

III. *Items Prohibited in Sterile and Cabin Areas, but May Be Placed in Checked Baggage.* Passengers may place prohibited items other than explosives, incendiaries, disabling chemicals, and other dangerous items (other than individual self-defense sprays as noted below), and loaded firearms in their checked baggage, subject to any limitations provided in DOT's hazardous materials regulation. 49 CFR part 175.

A. *Pepper spray or mace.* A passenger may place one container of self-defense spray in checked baggage, not exceeding 4 fluid ounces by volume, but only if it incorporates a positive means to prevent accidental discharge. See 49 CFR 175.10(a)(4)(ii).

B. *Small arms ammunition.* A passenger may place small arms ammunition for personal use in checked baggage, but only if securely packed in fiber, wood or metal boxes, or other packaging specifically designed to carry small amounts of ammunition. 49 CFR 175.10(a)(5).

C. *Unloaded firearms.* A passenger may place an unloaded firearm or starter pistol in checked baggage if the passenger declares to the airline operator, either orally or in writing, before checking the baggage, that (1) the passenger has a firearm in his or her bag and that it is unloaded, (2) the firearm is carried in a hard-sided container, and (3) the container is locked, and only the passenger has the key or combination. 49 CFR 1540.111(c).

D. *Club-like Items.* A passenger may transport club-like objects and sharp objects in checked baggage, as long as they do not contain explosives or incendiaries.

IV. *Lists are not Exclusive.* Neither the prohibited items list nor the permitted items list contains all possible items. A screener has discretion to prohibit an individual from carrying an item into a sterile area or onboard an aircraft if the screener determines that the item is a weapon, explosive, or incendiary, regardless of whether the item is on the prohibited items list or the permitted items list. For example, if a cigar cutter or other article on the permitted list appears unusually dangerous, the screener may refuse to allow it in sterile areas. Similarly, screeners may allow individuals to bring items into the sterile area that are not on the permitted items list. In addition, items may be prohibited from the cabin of an aircraft, or allowed in only limited quantities, by Department of Transportation regulations governing hazardous materials. Individuals with questions about the carriage of hazardous materials on passenger aircraft may call

the Hazardous Materials Information Center at 1-800-467-4922 for more information.

Issued in Arlington, Virginia, on December 5, 2005.

**Kip Hawley,**

*Assistant Secretary.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 041110317-4364-02; I.D. 112905B]

#### 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; inseason quota transfer.

**SUMMARY:** NMFS announces that the State of North Carolina is transferring commercial summer flounder quota to the Commonwealth of Virginia from its 2005 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

**DATES:** Effective December 5, 2005 through December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mike Ruccio, Fishery Management Specialist, (978) 281-9104, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations 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 § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 4,975 lb (2,257 kg) of its 2005 commercial quota to Virginia to cover a landing of a North Carolina vessel disabled at sea and subsequently granted safe harbor in Virginia. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised summer flounder quotas for calendar year 2005, inclusive of all previous adjustments and transfers published on October 18, 2005 (70 FR 60449), are: North Carolina, 4,604,347 lb (2,088,532 kg), and Virginia, 4,018,881 lb (1,822,964 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: December 2, 2005.

**Alan D. Risenhoover,**

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

[FR Doc. 05-23802 Filed 12-5-05; 2:09 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 050517132-5132-01; I.D. 051105D]

**RIN 0648-AT36**

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Haddock Incidental Catch Allowance for the Atlantic Herring Fishery

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

**ACTION:** Temporary rule; emergency action; response to public comments; extension of effective period.

**SUMMARY:** NMFS is promulgating this temporary rule to continue the effectiveness of emergency regulations that established an incidental haddock catch allowance for the Atlantic herring fishery. Emergency action was initially

requested by the New England Fishery Management Council (Council). Measures that were implemented June 12, 2005, are extended through this action for an additional 180 days. In developing these measures, NMFS considered recommendations made by the Council's Ad-hoc Bycatch Committee and the Council. These measures are intended to maintain a haddock possession tolerance as close to zero as practicable, while allowing the herring industry to operate.

**DATES:** The expiration date of the amendments published June 13, 2005 (70 FR 34055) regarding 50 CFR 648.14, 648.15, 648.80, 648.83, and 648.86 is extended from December 10, 2005 to June 6, 2006. The amendment to 15 CFR 902.1 and 50 CFR 648.2 is not affected by this action.

**ADDRESSES:** Copies of the emergency rule and its Regulatory Impact Review (RIR) are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Brian Hooker, Fishery Policy Analyst, phone: (978) 281-9220; fax: (978) 281-9135.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Regulations established under the Fishery Management Plan for the Northeast Multispecies Fishery (NE Multispecies FMP) prohibit vessels fishing for Atlantic herring (herring) from possessing or landing any groundfish species, including haddock. In July 2004, NOAA's Office of Law Enforcement (OLE) observed prohibited juvenile haddock in catches being landed by midwater trawl vessels fishing for herring on Georges Bank (GB). Representatives of the herring industry requested a series of meetings with staff from OLE and the Northeast Regional Office to report that they were encountering haddock unusually high in the water column, and were unable to avoid catching it, even with midwater trawl gear. The issue was raised to the attention of the Council, which voted on March 30, 2005, to request emergency action to authorize all Category I herring vessels to possess up to 1,000 lb (454 kg) of haddock incidentally caught when fishing for herring. NMFS received the Council's formal request for emergency action on April 6, 2005. A temporary rule implementing the emergency measures was published on June 13, 2005 (70 FR 34055), and is effective through December 10, 2005. Public comments were accepted through July 13, 2005.

