

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 051104293 5344 02; I.D. 080806F]

**Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Connecticut**

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

**ACTION:** Closure of commercial fishery

**SUMMARY:** NMFS announces that the summer flounder commercial quota available to Connecticut has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Connecticut for the remainder of calendar year 2006, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise Connecticut that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Connecticut.

**DATES:** Effective 0001 hours, August 12, 2006, through 2400 hours, December 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Management Specialist, (978) 281-9341

**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 on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2006 calendar year was set equal to 14,154,000 lb (6,420 mt) (70 FR 77061, December 29, 2005). The percent allocated to vessels landing summer flounder in Connecticut is 2.25708 percent, resulting in a commercial quota of 319,467 lb (144,910 kg). The 2006 allocation was reduced to 314,649 lb (142,725 kg) due to research set-aside.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS

(Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that Connecticut has harvested its quota for 2006.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, August 12, 2006, further landings of summer flounder in Connecticut by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2006 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, August 12, 2006, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Connecticut for the remainder of the calendar year, or until additional quota becomes available through a transfer.

**Classification**

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

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

Dated: August 10, 2006.

**James P. Burgess,**

*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. 060606151-6208-02; I.D. 051906A]

**RIN 0648-AU33**

**Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 43**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements Framework Adjustment 43 (Framework 43) to the NE Multispecies Fishery Management Plan (FMP), which addresses the incidental catch of NE multispecies by vessels fishing for Atlantic herring by establishing a Herring Exempted Fishery. Vessels issued a Category 1 Atlantic herring fishing permit (Category 1 vessels) are authorized to possess incidentally caught haddock until the catch of haddock reaches the level specified as an incidental haddock catch cap; upon attainment of the haddock catch cap, all herring vessels are limited to 2,000 lb (907 kg) of herring per trip, if any of the herring on board was caught within the Gulf of Maine/Georges Bank (GOM/GB) Herring Exemption Area defined in Framework 43. Herring Category 1 vessels are also authorized to possess up to 100 pounds (45 kg) of other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake), and are required to provide advance notification of their intent to land for purposes of enforcement. Atlantic herring processors and dealers that sort herring catches as part of their operations are required to cull and report all haddock.

**DATES:** Effective August 15, 2006.

**ADDRESSES:** Copies of supporting documents, including the Regulatory Impact Review, Final Regulatory Flexibility Analysis (RIR/FRFA), and Essential Fish Habitat Assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The RIR/FRFA is also accessible via the Internet at <http://www.nero.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, (978) 281-9259, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:****Background**

A proposed rule for this action was published in the **Federal Register** on June 21, 2006 (71 FR 35600), with public comment accepted through July 6, 2006. The final measures, with two exceptions, are unchanged from those that were proposed, and are summarized below. A complete discussion of the development of the measures appears in the preamble to the proposed rule and is not repeated here.

**Management Measures**

This action: (1) Authorizes the possession of haddock by Category 1 vessels up to the amount established as a cap on total haddock catch by such vessels; (2) establishes a cap on the amount of haddock that can be caught by Category 1 vessels that is equal to 0.2 percent of the total combined target total allowable catch (TAC) for GOM and GB haddock (the haddock catch cap specified is applicable to the NE multispecies fishing year (May 1—April 30), which differs from the herring fishing year (January 1—December 31)); (3) establishes a Herring Exempted Fishery and defines a GOM/GB Herring Exemption Area in which any herring permitted vessel that catches any herring from this area is limited to 2,000 lb (907 kg) per trip when the haddock catch cap is attained; (4) authorizes Category 1 vessels to possess an incidental catch of up to 100 lb (45 kg) of regulated NE multispecies other than haddock (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake); (5) suspends the minimum fish size for NE multispecies possessed by Category 1 vessels; (6) prohibits Category 1 vessels from selling haddock for human consumption and prohibits dealers from purchasing haddock from such vessels for human consumption; (7) requires herring processors that cull landings to report all culled haddock, and retain such haddock for 12 hr for inspection by enforcement officials; and (8) requires Category 1 vessels to provide advance notification of landing via the Vessel Monitoring System (VMS).

