

In accordance with the provisions of Executive Order 12866, this interim final rule with comment period was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

■ 1. The authority citation for part 433 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 433.10 is amended by adding new paragraph (c)(5) to read as follows:

§ 433.10 Rates of FFP for program services.

* * * * *

(c) * * *

(5) (i) Under section 1933(d) of the Act, the Federal share of State expenditures for Medicare Part B premiums described in section 1905(p)(3)(A)(ii) of the Act on behalf of Qualifying Individuals described in section 1902(a)(10)(E)(iv) of the Act, is 100 percent, to the extent that the assistance does not exceed the State's allocation under paragraph (c)(5)(ii) of this section. To the extent that the assistance exceeds that allocation, the Federal share is 0 percent.

(ii) Under section 1933(c)(2) of the Act and subject to paragraph (c)(5)(iii) of this section, the allocation to each State is equal to the total allocation specified in section 1933(c)(1) of the Act multiplied by the Secretary's estimate of the ratio of the total number of individuals described in section 1902(a)(10)(E)(iv) of the Act in the State to the total number of individuals described in section 1902(a)(10)(E)(iv) of the Act for all eligible States. In estimating that ratio, the Secretary will use data from the U.S. Census Bureau.

(iii) If, based on projected expenditures for a fiscal year, the Secretary determines that the expenditures described in paragraph (c)(5)(i) of this section for one or more States are projected to exceed the allocation made to the State, the Secretary may adjust each State's fiscal year 2005 allocation, as follows:

(A) The Secretary will compare each State's new projected total expenditures

for the expenses described in paragraph (c)(5)(i) of this section to the State's initial allocation, to determine the extent of each State's projected surplus or deficit.

(B) The surplus of each State with a projected surplus, as determined in accordance with paragraph (c)(5)(iii)(A) of this section will be added together to arrive at the Total Projected Surplus.

(C) The deficit of each State with a projected deficit, as determined in accordance with paragraph (c)(5)(iii)(A) of this section will be added together to arrive at the Total Projected Deficit.

(D) Each State with a projected deficit will receive an additional allocation equal to the amount of its projected deficit. The amount to be reallocated from each State with a projected surplus will be equal to $A \times B$, where A equals the Total Projected Deficit and B equals the amount of the State's projected surplus as a percentage of the Total Projected Surplus.

(iv) CMS will notify States of any changes in allotments resulting from any reallocations without opportunity for prior comment. CMS will follow applicable rulemaking procedures in publishing revisions to the allotments resulting from changes other than those specified above.

(v) The provisions of this paragraph (c)(5) will be in effect through the end of calendar year 2005.

Authority: Sections 1902(a)(10), 1933 of the Social Security Act (42 U.S.C. 1396a), and Pub. L. 105–33.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: August 9, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 15, 2005.

Michael O. Leavitt,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040804229–4300–02; I.D. 081705H]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Closure of the Eastern U.S./Canada Area and the Eastern U.S./Canada Haddock Special Access Program Pilot Program

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock Special Access Program (SAP) Pilot Program, to limited access Northeast (NE) multispecies days-at-sea (DAS) vessels for the remainder of the 2005 fishing year (i.e., through April 30, 2006), unless otherwise notified by the Administrator, Northeast Region, NMFS (Regional Administrator). This closure is based on a determination by the Regional Administrator that 90 percent of the total allowable catch (TAC) of Georges Bank (GB) cod allocated to be harvested from the Eastern U.S./Canada Area has already been harvested during the 2005 fishing year. This action is being taken to prevent the 2005 TAC for GB cod in the Eastern U.S./Canada Area from being exceeded during the 2005 fishing year in accordance with the regulations implemented under Amendment 13 to the NE Multispecies Fishery Management Plan and the Magnuson-Stevens Fishery Conservation and Management Act. **DATES:** The closure of the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels is effective 0001 hr local time, August 26, 2005, through 2400 hr local time, April 30, 2006. One exception to this prohibition is discussed in the **SUPPLEMENTARY INFORMATION** section of this temporary rule.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Regulations governing fishing activity in the U.S./Canada Management Areas are found at 50 CFR 648.85. In addition,

