

effective on May 1, 2012, then the previous ACL and AMs would remain in effect, with the result that overfishing would not be reduced. These measures would increase overfishing on the GOM cod stock and, as such, are inconsistent with the Magnuson-Stevens Act, the stated intent of the GOM cod rebuilding program, and the FMP. Moreover, failing to have the rule effective on May 1, 2012, may lead to confusion in the fishing community as to what regulations govern the harvest of GOM cod. Thus, the 30-day delay is impracticable and contrary to the public interest, and NMFS waives the requirement and makes this rule effective on May 1, 2012.

NMFS has consulted with the Office of Information and Regulatory Affairs (OIRA) and due to the circumstances described above this action is exempt from review under Executive Order 12866.

Under section 608 of the Regulatory Flexibility Act, an agency may waive the requirement to perform a regulatory flexibility analysis for a rule where the agency finds that the “rule is being promulgated in response to an emergency that makes compliance or timely compliance with [the regulatory flexibility analysis requirements] impracticable.” 5 U.S.C. 608. As discussed in the preamble to this interim rule, and as elaborated in this classification section, NMFS takes this action to address an emergency situation in the GOM cod fishery. Undertaking a regulatory flexibility analysis would delay this action and put the GOM cod and any small businesses that depend on it at further risk. Because the nature of this emergency requires immediate action, NMFS finds that compliance with the Regulatory Flexibility Act is impracticable. Thus, the requirements of the Regulatory Flexibility Act are hereby waived.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 29, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

- 2. In § 648.89,
 - a. Amend paragraph (b)(1) introductory text by removing the reference “paragraph (b)(3)” and adding “paragraph (b)(5) in its place”;
 - b. Suspend paragraphs (b)(3), (c)(1)(i), and (c)(2)(i); and
 - c. Add new paragraphs (b)(5), (c)(1)(vi), and (c)(2)(vi) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

(b) * * *

(5) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(1) of this section may not possess cod smaller than 19 inches (48.26 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

* * * * *

(c) * * *

(1) * * *

(vi) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 9 cod per day in, or harvested from, the EEZ.

* * * * *

(2) * * *

(vi) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified in paragraph (c)(2)(v) of this section, each person on a charter/party vessel may possess no more than 9 cod per day.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786-1781-01]

RIN 0648-XB103

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2012 commercial summer flounder quota to the Commonwealth of

Virginia. The State of North Carolina is also retroactively transferring a portion of its 2011 commercial summer flounder quota to the Commonwealth of Virginia. NMFS is adjusting the quotas and announcing the revised commercial quota for each state involved.

DATES: Effective April 2, 2012, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT:

Carly Bari, Fishery Management Specialist, 978-281-9224.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are in 50 CFR part 648, and require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) to evaluate requests for quota transfers or combinations.

North Carolina has agreed to transfer 831,241 lb (377,044 kg) of its 2012 commercial quota to Virginia. This transfer was prompted by summer flounder landings of a number of North Carolina vessels that were granted safe harbor in Virginia due to hazardous shoaling in Oregon Inlet, North Carolina, between February 1, 2012, and March 1, 2012, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. Additionally, 8,601 lb (3,901 kg) of summer flounder commercial quota will be retroactively transferred from North Carolina to Virginia for a landing that occurred on December 19, 2011. The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The revised summer flounder quotas for calendar year 2011 are: North Carolina, 3,151,783 lb (1,429,625 kg); and Virginia, 5,305,295 lb (2,406,441 kg). The revised summer flounder quotas for calendar year 2012 are: North Carolina, 1,783,420 lb

(808,945 kg); and Virginia, 4,423,924 lb (2,006,658 kg).

Classification

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

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

Dated: March 29, 2012.

Carrie Selberg,

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

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