This final rule clarifies the applicability of the haddock processor requirements to at-sea processors by specifying that they must retain all culled haddock for 12 hr after landing. The proposed rule required all processors to cull and retain haddock for 12 hours. The final rule will apply this to at-sea processors by requiring them to retain all culled haddock for 12 hours after landing.

This final rule also clarifies the scope of the prohibition on discarding haddock at sea by Category 1 vessels. The proposed rule included a provision that would have prohibited Category 1 vessels from discarding haddock at sea without an explicit description or definition of what constitutes “discarding haddock at sea.” As a result of comments received on this measure concerning how the fishery operates and potential safety concerns, and in light of the enforceability of this measure, this action clarifies that prohibition. This final rule specifies that the prohibition on discarding haddock at sea applies only to haddock pumped into the hold or brought onto the deck of a Category 1 vessel. The reasons for this clarification are more fully discussed in the response to comment 1.

These changes from the proposed rule to this final rule are logical outgrowths of the proposed rule and are authorized under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act because they are necessary to ensure that Framework 43 measures are effectively carried out.

**Comments and Responses**

Three comments were received on the proposed measures, from the Maine Department of Marine Resources (MEDMR), the East Coast Pelagic Association (ECPA), and Oceana.

*Comment 1:* All three organizations commented on the proposed requirement that would have prohibited Category 1 vessels from discarding haddock at sea. The ECPA raised concerns, stating that vessels that pump catch aboard could experience compromised safety if they were required to bring every codend on board to sort it for haddock. If the vessel's hold is already full, bringing additional catch on board to sort it could cause stability problems. The ECPA claimed that the proposed provision would fail to comply with national standards 9 and 10, which require, respectively, that, to the extent practicable, management measures minimize bycatch and promote safety at sea. The MEDMR echoed these concerns. In contrast, Oceana argued that the proposed measure, that would require vessels to retain all haddock that they catch, would allow fishermen to sample the catch and release codends if the catch contains haddock or other species. Oceana wants the provision to either require retention of haddock or limit or prohibit the dumping of codends.

*Response:* NMFS acknowledges that the proposed rule's prohibition on discarding haddock at sea was broadly worded, which prompted comments

concerning safety and operational issues. To address these comments and clarify what constitutes discarding haddock at sea, NMFS has modified the regulations prohibiting the discard of any haddock that is pumped into the hold or brought onto the deck of a Category 1 vessel. The key issue in determining the scope of the prohibition on discarding haddock at sea is determining what is the most practicable and enforceable way to account for haddock caught in the herring fishery. A herring vessel might have valid operational and safety reasons for not being able to bring a codend on board in certain cases. In such circumstances, it is not possible to determine if the net contains haddock, and if so, how much. From the perspective of enforceability, it is unlikely a case could be made that the vessel failed to retain haddock. From the perspective of data collection, it is unlikely that haddock bycatch could be effectively monitored and estimated. However, once the net and the codend are brought on deck, or once the fish is pumped from the net into the hold, it is possible to determine how much haddock is among the catch. This can be done through culling the catch on board, having observers take samples, or, in cases where the catch is delivered to a processing facility, requiring the processor to cull and retain the haddock, as this action will require. Therefore, the most practicable and enforceable application of the prohibition on discarding haddock is to limit it to prohibiting the discard of haddock pumped into the hold or brought onto the deck of a Category 1 vessel.

NMFS is concerned about reported industry practices in which vessels may continue fishing and bring in large hauls of fish when there is a relatively small amount of space left in the hold to accommodate those fish. This type of behavior forces a vessel to waste herring as well as any bycatch in the codend and, further, it does not allow for effective or accurate monitoring of haddock bycatch, which is essential for determining whether the haddock bycatch quota is reached. And, as noted by the commenters, such behavior could compromise the safety of the fishing operations. NMFS agrees with the commenters that safety at sea is very important. As a result, NMFS strongly encourages the industry members to modify their fishing strategies to avoid unsafe and wasteful practices.

