

**§ 1.1502–35T Transfers of subsidiary stock and deconsolidations of subsidiaries (temporary).**

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(c)(4)(ii) through (g)(2) [Reserved]. For further guidance, see § 1.1502–35(c)(4)(ii) through (g)(2).

(3) *Anti-loss reimportation rule*—(i) *Conditions for application.* This paragraph (g)(3) applies when—

(A) A member of a group (the selling group) recognized and was allowed a loss with respect to a share of stock of S, a subsidiary or former subsidiary of the selling group;

(B) That stock loss was duplicated (in whole or in part) in S's attributes (duplicating items) at the earlier of the time that the loss was recognized or that S ceased to be a member; and

(C) Within ten years of the date that S ceased to be a member, there is a reimportation event. For this purpose, a reimportation event is any event after which a duplicating item is a reimported item. A reimported item is any duplicating item that is reflected in the attributes of any member of the selling group, including S, or, if not reflected in the attributes, would be properly taken into account by any member of the selling group (for example as the result of a carryback) (a reimported item).

(ii) *Effect of application.* Immediately before the time that a reimported item (or any portion of a reimported item) would be properly taken into account (but for the application of this paragraph (g)(3)), such item (or such portion of the item) is reduced to zero and no deduction or loss is allowed, directly or indirectly, with respect to that item.

(iii) *Operating rules.* For purposes of this paragraph (g)(3)—

(A) The terms member, subsidiary, and group include their predecessors and successors to the extent necessary to effectuate the purposes of this section;

(B) The determination of whether a loss is duplicative is made under the principles of paragraph (d)(4) of this section; and

(C) The reduction of a reimported item (other than duplicating items that are carried back to a consolidated return year of the selling group) is a noncapital, nondeductible expense within the meaning of § 1.1502–32(b)(3)(iii).

(g)(4) through (g)(5) [Reserved]. For further guidance, see § 1.1502–35(g)(4) through (g)(5).

(6) *General anti-avoidance rule applicable on or after April 10, 2007.* If a taxpayer acts with a view to avoid the purposes of this section, appropriate

adjustments will be made to carry out the purposes of this section.

(h) *Application of other rules of law.* See § 1.1502–80(a) regarding the general applicability of other rules of law.

(i) [Reserved]. For further guidance, see § 1.1502–35(i).

(j)(1) [Reserved]. For further guidance, see § 1.1502–35(j)(1).

(2) *Transactions after April 10, 2007*—(i) *Effective date.* Paragraph (g)(3) of this section applies to reimported items if the related stock loss is recognized on or after April 10, 2007. Paragraph (g)(3) (other than paragraph (g)(3)(i)(A)) of this section also applies with respect to the duplication of subsidiary stock loss recognized in dispositions (described in § 1.1502–35(g)(3)(i)(A), as contained in 26 CFR part 1, revised as of January 1, 2007) on or after March 7, 2002, if the reimportation event with respect to that loss occurs on or after April 10, 2007. For rules applicable to losses reimported before April 10, 2007, see § 1.1502–35(g)(3), as contained in 26 CFR part 1 in effect on January 1, 2007. Paragraphs (g)(6) and (h) of this section apply on or after April 10, 2007. For rules applicable prior to April 10, 2007, see § 1.1502–35 as contained in 26 CFR part 1 in effect on January 1, 2007.

(ii) *Expiration date.* The applicability of paragraphs (g)(3), (g)(6), and (h) of this section will expire on April 9, 2010.

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**Linda M. Kroening,**

*Acting Deputy Commissioner for Services and Enforcement.*

Approved: March 29, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 04011–2010–4114–02; I.D. 040407D]

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for the U.S./Canada Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; landing limit.

**SUMMARY:** NMFS announces that the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), is increasing the Georges Bank (GB) yellowtail flounder trip limit to 25,000 lb (11,340 kg) for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan and is intended to prevent under-harvesting of the Total Allowable Catch (TAC) for GB yellowtail flounder while ensuring that the TAC will not be exceeded during the 2006 fishing year. This action is being taken to provide additional opportunities for vessels to fully harvest the GB yellowtail flounder TAC under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective April 5, 2007, through April 30, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Tobey Curtis, Fishery Management Specialist, (978) 281–9273, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at § 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2006 fishing year (May 1, 2006 - April 30, 2007) is 2,070 mt. The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to increase or decrease the trip limits in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation. On March 8, 2007, the 10,000–lb (4,536–kg) trip limit for GB yellowtail flounder was reduced to 5,000 lb (2,268 kg) in the Eastern U.S./Canada Area to prevent over-harvesting the TAC (72 FR 10426), and the requirement to only use a haddock separator trawl in the Eastern U.S./Canada Area was removed. Currently, NE multispecies vessels fishing in the Eastern U.S./Canada Area under a NE multispecies day-at-sea (DAS) with trawl gear must use either a haddock separator trawl or a flounder trawl net, as specified at § 648.85(a)(3)(iii). Based upon the most

