

Appropriations Act, 2009 (Pub. L. 110–329, Division E). Section 108 prohibits the use of funds appropriated in Title I of that Act for the procurement of steel for any military construction project or activity for which American steel producers, fabricators, or manufacturers have been denied the opportunity to compete.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule implements section 108 of the Military Construction and Veterans Affairs Appropriations Act, 2009. The objective of the rule is to ensure that American steel producers, fabricators, and manufacturers are given the opportunity to compete for contracts and subcontracts for the acquisition of steel for use in military construction projects and activities. Existing Buy American Act and Balance of Payments Program requirements, implemented in FAR Subpart 25.2 and DFARS Subpart 225.75 respectively, already provide for DoD acquisition of domestic construction materials, including steel. However, this DFARS rule will prohibit use of the exceptions to Buy American Act/Balance of Program requirements otherwise permitted by FAR/DFARS, with regard to the acquisition of steel, unless American steel producers, fabricators, and manufacturers are first provided the opportunity to compete. The rule is expected to benefit American steel producers, fabricators, and manufacturers by ensuring they are provided an opportunity to compete for contracts and subcontracts for the acquisition of steel for use in military construction projects and activities. DoD received no comments on the initial regulatory flexibility analysis or on any other aspect of the interim rule.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 225, 236, and 252

Government procurement.

Amy G. Williams,

*Editor, Defense Acquisition Regulations System.*

■ Accordingly, the interim rule amending 48 CFR parts 225, 236, and 252, which was published at 74 FR 2417 on January 15, 2009, is adopted as a final rule without change.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 080521698–9067–02]

RIN 0648–XS87

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Gear Restriction for the U.S./Canada Management Area

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

**ACTION:** Temporary rule; gear restriction.

**SUMMARY:** This action modifies the gear requirements for the U.S./Canada Management Area to prohibit all limited access Northeast (NE) multispecies vessels fishing on a NE multispecies day-at-sea (DAS) with trawl gear in the Western U.S./Canada Area south of 41°40' N. lat. from using trawl nets, except if using a properly configured haddock separator trawl or Ruhle trawl. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP), and is intended to avoid exceeding the total allowable catch (TAC) for Georges Bank (GB) yellowtail flounder while continuing to allow access to stocks of Eastern GB cod and Eastern GB haddock during the 2009 fishing year (FY). This action is being taken to optimize the harvest of transboundary stocks of GB yellowtail flounder, haddock, and cod under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective November 20, 2009, through April 30, 2010.

### FOR FURTHER INFORMATION CONTACT:

Douglas Potts, Fishery Policy Analyst, (978) 281–6341, fax (978) 281–9135.

### SUPPLEMENTARY INFORMATION:

Regulations governing the gear requirements for the U.S./Canada Management Area under the 2009 interim final rule (74 FR 17030, April 13, 2009) are found at § 648.85(a)(3)(ix). The GB yellowtail flounder TAC for FY 2009 (May 1, 2009 – April 30, 2010) was specified at 1,617 mt by the 2009 interim final rule. Once the available TAC for GB yellowtail flounder is projected to be caught, the Administrator, Northeast Region, NMFS (Regional Administrator) is required to close the Eastern U.S./Canada Area to all NE multispecies DAS vessels and prohibit retention of yellowtail flounder in the Western U.S./Canada Area for the remainder of the fishing year, pursuant to § 648.85(a)(3)(iv)(E).

The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to modify certain regulations governing the harvesting of fish from the U.S./Canada Management Area, including gear requirements, to prevent over-harvesting or under-harvesting the TAC allocations specified for Eastern GB cod, Eastern GB haddock, or GB yellowtail flounder in the U.S./Canada Management Area. Based upon Vessel Monitoring System (VMS) reports and other available information, the catch of GB yellowtail flounder was at 78 percent of the FY 2009 TAC as of November 4, 2009, and was projected to be fully harvested in early January 2010, resulting in the premature closure of the Eastern U.S./Canada Area and the potential under-harvest of the available TACs for Eastern GB cod and haddock during FY 2009. Recent at-sea observer reports indicate that very high discard rates of GB yellowtail flounder have occurred on some vessels directing on other flatfish. These reports indicate that the high catch rates of yellowtail flounder are being caught primarily south of 41°40' N. lat. Requiring trawl vessels that fish any part of a trip in the Western U.S./Canada Area south of 41°40' N. lat. to use either a haddock separator trawl or a Ruhle trawl would reduce the catch rate of yellowtail flounder, reduce discards, and result in the achievement of the TAC, without exceeding it. Based on this information, the Regional Administrator is prohibiting the use of trawl gear, except for the haddock separator trawl and the Ruhle trawl, as specified at § 648.85(a)(3)(ix) and (b)(10)(iv)(j)(3), respectively, by any limited access NE multispecies vessel which harvests, possesses or lands fish from, or deploys its net during any part

of a trip in, the Western U.S./Canada Area south of 41° 40' N. lat. under a NE multispecies DAS, to reduce catches and discards of GB yellowtail flounder, effective November 20, 2009, through April 30, 2010, or until modified by a subsequent action. For any such vessels, other gear may be on board the vessel but must be stowed according to the regulations at § 648.23(b) for the entire trip. For any limited access NE multispecies vessel possessing, harvesting, or landing fish exclusively from the area north of 41° 40' N. lat., all trawl gear, except the haddock separator trawl or Ruhle trawl, must be stowed while transiting the Western U.S./Canada Area south of this line. If sufficient GB yellowtail flounder TAC remains available, the Regional Administrator may lift this gear restriction before the end of FY 2009 to allow additional opportunity to achieve the FY 2009 TACs for the transboundary stocks of GB yellowtail flounder, GB cod, and GB haddock.

A previous temporary rule published on September 15, 2009 (74 FR 47118), restricted the use of trawl gear in the Eastern U.S./Canada Area to either the haddock separator trawl or the Ruhle trawl. Trawl vessels may continue to fish in either the Eastern or Western U.S./Canada Areas using either a haddock separator trawl or a Ruhle trawl. This action does not affect vessels fishing in the U.S./Canada Management Area with either hook gear or gillnet gear, as these gears do not catch a significant amount of yellowtail flounder. Because observer reports indicate that catches of yellowtail flounder are lower north of 41° 40' N. lat., other trawl gear will continue to be allowed on trips fishing in the Western U.S./Canada Area exclusively north of this line in order to allow vessels to harvest other species of flatfish.

The regulations at § 648.85(a)(3)(iv)(D) specify that, if the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited 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 possession of lobsters is prohibited.

#### 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)(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 notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations under § 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to modify gear requirements to prevent over-harvesting or under-harvesting the TAC allocation. Because of the time necessary to provide for prior notice and opportunity for public comment, NMFS would be prevented from taking immediate action to slow the catch rate of GB yellowtail flounder in the U.S./Canada Management Area. Such a delay would allow the high catch rate of GB yellowtail flounder to continue and would result in excessive discards of GB yellowtail flounder, the premature closure of the Eastern U.S./Canada Area for the remainder of the fishing year, and the potential under-harvest of the available TACs specified for Eastern GB cod and haddock. Excessive discards of GB yellowtail flounder caused by a delayed implementation of this action could potentially increase mortality on this overfished stock and undermine the conservation objectives of Amendment 13 to the FMP, and the Magnuson-Stevens Act. If implementation of this action is delayed, the NE multispecies fishery could be prevented from fully harvesting the TACs for Eastern GB cod and haddock during FY 2009. Under-harvesting these TACs would result in increased economic impacts to the industry, and social impacts beyond those analyzed in Amendment 13, as the full potential revenue from the available Eastern GB cod and haddock would not be realized.

The rate of harvest of the Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder TACs in the U.S./Canada Management Area are updated weekly on the internet at <http://www.nero.noaa.gov>. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action to provide additional opportunities to the NE multispecies industry to fully harvest the TAC for any species during FY 2009. Further, the Regional Administrator's authority to modify gear requirements in the U.S./Canada Management 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 to the FMP and Framework Adjustment 42 to

the FMP. 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: November 16, 2009.

**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. 0810141351-9087-02]

**RIN 0648-XS96**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processors Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher processors using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2009 Pacific cod total allowable catch (TAC) allocated to catcher processors using hook-and-line gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 16, 2009, through 2400 hrs, A.l.t., December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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 2009 Pacific cod TAC allocated as a directed fishing allowance to catcher processors using hook-and-line gear in the BSAI is 83,575 metric tons (mt) as