*Comment 2:* Oceana proposed that the 0.2-percent haddock catch cap should be lowered because of the way in which it was established. The Council

originally proposed to set the cap at 1 percent, and then decided to pro-rate it, based on an assumed level of observer coverage of 20 percent. The 0.2-percent haddock catch cap was arrived at by multiplying the 20-percent observer coverage times the 1-percent cap originally proposed. Oceana stated that the Northeast Fisheries Science Center has indicated that the level of observer coverage in the near-term is likely to be less than 20 percent. As a result, Oceana believes that NMFS must reduce the haddock catch cap accordingly, to reflect the reduced level of observer coverage. Oceana argues that the cap must be reduced because the Council adopted a "methodology" to set the cap, which relied on multiplying the percentage coverage times 1 percent to determine the actual cap.

*Response:* Oceana's request is based on an erroneous assumption about the measure. While the Council may have initially considered the percent observer coverage as the basis for the 0.2-percent cap, it ultimately specified it as an absolute value. The 0.2-percent cap has been determined to provide sufficient protection to the haddock stocks by constraining any bycatch in the herring fishery to biologically insignificant levels. At the same time, this small allowance enables the valuable herring fishery to operate under a reasonable level of constraint.

*Comment 3:* Oceana is concerned that, because the haddock catch cap is calculated by multiplying 0.2 percent times the total of the combined TACs for GOM and GB haddock, the haddock catch cap will increase if the combined TACs increase. Instead of allowing this to happen, Oceana wants NMFS to change the cap-calculation, preferably by reducing the cap over time.

*Response:* As noted above, Framework 43 specifies an absolute value for calculating the catch cap and NMFS cannot unilaterally change it in this action. However, the suggestion by Oceana runs contrary to the philosophy of the cap. The cap is predicated upon the assumption that the herring fishery can catch a certain percentage of haddock yet still not do any damage to the sustainability of the haddock stock. If the haddock stocks increase, the bycatch cap would increase, and if the haddock stocks decrease, the bycatch cap would decrease. Such a system is adequate to ensure that haddock catch in the herring fishery remains at levels that are not of biological concern and that are also in line with the expected encounter rate of haddock by the herring fishery.

*Comment 4:* Oceana commented that this action should require at-sea

observer coverage, shoreside monitoring, and a real-time system to publicly report bycatch.

*Response:* The measures established by Framework 43 include reporting by vessels, dealers, and law enforcement agents; requiring certain herring processors to cull landings made by limited access herring vessels and retain haddock for inspection by enforcement officials; and a requirement for all limited access directed fishery holders to provide advance notification of landings via VMS. These are the same reporting measures as those that were used under the emergency measures that were put in place in 2005, and NMFS considers them adequate to monitor and estimate bycatch of haddock and other species. As was done under the emergency action, NMFS will publicly report haddock catch through the landings reports on its website as soon as that information is available.

*Comment 5:* Oceana expressed concern that the requirements for processors to cull, report, and retain for inspection haddock catch for 12 hr could be ineffective when applied to at-sea processors because of the location of the processor at sea.

*Response:* The current regulations that govern shoreside processors also apply to at-sea processors. To maintain that consistency, NMFS has clarified the regulatory language in the final rule to specify that at-sea processors must retain all culled haddock for 12 hr after landing. This would provide the same opportunity for inspection, regardless of whether the processor is an at-sea or a shoreside processor.

*Comment 6:* Oceana commented that Framework 43 should establish a real-time method of reporting all species landed and discarded under this framework. Oceana viewed this as an expansion of the reporting requirements.

*Response:* The Northeast Region mandatory reporting requirements currently require the owner/operator of any federally permitted herring vessel to report all species landed or discarded through the fishing vessel trip reports (FVTRs), regardless of species fished for or harvested. NMFS believes that the system of reporting established under this framework is adequate to keep track of bycatch in this fishery and to ensure the integrity of the haddock bycatch cap.

*Comment 7:* Oceana noted that, in its view, NMFS did not publish the proposed rule for Framework 43 in an expeditious manner, after submission of the Framework by the Council on February 23, 2006. As a result, final measures could not be in place prior to

the expiration of the emergency action, and this limited the effectiveness of the Framework for 2006. In Oceana's view, the agency must explain why it unlawfully delayed the rule and how it would prevent similar delays in the future.

