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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180123063-8063-01]

RIN 0648-XF987

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Adjustment of Southern New England/Mid-Atlantic Yellowtail Flounder Catch Limits

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

ACTION: Temporary rule; inseason adjustment of annual catch limits.

SUMMARY: This action transfers unused quota of Southern New England/Mid-Atlantic yellowtail flounder from the Atlantic sea scallop fishery to the Northeast multispecies fishery for the remainder of the 2017 fishing year. This transfer implements an inseason adjustment of annual catch limits authorized by regulations implementing the Northeast Multispecies Fishery Management Plan (FMP) that apply when the scallop fishery is not expected to catch its entire allocation of yellowtail flounder. The transfer is intended to achieve optimum yield for both fisheries while ensuring the total annual catch limit is not exceeded.

DATES: Effective [*insert date of filing for public inspection at the Office of the Federal Register*], through April 30, 2018.

FOR FURTHER INFORMATION CONTACT: Claire Fitz-Gerald, Fishery Management Specialist, (978) 281-9255.

SUPPLEMENTARY INFORMATION: NMFS is required to estimate the total amount of yellowtail flounder bycatch in the scallop fishery by January 15 each year. NMFS must determine if the scallop fishery is expected to catch less than 90 percent of its Georges Bank (GB) or Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder sub-annual catch limit (sub-ACL) (50 CFR 648.90((a)(4)(iii)(C))). If so, the Regional Administrator (RA) may reduce the scallop fishery sub-ACL for these stocks to the amount projected to be caught, and increase the groundfish fishery sub-ACL for these stocks up to the same amount. This adjustment is intended to help achieve optimum yield for both fisheries while ensuring the total ACLs are not exceeded.

Based on the most recent catch information available, we project that the scallop fishery will have unused quota in the 2017 fishing year for the SNE/MA yellowtail flounder stock. Because the scallop fishery is not expected to catch its entire allocation of SNE/MA yellowtail flounder, this rule reduces the scallop sub-ACL for this stock to the upper limit projected to be caught, and increases the groundfish sub-ACL for this stock by the same amount, effective *[insert date of filing for public inspection at the Office of the Federal Register]*, through April 30, 2018. This transfer is based on the upper limit of expected SNE/MA yellowtail flounder catch by the scallop fishery, which is expected to minimize any risk of an ACL overage by the scallop fishery while still providing additional fishing opportunities for groundfish vessels.

Table 1 summarizes the revisions to the 2017 fishing year sub-ACLs, and Table 2 shows the revised allocations for the groundfish fishery as allocated between the sectors and common pool based on final sector membership for fishing year 2017.

Table 1. Southern New England/Mid-Atlantic Yellowtail Flounder Sub-ACLs

Stock	Fishery	Initial sub-ACL (mt)	Change (mt)	Revised sub-ACL (mt)	Percent change
SNE/MA Yellowtail Flounder	Groundfish	187.5	+29.9	217.4	+16%
	Scallop	34.0	-29.9	4.1	-88%

Table 2. Allocations for Sectors and the Common Pool (in pounds)

Sector Name	SNE/MA Yellowtail Flounder	
	Revised	Original
Common Pool	92,341	79,641
Fixed Gear Sector	1,774	1,530
Maine Coast Community Sector	6,104	5,264
Maine Permit Bank	152	131
NCCS	3,358	2,896
NEFS 1	-	-
NEFS 10	2,624	2,263
NEFS 11	84	72
NEFS 12	50	43
NEFS 13	100,781	86,920
NEFS 2	8,293	7,152
NEFS 3	316	273
NEFS 4	11,268	9,718
NEFS 5	100,300	86,506
NEFS 6	25,259	21,785
NEFS 7	11,847	10,218
NEFS 8	25,013	21,573
NEFS 9	41,805	36,055
New Hampshire Permit Bank	0	0
Sustainable Harvest Sector 1	1,511	1,303
Sustainable Harvest Sector 2	10,761	9,281
Sustainable Harvest Sector 3	35,643	30,741
Sector Total	386,944	333,726

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that the management measures implemented in this final rule are necessary for the conservation and management of the Northeast multispecies fishery and are consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

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

The Assistant Administrator for Fisheries finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment for this inseason adjustment because it would be impracticable and contrary to the public interest and would prevent the positive benefits the rule is intended to provide. NMFS is required to project GB and SNE/MA yellowtail flounder catch in the scallop fishery on or around January 15 of each year so that unused quota can be transferred to the groundfish fishery. The groundfish fishing year ends on April 30, 2018. The time necessary to provide for prior notice and comment would likely prevent this action from being implemented before the end of the fishing year, thereby precluding the additional economic benefits that would be created through additional GB and SNE/MA yellowtail flounder being made available to groundfish vessels. This adjustment, which implements provisions of 5 USC part 648, is routine and formulaic, and there was extensive public comment during the development of this provision in the FMP and its implementing regulations. Furthermore, there is no need to allow the industry additional time to adjust to this rule, because this rule does not require any compliance or other action on the part of individual scallop or groundfish fishermen. Thus, prior notice and comment for this rule

would provide no benefits to industry and the public, while at the same time it would preclude timely implementation of this action and the intended economic benefits to the groundfish fishery. Giving effect to this rule as soon as possible will help achieve optimum yield in the fishery. For these same reasons, the NMFS Assistant Administrator also finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in the date of effectiveness for this action.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

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

Dated: March 19, 2018.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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