

vessels do not exceed the 2011 sub-ACL allocated to Area 1B. The Atlantic herring fishery opened for the 2011 fishing year on January 1, 2011. Data indicating the Atlantic herring fleet will have landed at least 95 percent of the 2011 sub-ACL allocated to Area 1B have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the sub-ACL for Area 1B for this fishing year will be exceeded, thereby undermining the conservation objectives of the FMP. 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: September 28, 2011.

**Steven Thur,**

*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. 0910051338-0151-02]

RIN 0648-XA732

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Correction to Cod Landing Limit for Handgear B Vessels in the Common Pool Fishery

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

**ACTION:** Temporary rule; inseason adjustment of landing limit.

**SUMMARY:** NMFS is decreasing the Gulf of Maine and Georges Bank cod landing limit to 50 lb (22.7 kg) and 25 lb (11.3 kg) per trip for Northeast multispecies open access Handgear B permitted vessels fishing in the common pool fishery for the remainder of the 2011 fishing year (through April 30, 2012). This action is authorized under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is required by the regulations implementing the Northeast Multispecies Fishery Management Plan.

**DATES:** *Effective* October 3, 2011, through April 30, 2012.

**FOR FURTHER INFORMATION CONTACT:** Brett Alger, Fisheries Management

Specialist, (978) 675-2153, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

Regulations governing possession and landing limits for Handgear B (HB) vessels fishing under common pool regulations at § 648.88(a)(1) state that the HB cod trip limit for the Gulf of Maine (GOM) and Georges Bank (GB) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)) “if either the GOM or GB cod trip limit applicable to a vessel fishing under a Northeast (NE) multispecies day-at-sea (DAS) permit, as specified in § 648.86(b)(1) and (2), respectively, is adjusted by NMFS.” The initial GOM and GB cod trip limits for NE multispecies common pool vessels fishing under a day-at-sea (DAS) are set at 800 lb (362.9 kg) per DAS and 2,000 lb (907.2 kg) per DAS respectively. However, for fishing year (FY) 2011, Framework Adjustment 45 (FW 45) reduced the initial GOM cod trip limit to 500 lb (226.8 kg) per DAS from 800 lb (362.9 kg) per DAS (76 FR 23042; April 25, 2011). An inseason adjustment on May 24, 2011, increased the GB cod trip limit to 3,000 lb (1,360.8 kg) per DAS from 2,000 lb (907.2 kg) per DAS (76 FR 30035; May 24, 2011). A second inseason adjustment, on August 30, 2011, decreased the GOM cod trip limit to 350 lb (158.8 kg) per DAS and the GB cod trip limit to 300 lb (136.1 kg) per DAS (76 FR 53832, August 30, 2011). Due to an oversight, the HB trip limits for GOM and GB cod were not adjusted at the beginning of FY 2011 through the FW 45 final rule, at the time of the first inseason adjustment, or the most recent inseason adjustment.

In the GOM, the current 350 lb (158.8 kg) per DAS landing limit represents a 56.3-percent reduction from the initial 800 lb (362.9 kg) per DAS limit. Therefore, the landing limit for HB vessels for GOM cod is reduced to 50 lb (22.7 kg) per trip (75 lb (34.0 kg) per trip reduced by 56.3 percent = 32.8 lb (14.9 kg) per trip, rounded up to 50 lb (22.7 kg) per trip). On GB, the current 300 lb (136.1 kg) per DAS landing limit represents an 85-percent reduction from the initial 2,000 lb (907.2 kg) per DAS limit. Therefore, the landing limit for HB vessels for GB cod is reduced to 25 lb (11.3 kg) per trip (75 lb (34.0 kg) per trip reduced by 85.0 percent = 11.3 lb (5.1 kg) per trip, rounded up to 25 lb (11.3 kg) per trip). To correct the oversights in the previous actions, NMFS is reducing the trip limit for GOM cod to 50 lb (22.7 kg) per trip and GB cod to 25 lb (11.3 kg) per trip for NE multispecies HB permitted vessels in the common pool fishery for the

remainder of FY 2011 (through April 30, 2012).