*Response:* NMFS reviews all Council submissions as carefully and quickly as possible to determine that the submission complies with all legal requirements sufficiently to support publication of the proposed rule. Following public comment, NMFS considers all of the issues raised by the commenters, prepares responses to each comment, and makes the decision to approve or disapprove the action.

*Comment 8:* ECPA claimed that the status of the haddock full retention measure, as included in the proposed rule, is not clear in the record, and that the "Council staff clearly indicated that language in the framework was to be based on measures found in the previous emergency action," and that "the emergency action contained no catch retention measures." As a result, ECPA asserts that neither the Council members or members of the public realized that the full retention measure would be part of Framework 43.

*Response:* The framework was based on measures found in the emergency action, as well as additional elements added by the Council during its deliberations. The full retention/no discarding of haddock measure was included in the framework, by the Council, and was discussed and approved by the Council, although the scope of the meaning of full retention/no discarding of haddock was not clearly discussed in the framework, as noted in the response to comment 1. The Council was aware that the emergency measure did not contain the full retention/no discarding of haddock provision, yet they still voted to include it in the framework. Furthermore, during the review of Framework 43, NMFS confirmed with Council staff that the Council had intended to include the full retention/no discarding of haddock provision.

#### Changes From the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment. These changes are listed below in the order that they appear in the regulations.

In § 648.14, paragraph (a)(169) has been added in response to comments from the public to clarify the applicability of the requirement to at-sea processors.

Paragraph (bb)(19) has been reserved because the language that currently appears on that paragraph is redundant.

In § 648.15, paragraph (d) has been modified to clarify the applicability of the provision.

#### Classification

The Administrator, Northeast Region, NMFS, has determined that Framework 43 is necessary for the conservation and management of the herring fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This action relieves participants in the herring fishery from the existing restrictions that prohibit any possession of NE multispecies by Category 1 herring vessels and, as a result, this rule is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1). It allows Category 1 herring vessels to possess haddock up to the amount specified as a haddock catch cap, to possess up to 100 lb (45 kg) of other NE regulated multispecies, and to be exempt from the minimum size requirement for all NE multispecies in their possession.

The NE Multispecies fishing regulations currently in effect prohibit Category 1 herring vessels from possessing any NE multispecies. As a result, the owners of midwater trawl vessels are delaying the start of the summer herring fishery on GB because of their concern that the retention of any amount of NE multispecies would be a violation of the regulations. The Council became aware of this issue in July 2004, when NMFS's Office of Law Enforcement (OLE) observed prohibited juvenile haddock in catches being landed by midwater trawl vessels fishing for herring on GB. The Council established a Bycatch Committee later that year to look into the matter and make recommendations to the Council. The Bycatch Committee met several times to consider the issue, and recommended to the Council on March 30, 2005, that herring vessels should be allowed to catch haddock until the catch reached a specified level. Also on March 30, 2005, the Council voted to formally request emergency action by NMFS to address this unforeseen event. The Council discussed the issue further at subsequent meetings and voted on November 17, 2005, to establish the Council meeting that day as the initial meeting to develop permanent measures to address the issue in Framework 43. The Council adopted the Framework 43 measures for submission to NMFS on February 2, 2006.

NMFS established emergency measures through a rule published on June 13, 2005 (70 FR 34055), and extended those measures for 180 days on December 8, 2005 (70 FR 72934). The emergency rule expired on June 6, 2006. The Council moved expeditiously to develop permanent measures to address this previously unforeseen management issue, but was unable to finalize Framework 43 in time to avoid a hiatus between the emergency regulations and the measures proposed in Framework 43.

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

A final regulatory flexibility analysis (FRFA) was prepared. Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the initial regulatory flexibility analysis (IRFA) and other analyses completed in support of this action. A copy of the IRFA is available from the Regional Administrator (see ADDRESSES).

#### Final Regulatory Flexibility Analysis

##### *Statement of Objective and Need*

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated here.

##### *Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

During the 2005 fishing year, 115 vessels had Category 1 permits (the class to which this rule applies), with 38 of these vessels averaging more than 2,000 lb (907 kg) of herring per trip. There are no large entities, as defined in section 601 of the Regulatory Flexibility Act, participating in this fishery. Therefore, there are no disproportionate economic impacts between large and small entities.

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

The collection-of-information requirement in this final rule (requiring Category 1 vessels to provide notification to NMFS of their intent to land at least 6 hr prior to landing) has been approved by OMB as follows: Haddock Bycatch Notification of Landing, Office of Management and Budget (OMB) control number 0648-0202, (5 min/response).

#### *Minimizing Significant Economic Impacts on Small Entities*

Three alternatives were considered in the development of this action. The first would have continued the program put into place by the emergency action. Specifically, this would have established a 1,000-lb (453-kg) incidental catch possession limit on haddock, and a 100-lb (45.3-kg) incidental catch possession limit on other regulated multispecies, with no limit on the total amount of haddock or other regulated multispecies that could be caught. The second alternative is the one proposed in this action. The third alternative is no action, under which the herring vessels would not be allowed to possess any multispecies.

Compared to the no-action alternative, the other alternatives significantly minimize the economic impacts on herring vessels. Both the proposed action and the non-selected alternative prevent direct economic loss resulting from herring harvest that would be foregone by vessel owners concerned about haddock bycatch and the potential for resulting regulatory violations under the no-action alternative. By allowing for the incidental catch of groundfish, both the proposed action and the other alternative would enable herring vessels to continue fishing even if they encounter groundfish. This is particularly important in herring Management Area 3 (GB), where herring vessels encountered haddock in 2004. Up to this point, the herring fishery has not fully harvested the allowed catch from Area 3 and the resource in that area can support increased landings. If no action is taken and vessels decline to fish in Area 3, estimate foregone revenues would be \$2,123,727, presuming they could have landed the same amount as preliminary reported herring landings during 2005 (13,029 mt) at an average price of \$163 per mt. Foregone revenues could be as high as \$8,150,000 based on the potential utilization of the entire available TAC from Area 3 (50,000 mt). This assumes that the herring fleet would not fish in Area 3 at all for fear of being in violation of the prohibition on the possession of haddock and other regulated groundfish and, therefore, represents an upper bound to the range of expected impacts. The proposed action would have less impact on small entities than either of the other alternatives because it would not impose a 1,000-lb (453-kg) possession limit for haddock, but would rely on the overall incidental catch cap. This provides more flexibility to

individual vessels that may encounter varying amounts of haddock.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 10, 2006.

**Samuel D. Rauch III,**

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

■ For reasons set forth in the preamble, 50 CFR part 648 is amended as follows:

### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, the definition of “Exempted gear” is revised to read as follows:

#### § 648.2 Definitions.

\* \* \* \* \*

*Exempted gear*, with respect to the NE multispecies fishery, means gear that is deemed to be not capable of catching NE multispecies, and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, shrimp trawls (with a properly configured grate as defined under this part), and surfclam and ocean quahog dredges.

\* \* \* \* \*

■ 3. In § 648.14, paragraphs (bb)(19) and (23) are removed and reserved; paragraphs (a)(169) and (bb)(20) are revised; and paragraphs (a)(166) through (168), (bb)(24), (bb)(25) and (bb)(26) are added to read as follows:

#### § 648.14 Prohibitions.

(a) \* \* \*

(166) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies, or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) for, or intended for, human consumption landed by a Category 1 herring vessel as defined in § 648.2.

(167) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a Category 1 herring vessel, and to retain such catch for at least 12 hr, with the vessel that landed the haddock clearly identified by name.

(168) Sell, purchase, receive, trade, barter, or transfer, or attempt to sell, purchase, receive, trade, barter, or transfer to another person any haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) separated out from a herring catch offloaded from a Category 1 herring vessel as defined in § 648.2.

(169) While operating an at-sea herring processor, fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a Category 1 herring vessel, and to retain such catch for at least 12 hr after landing, with the vessel that offloaded the haddock clearly identified by name.

\* \* \* \* \*

(bb) \* \* \*

(20) If the vessel has been issued a Category 1 herring permit and is fishing for herring, fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS at least 6 hr prior to landing or crossing the VMS demarcation line on its return trip to port.

