

**\*\*The map image in this letter contains an error. Please see November 3, 2009, letter for correct map\*\***



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 NATIONAL MARINE FISHERIES SERVICE  
 NORTHEAST REGION  
 55 Great Republic Drive  
 Gloucester, MA 01930-2298

October 28, 2009

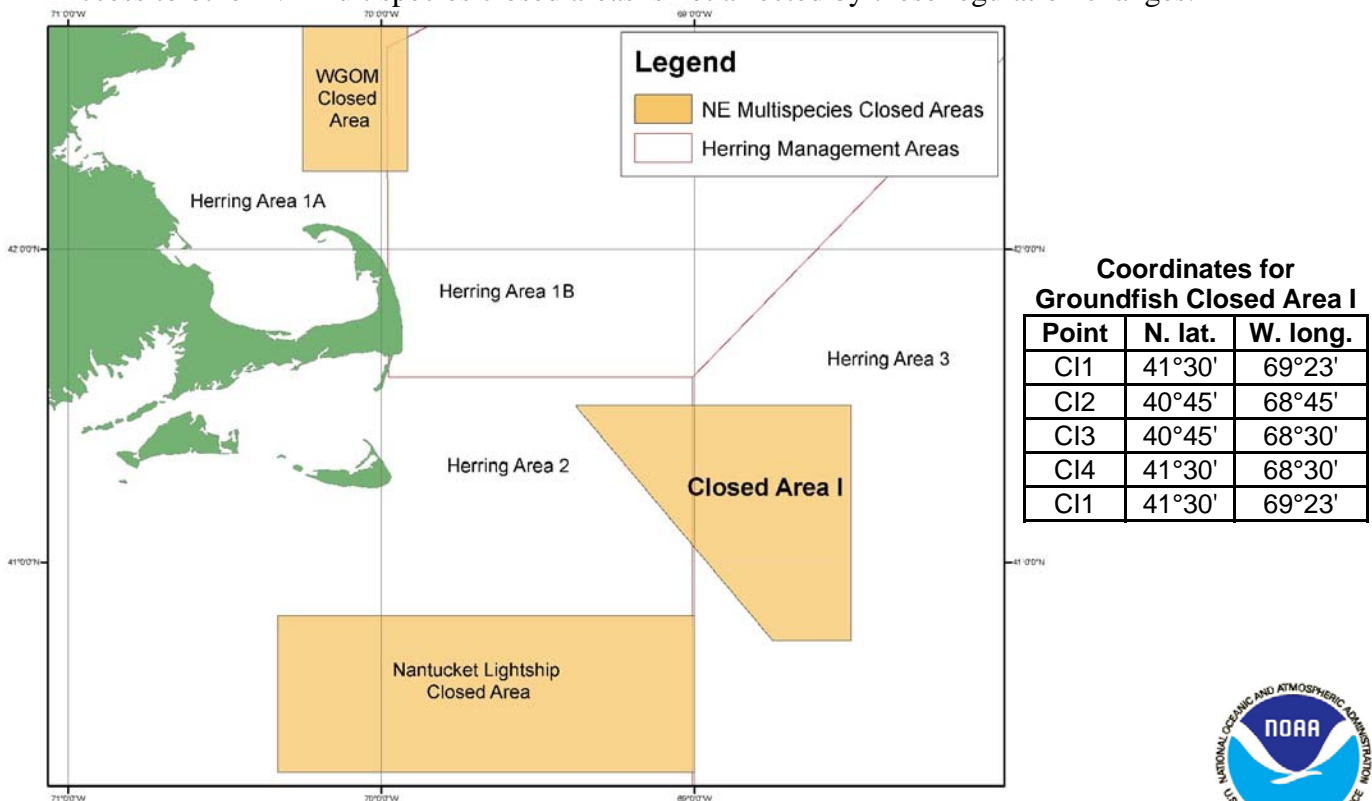
## Changes for Midwater Trawl Vessels Fishing in Groundfish Closed Area I

### Small Entity Compliance Guide

Dear Limited Access Herring Category A or B Permit Holder:

This letter is to inform you of new requirements, effective on **November 2, 2009**, for any vessel issued an All Areas or an Areas 2 and 3 limited access herring permit fishing in Northeast (NE) multispecies Closed Area I under the authority of the Gulf of Maine (GOM)/Georges Bank (GB) Herring Midwater Trawl Gear Letter of Authorization (LOA). These new requirements, implemented at the request of the New England Fishery Management Council (Council), as more fully explained below, are as follows: 100% observer coverage and a prohibition on releasing catch before it is sampled by the observer, except in specific circumstances, for midwater trawl herring vessels when fishing in NE multispecies Closed Area I.