Catch will be closely monitored through dealer-reported landings, vessel monitoring system (VMS) catch reports, and other available information. NMFS may consider future inseason adjustments to decrease the trip limit, or to increase differential DAS measures, based on updated catch data and projections. Conversely, if the common pool sub-annual catch limit (ACL) is projected to be under-harvested by the end of FY 2011, NMFS will consider inseason adjustments, such as increasing the trip limit for the remainder of FY 2011.

#### Classification

This action is authorized 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)(3)(B) to waive prior notice and the opportunity for public comment for this inseason adjustment because notice and comment would be impracticable and contrary to the public interest. The regulations at § 648.86(o) grant the RA authority to adjust the NE multispecies trip limits for common pool vessels in order to prevent the overharvest or underharvest of the pertinent common pool sub-ACLs. This action decreases the trip limits for GOM and GB cod to reduce their harvest in order to prevent the common pool sub-ACLs from being exceeded. The time necessary to provide for prior notice and comment would prevent NMFS from implementing the necessary trip limit adjustments in a timely manner. A resulting delay in the reduction of trip limits would allow for continued higher catch rates and potentially allow the pertinent common pool sub-ACLs to be exceeded. This is contrary to NMFS's obligation under the Magnuson-Stevens Act to prevent overfishing. Further, if the sub-ACLs are exceeded, this would trigger the implementation of accountability measures that would have negative economic impacts on the participants in the common pool. Giving effect to this rule as soon as possible will prevent these unnecessary impacts.

Further, the AA finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This action decreases the trip limits for GOM and GB cod to reduce their harvest in order to prevent the common pool sub-ACLs from being exceeded. A delay in the reduction of trip limits would allow for continued higher catch rates and potentially allow the pertinent common pool sub-ACLs to

be exceeded. This is contrary to NMFS's obligation under the Magnuson-Stevens Act to prevent overfishing. Further, if the sub-ACLs are exceeded, this would trigger the implementation of accountability measures that will have negative economic impacts on the participants in the common pool. Giving effect to this rule as soon as possible will prevent these unnecessary impacts

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

Dated: September 28, 2011.

**Steven Thur,**

*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. 0907301205-0289-02]

RIN 0648-XA649

#### 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 announces that, effective 0001 hr, October 3, 2011, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring (herring) in or from Management Area 3 (Area 3) per calendar day until January 1, 2012, when the 2012 sub-ACL (annual catch limit) for Area 3 becomes available, except when transiting as described in this notice. This action is based on the determination that 95 percent of the herring sub-ACL allocated to Area 3 for 2011 is projected to be harvested by October 3, 2011.

**DATES:** Effective 0001 hr local time, October 3, 2011, through December 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Lindsey Feldman, Fishery Management Specialist, (978) 675-2179.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the 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 sub-ACLs for each management area. The 2011 Domestic Annual Harvest is 91,200 metric tons (mt); the 2011 sub-ACL allocated to Area 3 is 38,146 mt and 0 mt of the sub-ACL is set aside for research (75 FR 48874, August 12, 2010).

The regulations at § 648.201 require 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 upon 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 is required to 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 calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 3 with more than 2,000 lb (907.2 kg) of herring on board is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other available information that 95 percent of the total herring sub-ACL allocated to Area 3 for 2011 is projected to be harvested. Therefore, effective 0001 hr local time, October 3, 2011, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of herring

in or from Area 3 per calendar day through December 31, 2011. 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 required by § 648.23(b). Effective October 3, 2011, 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, 2011.

#### Classification

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

NMFS 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 contrary to the public interest. This action closes the herring fishery for Management Area 3 until January 1, 2012, under current regulations. The regulations at § 648.201(a) require such action to ensure that herring vessels do not exceed the 2011 sub-ACL allocated to Area 3. The herring fishery opened for the 2011 fishing year on January 1, 2011. Data indicating the herring fleet will have landed at least 95 percent of the 2011 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. NMFS 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: September 28, 2011.

**Steven Thur,**

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

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