While these measures are not intended to directly reduce potential interactions between herring vessels and haddock, as interim measures, they are intended to provide an allowance for the herring fishery to operate while the Council develops a long-term solution through Amendment 1 to the Fishery Management Plan for the Atlantic Herring Fishery (Herring FMP). Since Amendment 1 is not expected to be implemented until summer 2006, it is prudent to continue the measures implemented through the emergency rule for an additional 180 days as authorized under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

The following provisions are continued through this temporary rule that extends the emergency action: (1) Suspension of the prohibition on the possession of haddock by vessels using purse seines or midwater trawls (including pair trawls), (2) establishment of a 1,000-lb (454-kg) haddock incidental possession limit for Category 1 herring vessels, (3) suspension of the haddock minimum fish size for Category 1 herring vessels, (4) prohibition on the purchase and sale of haddock landed by Category 1 herring vessels for human consumption, (5) establishment of a provision to require herring processors to cull landings made by Category I herring vessels and retain haddock for inspection by enforcement officials, (6) establishment of a requirement to provide advance notification prior to landing for all Category 1 herring vessels via the Vessel Monitoring System (VMS), and (7) establishment of an incidental catch TAC (bycatch cap) on the total amount of haddock that can be landed under the haddock incidental catch possession limit. NMFS will continue to monitor a 270,000-lb (122,470-kg) haddock bycatch cap based on actual landings reported by vessels and dealers/processors, as well as any other landings based on observer reports or enforcement actions. As of November 2005, only an estimated 11.32 percent of the total haddock bycatch cap have been reported landed from Category 1 herring vessels. If these actual reported or observed landings under the incidental possession limit reach the bycatch cap, the directed herring fishery in the GB haddock stock area will be closed, and a prohibition on the possession of haddock would be reinstated for all Category 1 herring vessels fishing in all other areas. The current absolute prohibition on the possession of haddock appears unrealistic, given the potential for haddock and herring

interactions. The measures being extended through this rule reflect the intention of maintaining a haddock possession tolerance as close to zero as practicable, while allowing the herring industry to operate. According to all available data, Category 1 herring vessels have done well in avoiding haddock during the initial effective period of the emergency rule. However, as a precautionary measure it is prudent to continue the emergency action for up to an additional 180 days, or until Amendment 1 to the Herring FMP can be implemented, if approved.

This temporary rule maintains the current cap on the total amount of observed and reported haddock that can be landed by Category 1 herring vessels. The bycatch cap is a backstop on the total amount of haddock permitted to be landed in order to mitigate any unexpected haddock harvest levels. Thus, the herring fishery will not be allowed an unlimited harvest of haddock. NMFS will use landings reported by vessels and dealers/processors, as well as any other landings reported through observer reports or enforcement actions, to determine if observed and reported landings reach the bycatch cap level. If the bycatch cap is reached, the directed herring fishery in the GB haddock stock area will be closed, and the emergency measures that authorize Category 1 vessels to possess haddock will be terminated. If the fishery is closed due to attainment of the bycatch cap, the measures established by this action to require herring processors and dealers to retain haddock landed by Category 1 herring vessels would remain in effect, as would the requirement for Category 1 herring vessels to provide advance notification of landing, to ensure that the closure is enforceable.

##### **Management Measures**

Additional background and explanation of the management measures being extended by this temporary rule contained in the preamble of the June 13, 2005, emergency rule and are not repeated here.

##### **Comments and Responses**

Nine letters were received during the comment period for the initial temporary rule implementing the emergency action to address haddock bycatch in the herring fishery. These comments included two letters from non-governmental organizations, one letter from the Maine Department of Marine Resources, five letters from industry members, and one letter from the general public. NMFS has not

responded to the comments that were not specific to the emergency management measures contained in the initial temporary rule. The comments are summarized and addressed in the proceeding paragraphs.

#### *Rationale Behind a Haddock Bycatch Allowance in the Herring Fishery*

*Comment 1:* Four comments were received questioning the rationale for allowing Category 1 herring vessels to catch haddock when this species was previously prohibited. Commenters stated that Category 1 herring vessels should not be allowed to catch haddock, since they use a mesh size that is prohibited in the directed haddock fishery, and because herring vessels are not historical participants in the groundfish fishery and should, therefore, not be eligible to participate in any capacity now that the haddock resource is recovering.

