

because golden tilefish is not overfished.

#### Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on the reopening of the commercial sector for golden tilefish in the South Atlantic EEZ, as notice and comment would be unnecessary and contrary to the public interest. Providing prior notice and the opportunity for public comment is unnecessary because the increased commercial and recreational ACLs for golden tilefish were subject to notice and comment as part of the proposed rule for Regulatory Amendment 12 (77 FR 42688); therefore, this waiver only covers the portion of the final rule that informs the public that additional commercial harvest is available and that the commercial sector will reopen. In addition, delaying implementation of this rulemaking to provide for prior notice and public comment is contrary to the public interest because it would reduce the likelihood of reopening the commercial sector for golden tilefish in the early fall months, when weather conditions are more favorable and fishing conditions are safer. Delaying the reopening to allow for public comment would therefore endanger the health and safety of the fishing fleets without providing any benefits to the public.

Three provisions in this final rule are exempt from the requirement to delay the effectiveness of a final rule by 30 days after publication in the **Federal Register**, under 5 U.S.C. 553(d)(1). Specifically, the following provisions relieve restrictions on the regulated community: The increases in the commercial and recreational ACLs for golden tilefish set forth in § 222.42(e)(2) and § 222.49(b)(1)(ii), and the reopening of the commercial sector to allow for the harvest of the new commercial ACL and achievement of OY. However, the recreational ACL is contained in the same paragraph in the regulations as the recreational AMs for golden tilefish. The provisions that implement the in-season AM and revise the post-season AM for the recreational sector for golden tilefish do not relieve a restriction and are therefore subject to the 30-day delay in effectiveness. Further, because the increased recreational ACL has already been reached, and the recreational sector will not reopen, the increased recreational ACL does not need to be effective immediately. Therefore, the paragraph in the regulations containing both the recreational ACL and AMs for golden tilefish, § 222.49(b)(1)(ii), will be

effective 30 days after publication of this final rule.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders in the South Atlantic snapper-grouper fishery.

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 3, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 222.42, paragraph (e)(2) is revised to read as follows:

##### § 222.42 Quotas.

\* \* \* \* \*

(e) \* \* \*

(2) *Golden tilefish*—541,295 lb (245,527 kg).

\* \* \* \* \*

■ 3. In § 222.49, the section heading is revised, and paragraphs (b)(1)(i) and (b)(1)(ii) are revised to read as follows:

##### § 222.49 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACL (commercial quota) specified in § 222.42(e)(2), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(ii) *Recreational sector.* If recreational landings for golden tilefish, as estimated by the SRD, reach or are projected to reach the recreational ACL of 3,019 fish, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. If recreational landings for golden tilefish, as estimated by the SRD, exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year.

\* \* \* \* \*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0907301205-0289-02]

RIN 0648-XC157

#### Fisheries of the Northeastern United States; Atlantic Herring Fishery; Sub-ACL (Annual Catch Limit) Harvested for Management Area 3

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is closing the directed herring fishery in Management Area 3, because 95 percent of the catch limit for that area has been caught. Effective 0001 hr, October 7, 2012, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) per calendar day of Atlantic herring in or from Area 3 until January 1, 2013, when the 2013 allocation for Area 3 becomes available.

**DATES:** Effective 0001 hr local time, October 7, 2012, through December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Lindsey Feldman, Fishery Management Specialist, (978) 675-2079.

**SUPPLEMENTARY INFORMATION:** Regulations governing the Atlantic herring (herring) fishery are found at 50 CFR part 648. The regulations require annual specification of the overfishing

limit, acceptable biological catch, annual catch limit (ACL), optimum yield, domestic harvest and processing, U.S. at-sea processing, border transfer, and the sub-ACL for each management area. The 2012 Domestic Annual Harvest was set as 91,200 metric tons (mt); the sub-ACL allocated to Area 3 for the 2012 fishing year (FY) was 38,146 mt, and 0 mt of the sub-ACL was set aside for research in the 2010–2012 specifications (75 FR 48874, August 12, 2010).

Section 648.201 requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the herring fishery in each of the four management areas designated in the Fishery Management Plan for the herring fishery and, based on dealer reports, state data, and other available information, to determine when the harvest of herring is projected to reach 95 percent of the management area sub-ACL. When such a determination is made, NMFS must publish notification in the **Federal Register** and prohibit herring vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip or landing more than once per calendar day in or from the specified management area for the remainder of the closure period. Transiting Area 3 with more than 2,000 lb (907.2 kg) of herring on board is allowed under the conditions described below.

The Regional Administrator has determined, based on dealer reports and other available information that 95 percent of the total herring sub-ACL allocated to Area 3 for 2012 is projected to be harvested on October 7, 2012. Therefore, effective 0001 hr local time, October 7, 2012, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of herring per trip (and landing herring no more than once per calendar day) in or from Area 3 through December 31, 2012. Vessels may transit through Area 3 with more than 2,000 lb (907.2 kg) of herring on board, provided such herring was not caught in Area 3 and provided all fishing gear aboard is stowed and not available for immediate use as stated in § 648.23(b). Effective 0001 hr, October 7, 2012, federally permitted dealers are also advised that they may not purchase herring from federally permitted herring vessels that harvest more than 2,000 lb (907.2 kg) of herring from Area 3 through 2400 hr local time, December 31, 2012.

### Classification

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

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. This action closes the herring fishery for Management Area 3 until January 1, 2013, under current regulations. The regulations at § 648.201(a) require such action to ensure that herring vessels do not exceed the 2012 sub-ACL allocated to Area 3. The herring fishery opened for the 2012 fishing year on January 1, 2012. Data indicating the herring fleet will have landed at least 95 percent of the 2012 sub-ACL allocated to Area 3 have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the sub-ACL for Area 3 for this fishing year can be exceeded, thereby undermining the conservation objectives of the FMP and requiring any excess to be subtracted from the Area 3 sub-ACL for the fishing year following the total catch determination. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: October 3, 2012.

**Lindsay Fullenkamp,**

*Acting Deputy 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. 111213751–2102–02]

RIN 0648–XC278

### Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Atka Mackerel 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; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of the 2012 Atka mackerel incidental catch allowance (ICA) for the Bering Sea subarea and Eastern Aleutian district (BS/EAI) of to the Amendment 80 cooperatives in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2012 total allowable catch of Atka mackerel to be fully harvested.

**DATES:** Effective October 3, 2012, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7269.

**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 2012 Atka mackerel ICA for the BS/EAI is 1,000 metric tons (mt) and 2012 Atka mackerel total allowable catch allocated to the Amendment 80 cooperative is 29,892 mt as established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

The Administrator, Alaska Region, NMFS, has determined that 570 mt of the Atka mackerel ICA for the BS/EAI will not be harvested. Therefore, in accordance with § 679.91(f), NMFS reallocates 570 mt of Atka mackerel from the BS/EAI ICA to the Amendment 80 cooperatives in the BSAI. In accordance with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated Atka mackerel following the procedures set forth in § 679.91(f)(3).

The harvest specifications for Atka mackerel included in the harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) are revised as follows: 430 mt of Atka mackerel for the BS/EAI ICA and 30,463 mt of Atka mackerel for the Amendment 80 cooperatives in the BS/EAI. Table 4 is correctly revised and republished in its entirety as follows: