficient to support 150 trips with a 15,000-lb (6,804-kg) GB yellowtail flounder trip limit. One hundred and fifty trips at 15,000 lb (6,804 kg) per trip amounts to 1,020 mt of GB yellowtail flounder recommended to support the CA II Yellowtail Flounder SAP. Based on the 4,260-mt TAC of GB yellowtail flounder specified in a recent proposed rule for the 2005 fishing year (April 14, 2005; 70 FR 19724), and using the formula specified in FW 40B, only 260 mt of GB yellowtail flounder are estimated to be available to allow for the CA II Yellowtail Flounder SAP in the 2005 fishing year.

Based on this information, the available 2005 GB yellowtail flounder catch is less than the minimum 1,020 mt recommended to support vessel operations in this SAP for the 2005 fishing year. The Regional Administrator consulted with the Council regarding determining the appropriate number of trips into the CA II Yellowtail Flounder SAP for the 2005 fishing year at its June 21-23, 2005, meeting, and is authorizing zero trips into the CA II Yellowtail Flounder SAP for the 2005 fishing year pursuant to § 648.85(b)(3)(vii).

Under NOAA Administrative Order 205-11, 07/01, dated December 17, 1990, the Undersecretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

#### Classification

This action is required by § 648.85(b)(3)(vii) and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as well as the 30-day delayed effectiveness for this action, as notice and comment and delayed effectiveness would be impracticable and contrary to the public interest. NMFS cannot initiate rulemaking for actions implemented by a framework action until that action is approved and implemented through a final rule. NMFS did not receive the final FW 40B package until February 15, 2005. This delayed the review,

approval, and implementation of FW 40B. The regulations implemented by FW 40B require the Regional Administrator to consult with the Council before announcing the maximum number of trips into the CA II Yellowtail Flounder SAP for a particular fishing year. Since the authority to modify the maximum number of trips into the SAP did not become effective until June 1, 2005, the first opportunity for the Regional Administrator to formally consult with the Council was at the Council's June 21-23, 2005, meeting. Because the delayed implementation of the measures included in FW 40B and the resulting late consultation with the Council, it would be impracticable for NMFS to pursue notice and comment rulemaking in time to specify the number of trips into the CA II Yellowtail Flounder SAP for the 2005 fishing year prior to the start of the SAP on July 1, 2005.

The public has had an opportunity to comment on the appropriate number of trips into the CA II Yellowtail Flounder SAP through the proposed rule for FW 40B. The proposed rule (March 29, 2005; 70 FR 15803) indicated that preliminary information suggested that there would be insufficient available catch of GB yellowtail flounder to support the CA II Yellowtail Flounder SAP for the 2005 fishing year. During the public comment period, several commenters expressed support for the actions taken through this temporary rule. NMFS received no comments in opposition to the action implemented by this rule during the public comment period for FW 40B.

Failure to waive the 30-day delayed effectiveness would allow the SAP to open on July 1, 2005, resulting in potentially high landings of GB yellowtail flounder until the SAP is closed again after the delayed effectiveness. Increased landings caused by the opening of the SAP on July 1 could contribute to the premature harvest of the GB Yellowtail Flounder TAC, resulting in the closure of access to the Eastern U.S./Canada Area prior to the end of the 2005 fishing year (i.e., before April 30, 2006) and a prohibition on the retention of GB yellowtail flounder in the entire U.S./Canada Management Area by limited access NE multispecies DAS vessels for the remainder of the 2005 fishing year. Such

a premature closure and retention prohibition could cause unnecessary additional discards of GB yellowtail flounder, further increasing mortality and the potential that the fishery will exceed the yearly TAC. Exceeding the yearly TAC would result in any TAC overages being deducted from the available TAC allocated to the following fishing year, causing additional economic impacts for the following fishing year. A premature closure and retention prohibition would also decrease opportunities to fish for GB haddock and GB cod in the Eastern U.S./Canada Area, thereby reducing sources of potential vessel revenue and decreasing the chance that OY will be achieved in the fishery. Effort reductions implemented by Amendment 13 resulted in substantial adverse economic impacts to the groundfish fishery. Additional economic impacts resulting from a delayed effectiveness of the measures contained in this rule, taken cumulatively, represent further economic hardships to an already struggling industry. Finally, since this action specifies zero trips into this SAP for the 2005 fishing year, failure to implement this action by July 1, 2005, would result in the opening of the SAP on July 1, 2005, only to be closed again once this action becomes effective. This would cause confusion to the industry. Therefore, a delayed effectiveness would be contrary to the public interest because it could potentially: (1) Lead to additional discards and the associated additional mortality on GB yellowtail flounder (2) result in reduced sources of potential revenue, decreased economic returns, and further adverse economic impacts to the fishing industry; and (3) increase confusion in the fishing industry through rapid closure of the SAP. Therefore, given the likely impacts resulting from a delayed effectiveness of this action as described above, it would be contrary to the public interest to provide further notice and opportunity for public comment and a 30-day delayed effectiveness.

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

Dated: June 22, 2005.

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