recent Vessel Monitoring System (VMS) reports and other available information, the Regional Administrator has determined that the current rate of harvest will result in the under-harvest of the GB yellowtail flounder TAC during the 2006 fishing year. Based on this information, the Regional Administrator is increasing the current 10,000-lb (4,536-kg) trip limit in the Western U.S./Canada Area, and the 5,000-lb (2,268-kg) trip limit in the Eastern U.S./Canada Area to 25,000 lb (11,340 kg) in both areas, effective April 5, 2007, through April 30, 2007. Accordingly, there is a 25,000-lb (11,340-kg) trip limit on the amount of GB yellowtail flounder that can be harvested or landed for the remainder of the fishing year for vessels subject to these regulations. GB yellowtail flounder landings will be closely monitored through VMS and other available information. Should 100 percent of the TAC allocation for GB yellowtail flounder be projected to be harvested, the Eastern U.S./Canada Area will close to all groundfish DAS vessels, and all vessels will be prohibited from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area for the remainder of the fishing year. Additionally, the Eastern GB cod TAC will also be closely monitored, and should 100 percent of its TAC allocation be projected to be harvested, groundfish DAS vessels will be prohibited from entering the Eastern U.S./Canada Area for the remainder of the fishing year, as required by the regulations at § 648.85(a)(3)(iv).

#### 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), the Assistant Administrator (AA) finds good cause to waive prior notice and opportunity for public comment for this action, because notice and comment would be impracticable and contrary to the public interest. The regulations at § 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to adjust the GB yellowtail flounder trip limits to prevent over-harvesting or under-harvesting the TAC allocation. Given that approximately 20 percent of the GB yellowtail flounder TAC remains unharvested and the 2006 fishing year ends on April 30, 2007, the time necessary to provide for prior notice, opportunity for public comment, or delayed effectiveness would prevent the agency from ensuring that the 2006 TAC for GB yellowtail flounder will be fully harvested. If implementation of this

action is delayed, the NE multispecies fishery could be prevented from fully harvesting the TAC for GB yellowtail flounder during the 2006 fishing year. Under-harvesting the GB yellowtail TAC would result in increased economic impacts to the industry and social impacts beyond those analyzed for Amendment 13, as the full potential revenue from the available GB yellowtail flounder TAC in the U.S./Canada Management Area would not be realized. This action also relieves a restriction placed on the NE multispecies fishing industry by liberalizing the trip limits for GB yellowtail flounder.

For the reasons specified above and because this action relieves a restriction, the AA finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the entire 30-day delayed effectiveness period for this action. A delay in the effectiveness of the trip limit modification in this rule would prevent the agency from meeting its management obligation and ensuring the opportunity for the 2006 TAC for GB yellowtail flounder specified for the U.S./Canada Management Area to be harvested at a level that approaches optimum yield. Any such delay could lead to the negative impacts to the fishing industry described above.

The rate of harvest of the GB yellowtail flounder TAC in the U.S./Canada Management Area is 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 GB yellowtail flounder during the 2006 fishing year. Further, the potential for this action was considered and open to public comment during the development of Amendment 13 and Framework 42. 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: April 5, 2007.

**James P. Burgess**

*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. 061228342-7068-02; I.D. 122206A]

RIN 0648-AT66

### Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2007-2009 Specifications

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

**ACTION:** Final rule.

**SUMMARY:** NMFS announces final specifications for the 2007-2009 fishing years for the Atlantic herring (herring) fishery. The intent of this final rule is to conserve and manage the herring resource and provide for a sustainable fishery.

**DATES:** Effective May 10, 2007, through December 31, 2009.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Essential Fish Habitat Assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.gov>. NMFS prepared a Final Final Regulatory Flexibility Analysis (FRFA), a summary of which is contained in the Classification section of the preamble of this final rule. Copies of the FRFA and the Small Entity Compliance Guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, 978-281-9259, e-mail at [eric.dolin@noaa.gov](mailto:eric.dolin@noaa.gov), fax at 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

Proposed 2007-2009 specifications were published on January 10, 2007 (72 FR 1206), with public comment accepted through February 9, 2007. These final specifications are unchanged from those that were proposed. A complete discussion of the