(21) Possess, land, transfer, receive, sell, purchase, trade, or barter, or attempt to transfer, receive, purchase, trade, or barter, or sell more than 2,000 lb (907 kg) of Atlantic herring per trip taken from the GOM/GB Herring Exemption Area defined in § 648.86(a)(3)(ii)(A)(1) following the effective date of the determination that the haddock cap has been reached pursuant to § 648.86(a)(3), unless all of the herring possessed or landed by a vessel was caught outside of that area.

\* \* \* \* \*

(24) If a Category 1 herring vessel, discard haddock at sea that has been brought on deck or pumped into the hold.

(25) If fishing with midwater trawl or a purse seine gear, fail to comply with the requirements of § 648.80 (d) and (e).

(26) Transit the GOM/GB Herring Exemption Area when that area is limited to the 2,000 lb (907 kg) limit specified in § 648.86(a)(3)(ii)(A)(1) with more than 2,000 lb (907 kg) of herring, unless all the herring on board was caught outside of that area and all fishing gear is stowed and not available for immediate use as required by § 648.23 (b).

\* \* \* \* \*

■ 4. In § 648.15, paragraphs (d) and (e) are added to read as follows:

#### § 648.15 Facilitation of enforcement.

\* \* \* \* \*

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that receive herring from Category 1 herring vessels, and that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from a Category 1 herring vessel. Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hr for dealers and processors on land, and for 12 hr after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Law enforcement officials must be given access to inspect the haddock.

(2) All haddock separated out and retained is subject to reporting requirements specified at § 648.7.

(e) *Prohibition on discarding haddock by Category 1 herring vessels.* A Category 1 herring vessel may not discard any haddock that has been brought on the deck or pumped into the hold.

■ 5. In § 648.80, paragraphs (d), (e), and (g)(3) are revised to read as follows:

#### § 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

(d) *Midwater trawl gear exempted fishery.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with the following restrictions:

(i) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat. and in the areas described in § 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20' N. lat.; and

(ii) The vessel is issued a letter of authorization for a minimum of 7 days.

(3) The vessel carries a NMFS-approved sea sampler/observer, if requested by the Regional Administrator;

(4) The vessel does not fish for, possess or land NE multispecies, except that Category 1 herring vessels may possess and land haddock or other regulated NE multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated NE multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated NE multispecies that is separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Category 1 vessels may not discard haddock that has been brought on the deck or pumped into the hold.

(5) To fish for herring under this exemption, vessels issued a Category 1 herring permit defined in § 648.2 must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All Category 1 herring vessels on a declared herring trip must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

(e) *Purse seine gear exempted fishery.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator and complies with the following:

(i) The vessel only fishes for, possesses, or lands Atlantic herring,

blueback herring, mackerel, or menhaden; and

(ii) The vessel must carry a NMFS-approved sea sampler/observer, if requested to do so by the Regional Administrator;

(3) The vessel is issued a letter of authorization for a minimum of 7 days, and cancels it only as instructed by the Regional Administrator; and

(4) The vessel does not fish for, possess or land NE multispecies, except that Category 1 herring vessels may possess and land haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated multispecies that is separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Category 1 vessels may not discard haddock that has been brought on the deck or pumped into the hold.

(5) To fish for herring under this exemption, vessels issued a Category 1 herring permit as defined in § 648.2 must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All Category 1 herring vessels must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

\* \* \* \* \*

(g) \* \* \*

(3) Pair trawl prohibition. No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested

by means of pair trawling, except as authorized under paragraph (d) of this section.

\* \* \* \* \*

■ 6. In § 648.83, paragraph (b)(4) is added to read as follows:

**§ 648.83 Multispecies minimum fish sizes.**

\* \* \* \* \*

(b) \* \* \*

(4) Category 1 herring vessels may possess and land haddock and other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) that are smaller than the minimum size specified under § 648.83, consistent with the bycatch caps specified in §§ 648.86(a)(3) and 648.86 (j). Such fish may not be sold for human consumption.

■ 7. In § 648.85, paragraph (d) is added to read as follows:

**§ 648.85 Special management programs.**

\* \* \* \* \*

(d) *Incidental catch allowance for Category 1 herring vessels.* The incidental catch allowance for Category 1 herring vessels is defined as 0.2 percent of the combined target TAC for Gulf of Maine haddock and Georges Bank haddock (U.S. landings only) specified according to “ 648.90(a) for a particular multispecies fishing year.