With the adoption of Framework Adjustment 18 to the NE Multispecies Fishery Management Plan, midwater trawl vessels have been allowed to fish in Closed Area I since 1998. Reports of groundfish bycatch in this area over the past several years prompted the Council to request that NOAA's National Marine Fisheries Service (NMFS) implement additional observer requirements for vessels that fish with midwater trawl gear, in order to obtain additional bycatch information. Access to other NE multispecies closed areas is not affected by these regulation changes.



### **Changes to Observer Call-in Requirements**

To fish using midwater trawl gear in Closed Area I, a vessel with an All Areas or an Areas 2 and 3 limited access herring permit must now carry an observer. To ensure 100% observer coverage for midwater trawl gear vessels fishing in Closed Area I, when calling the NE Fishery Observer Program (NEFOP) at 508-990-9057 before each trip, any vessel that is issued an All Areas or an Areas 2 and 3 limited access herring permit will be asked if it intends to fish inside Closed Area I. This will allow NEFOP to schedule an observer for that trip. **Please note the coordinates for Closed Area I on the first page of this letter, as you may not fish any part of a trip inside Closed Area I without a NMFS-approved observer onboard.** If your vessel is not carrying an observer, you may fish a trip in any open area outside of Closed Area I, but no part of a tow may be made inside of Closed Area I. A vessel that is not carrying an observer may still transit Closed Area I provided that all fishing gear is stowed and not available for immediate use.

The NEFOP intends to meet with midwater trawl vessel owners and operators to discuss these changes and their impact on specific vessel operations. NEFOP will be reaching out to vessel owners and operators to schedule these meetings. Alternatively, you may contact Amy Van Atten, Fisheries Sampling Branch Chief, at 508-495-2266, to schedule a meeting or to discuss observer issues.

### **Changes to Midwater Trawl Tows in Closed Area I**

A midwater trawl vessel fishing any part of a tow inside of Closed Area I is now prohibited from:

- Releasing fish from the codend of the net;
- Transferring fish to another vessel that is not carrying a NMFS-approved observer (such as a herring carrier vessel); or
- Discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer, except in specific circumstances described below.

In recognition that there are certain conditions under which fish must be released from the codend without being sampled, the new regulations provide that fish that have not been pumped aboard the vessel may be released if the vessel operator determines that:

- Pumping the catch could compromise the safety of the vessel;
- Mechanical failure precludes bringing some or all of a catch aboard the vessel; or
- Spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch.

Following the release of a net under any of the three conditions cited above, the vessel must stop fishing and exit Closed Area I. The vessel may continue to fish the remainder of the trip outside of Closed Area I, but may not fish any part of a midwater trawl tow inside Closed Area I for the remainder of that trip.

A vessel operator must make all reasonable efforts (including strapping and splitting the net) to pump as much of the catch as possible before releasing the codend. Small amounts of fish that remain in the net at the end of normal pumping operations, because they are too large for the pump grate or are floating and cannot be pumped, may also be released. In all cases, the vessel

operator must notify the observer of the reason for the release and give reasonable assistance to the observer in his/her efforts to visually inspect and identify the catch remaining in the net before it is released. Although the proposed rule for this action included an affidavit requirement that has been delayed (see below), the collection of information on why catch is discarded is authorized by the existing approval of observer questions.<sup>†</sup>

**Additional Measure that is Delayed**

There is an additional proposed reporting requirement for midwater trawl vessels fishing in Closed Area I that will become effective when approved by the Office of Management and Budget (OMB). This measure, once approved, requires that vessel operators complete, sign, and submit to NMFS a Closed Area I Midwater Trawl Released Codend Affidavit; if a tow in Closed Area I is released for any of the three conditions for releasing catch that are cited above. The affidavit form would include vessel information and details of where, when, and why the net was released, as well as a good-faith estimate of both the total weight of fish caught on that tow and the weight of fish released (if the tow had been partially pumped). Once OMB approves the form, NMFS will publish another rule in the Federal Register to implement this new requirement and you will be notified with details of this requirement in a subsequent permit holder letter.

These new requirements and prohibitions will be added to the conditions of the GOM/GB Herring Midwater Trawl Gear LOA. If your vessel was issued an LOA prior to these new requirements going into effect, a new copy which includes the new conditions, will be sent to you shortly. If you have any questions about these new requirements, please contact the Sustainable Fisheries Division at 978-281-9341.

Sincerely,



for

Patricia A. Kurkul  
Regional Administrator

<sup>†</sup>The National Marine Fisheries Service requires this information for the conservation and management of marine fishery resources in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. The data reported will be used to develop, implement, and monitor fishery management strategies and for a variety of other uses. All data submitted will be handled as confidential material in accordance with NOAA Administrative Orders. Public reporting of burden is estimated to average 81 minutes for all questions asked during a trip. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.