regulations specifically governing vessel operations in the Eastern U.S./Canada Haddock SAP Pilot Program are specified at § 648.85(b)(8). These regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP Pilot Program, under specific conditions. The final GB cod TAC allocation for the 2005 fishing year was specified at 260 mt (July 7, 2005; 70 FR 39190). Once 30 percent and/or 60 percent of the TAC allocations specified for the U.S./Canada Management Area are projected to have been harvested, the regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to modify or close access to the Eastern U.S./Canada Area by all limited access NE multispecies DAS vessels to prevent over-harvesting the TAC allocations for the U.S./Canada Management Area.

Based upon vessel monitoring system (VMS) daily catch reports, dealer reports, and other available information, the Regional Administrator has determined that, to date, 90 percent of the 2005 GB cod TAC of 260 mt has been harvested by NE multispecies DAS vessels fishing in the Eastern U.S./Canada Area. Based on the small 2005 GB cod TAC and the very rapid rate at which the GB cod TAC has been harvested during the 2005 fishing year, it is likely that the 2005 GB cod TAC would be harvested before the end of the fishing year. Therefore, based on the available information described above, to ensure that the TAC for GB cod will not be exceeded, the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP Pilot Program, is closed to all limited access NE multispecies DAS vessels for the remainder of the 2005 fishing year,

effective August 26, 2005 through April 30, 2006, pursuant to the regulations at § 648.85(a)(3)(iv)(D). This area may be reopened at a later date during the 2005 fishing year, in accordance with the regulations at § 648.85(a)(3)(iv)(D), should it be determined that there is additional GB cod TAC remaining and that it could be harvested without resulting in exceeding the GB cod TAC for the 2005 fishing year. However, vessels that have already declared their intent to fish in the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP Pilot Program (VMS Area Codes 2, 5, or 6) through VMS, departed on a trip, and crossed the demarcation line as of 0001 hours on August 26, 2005, are exempt from the closure initially in that they may finish their trip into the Eastern U.S./Canada Area.

Classification

This action is required 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), 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. Given the small GB cod TAC for the Eastern U.S./Canada Area during the 2005 fishing year and the very rapid rate at which the GB cod TAC was harvested to date, it would be impractical for NMFS to provide for prior notice and opportunity for public comment or a delayed effectiveness because this would likely prevent the agency from closing the Eastern U.S./Canada Area and the Eastern U.S./Canada Haddock SAP Pilot Program before the GB cod TAC is fully harvested. To allow vessels to continue

to direct fishing effort on GB cod during the period necessary to publish and receive comments on a proposed rule, or to delay effectiveness, would result in the continued harvest of GB cod, potentially increasing the potential for the groundfish fishery to exceed the GB cod TAC for the Eastern U.S./Canada Area during the 2005 fishing year, thereby unnecessarily delaying rebuilding of this overfished stock. Exceeding the GB cod TAC during the 2005 fishing year would require any overages to be deducted from the 2006 GB cod TAC for the Eastern U.S./Canada Area. This would result in decreased revenue for the NE multispecies fishery, increased economic impacts to vessels operating in the Eastern U.S./Canada Area, reduced opportunities to fully harvest the GB cod, GB haddock, and GB yellowtail flounder TACs in the Eastern U.S./Canada Area, and a reduced chance of achieving optimum yield in the groundfish fishery. The rate of harvest of GB cod in the Eastern U.S./Canada Area is updated weekly on NMFS's Northeast Regional Office website 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 closure of the Eastern U.S./Canada Area minimizing the need for a delayed effectiveness. Therefore, based on the above, it would be impracticable and contrary to the public interest to delay closure of this area through prior notice and public comment or a delay in the effectiveness of this action.

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

Dated: August 22, 2005.

Alan D. Risenhoover,

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