■ 8. In § 648.86, paragraphs (a)(3) and (k) are added to read as follows:

**§ 648.86 Multispecies possession restrictions.**

\* \* \* \* \*

(a) \* \* \*

(3)(i) *Incidental catch allowance for herring Category 1 vessels.* Category 1 herring vessels defined in § 648.2 may possess and land haddock on all trips that do not use a NE multispecies DAS, subject to the requirements specified in § 648.80(d) and (e).

(ii) *Haddock incidental catch cap.* (A)(1) When the Regional Administrator has determined that the incidental catch allowance in § 648.85(d) has been caught, all vessels issued a herring permit or fishing in the Federal portion of the GOM/GB Herring Exemption Area, as defined below, are prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907 kg) per trip in or from the GOM/GB Herring Exemption Area, unless all herring possessed and landed by the vessel were caught outside the GOM/GB Herring Exemption Area and the vessel complies with the gear stowage provisions specified in paragraph (a)(3)(ii)(A)(3) of this section while transiting the Exemption Area. Upon this

determination, the haddock possession limit is reduced to 0 lb (0 kg) for all Category 1 herring vessels regardless of where they were fishing. In making this determination, the Regional Administrator shall use haddock landings observed by NMFS-approved observers and law enforcement officials, and reports of haddock catch submitted by vessels and dealers pursuant to the reporting requirements of this part. The GOM/GB Herring Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

#### GB/GOM HERRING EXEMPTION AREA

Point	N. lat.	W. long.
1 .....	41°33.05'	70°00'
2 .....	41°20'	70°00'
3 .....	41°20'	69°50'
4 .....	41°10'	69°50'
5 .....	41°10'	69°30'
6 .....	41°00'	69°30'
7 .....	41°00'	68°50'
8 .....	39°50'	68°50'
9 .....	39°50'	66°40'
10 .....	40°30'	66°40'
11 .....	40°30'	64°44.34'
12 .....	41°50'	66°51.94'
13 .....	41°50'	67°40'

#### GB/GOM HERRING EXEMPTION AREA—Continued

Point	N. lat.	W. long.
14 .....	44°00'	67°40'
15 .....	44°00'	67°50'
16 .....	44°10'	67°50'
17 .....	44°27'	67°59.18'
18 .....	(1)	(1)
19 .....	41°33.05'	70°00'

<sup>1</sup> ME, NH, MA Coastlines.

(2) The haddock incidental catch cap specified is for the NE multispecies fishing year (May 1—April 30), which differs from the herring fishing year (January 1—December 31). If the haddock catch cap is attained by the Category 1 herring fishery, the 2,000-lb (907-kg) limit on herring possession and landings in the GOM/GB Herring Exemption Area will be in effect until the end of the NE multispecies fishing year. For example, the 2006 haddock catch cap is specified for the period May 1, 2006—April 30, 2007, and the 2007 haddock catch cap applies to the period May 1, 2007—April 30, 2008. If the catch of haddock by Category 1 vessels reaches the 2006 catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2007), the 2,000-lb (907-kg) limit on possession or landing herring in the GOM/GB Herring

Exemption Area extends through April 30, 2007, at which time the 2007 catch cap will go into effect.

(3) A vessel may transit the GOM/GB Herring Exemption Area with more than 2,000 lb (907 kg) of herring when the haddock catch cap in § 648.86 (a)(3)(ii)(A)(1) has been caught, providing that all of the herring possessed or landed by the vessel was caught outside of the GOM/GB Herring Exemption Area and all fishing gear is stowed and not available for immediate use as required by § 648.23(b).

(B) [Reserved]

\* \* \* \* \*

(k) *Other regulated NE multispecies possession restrictions for herring vessels. Incidental catch allowance for herring Category 1 vessels.* Category 1 herring vessels defined in § 648.2 may possess and land up to 100 lb (45 kg) of other regulated NE multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) on all trips that do not use a multispecies DAS, subject to the requirements specified in § 648.80(d) and (e). Such fish may not be sold for human consumption.

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