*Response:* Some allowance to allow Category 1 herring vessels to land haddock is needed to allow the herring fishery to operate. Regulations prior to the emergency action prohibited any possession of haddock by Category 1 herring vessels. This temporary action allows a limited amount of haddock to be possessed if caught coincidental to the herring fishery. The 270,000-lb (122,470-kg) haddock bycatch cap, is roughly equivalent to 1 percent of the 2005 GB haddock bycatch cap and less than 1 percent of the Council-recommended 2006 GB haddock total allowable catch (TAC). The groundfish fleet only caught 16 percent of the 2004 Eastern U.S./Canada haddock TAC, and has only caught 7 percent of the 2005 haddock TAC as of November 2005. As a result, it is not expected that the bycatch cap will hinder harvesting efforts in the directed haddock fishery, nor will it undermine haddock conservation measures of the NE Multispecies FMP. It is also important to note that NMFS has prohibited Category 1 herring vessels from selling landed haddock for human consumption, which significantly reduces any incentive to catch haddock.

#### *Monitoring of the Haddock TAC*

*Comment 1:* Three comments were received regarding the monitoring of the haddock bycatch cap. Commenters requested that reported haddock catch be extrapolated to the entire Category 1 herring vessel fishing trips, similar to bycatch monitoring programs in the groundfish fishery.

*Response:* This action does not include a measure to extrapolate the reported haddock bycatch to all Category 1 herring trips, as the haddock

bycatch events of the summer of 2004 showed that haddock bycatch events were not consistent across the fishery, but rather rare events. This variability led NMFS to conclude that it could not meaningfully extrapolate landings of haddock to the entire herring fishery. Furthermore, the 2005 herring fishing year was the first fishing year in which NMFS at-sea observers used a newly developed sampling protocol for determining the percent composition of haddock in the herring catch.

*Comment 2:* Two comments were received requesting that NMFS specify the level of at-sea observer coverage and the dockside monitoring protocol in the temporary rule.

*Response:* NMFS has relied on its existing programs to monitor the fishery. It would not be appropriate for NMFS to arbitrarily commit resources that it can not guarantee would be available for the duration of the emergency, and that may not be necessary to get reliable information sufficient to monitor this fishery.

#### *Duration of Herring Fishery Closure Area if Bycatch Cap is Exceeded*

*Comment 1:* One comment was received requesting that NMFS clarify how the closure of the herring fishery in the GB stock area would be administered if the haddock bycatch cap is attained. The commenter noted that a new herring fishing year begins January 1, 2006, and a new groundfish fishing year begins May 1, 2006. The commenter asked when a closure, if required, would end.

*Response:* Although not explicit in the initial temporary rule it is the intention of NMFS that the GB haddock stock area would re-open to the harvest of herring upon the expiration of the emergency rule that authorized the closure, unless additional management measures are implemented that address the situation at that time. However, in the absence of these temporary emergency measures, the haddock bycatch possession limit would be zero.

#### *Area of the GB Haddock Stock Closure*

*Comment 1:* One comment was received regarding the western boundary of the area that would be closed to Category 1 herring vessels if the bycatch cap is reached. The commenter suggests that the western boundary of the closure area includes areas where haddock are sparse, and thus would not serve any benefit in conserving the haddock resource. Furthermore, the commenter stated that this area is important to the herring fishery and should not be included in any closure.

*Response:* Including the entire GB stock area as part of the area that would be closed once the haddock bycatch cap is reached was a provision recommended by the Council's Bycatch Committee to ensure that no further incidental haddock catch occurs in the herring fishery. The stock that NMFS is trying to protect through this action is the GB haddock stock. Thus, it is prudent to close the GB haddock stock area, already defined in the regulations, if and when it is determined that the herring fishery has reached the bycatch cap in a given groundfish fishing year.

#### *Classification*

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

This action continues emergency measures implemented June 13, 2005, for 180 days beyond the current expiration date of December 10, 2005, because the conditions prompting the initial emergency action still remain. The public was provided with the opportunity to submit public comment on these measures, and those comments are responded to in this rule. Therefore, the Assistant Administrator for Fisheries, NOAA (AA) finds that it would be impracticable and contrary to the public interest to delay the extension of these measures by providing additional opportunities for public comment, and finds good cause to waive additional public comments under U.S.C. 553 (b)(B).

Because this rule continues to relieve a restriction by maintaining a haddock possession limit for Category 1 herring vessels, it is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1). The possession limit for haddock for vessels using purse seine or midwater trawl gear in the Gulf of Maine and Georges Bank Exemption Area, absent this temporary rule, is 0 lb (0 kg). This emergency action continuance will maintain the haddock possession limit at 1,000 lb (454 kg) for these vessels.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirement*

This emergency rule extends a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). Category 1 herring vessels will remain required to notify OLE via VMS of the port in which they will land their catch. Notice is required prior to landing. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements. These requirements have been approved by the Office of Management and Budget (OMB) under control number 0648-0521 (5 min/response).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

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

Dated: December 5, 2005.

**James W. Balsiger,**

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

[FR Doc. 05-23803 Filed 12-5-05; 2:09 pm]

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