

U.S./Canada TACs will likely be similar to the economic impacts of the TACs specified for the 2004 fishing year.

A downward adjustment to the TACs specified for FY 2005 could occur after these TACs are implemented, if it is determined that the U.S. catch of one or more of the shared stocks during FY 2004 exceeded the relevant TACs specified for FY 2004.

Three alternatives were considered for FY 2005: The proposed TACs, the status quo TACs, and the no action alternative. No additional set of TACs was proposed because the process involving the TMGC and the Council yields only one proposed set of TACs. The implemented TACs will have a similar economic impact as the status quo TACs. Adoption of the status quo TACs, however, would not be consistent with the FMP because the status quo TACs do not reflect the best available scientific information. Although the no action alternative (no TACs) would not constrain catch in the U.S./Canada Management Area, and therefore would likely provide some additional fishing opportunity, the no action alternative is not a reasonable alternative because it is inconsistent with the FMP in both the short and long term. The FMP requires specification of hard TACs in order to limit catch of shared stocks to the appropriate fish mortality level (i.e., consistent with the Understanding and the FMP). The appropriate fishing mortality enables consistent management between the U.S. and Canada and therefore the full benefits of U.S. conservation actions are more likely to be realized. The no action alternative would likely provide fewer economic benefits to the industry in the long term than the implemented alternative, and likely result in fishing mortality levels that are inconsistent with the fishing mortality levels of the Canadian portions of the shared stocks.

Two of the three FY 2005 TACs (cod and yellowtail flounder) represent reductions from the FY 2004 level and could, under certain circumstances, constrain fishing opportunity on haddock (for which the TAC is increasing). The FY 2005 TACs implemented by this final rule do not modify any collection of information, reporting, or recordkeeping requirements. The FY 2005 TACs do not duplicate, overlap, or conflict with any other Federal rules.

There is good cause under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date because doing otherwise may compromise full and effective management of the GB stocks of cod, haddock, and yellowtail flounder. Because of recent unanticipated high

catch rates of GB cod in the Eastern U.S./Canada Area, it is crucial that the TACs are implemented as soon as possible in order to ensure that the fishing mortality objective for the shared stock of cod is not exceeded. The timeline for the development of the EA that analyzed the TACs and publication of the proposed rule for the TACs, prior to the 2005 fishing year, did not anticipate a high catch rate of cod during the 2005 fishing year (based upon the 2004 fishing year information). The FMP provides authority to the Regional Administrator to make modifications to various rules associated with the U.S./Canada Management Area, once 30 percent of any of the TACs has been harvested. If the delay is not waived it is highly possible that the TAC for the most depleted stock, GB cod, could be reached and exceeded during the 30 day delay period, and the Regional Administrator will be unable to take action to stop fishing on this stock. Failure to stop fishing on this stock when the TAC is caught would severely undermine the conservation objectives of the groundfish FMP. Any resulting TAC overages are required to be deducted from the following year's TAC, which is already very small for GB cod. The consequences of any substantial overage that could occur if the effectiveness of the implementation of the 2005 TACs is delayed could be very severe for the industry in the 2006 fishing year. The high catch rate of cod created the need for regulatory action early in the fishing year, based on an implemented cod TAC.

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." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of limited access DAS permits for the NE multispecies fishery. The guide and this final rule will be posted on the NMFS NE Regional Office web site at <http://www.nero.noaa.gov> and will also be available upon request.

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

Dated: June 30, 2005.

**Rebecca Lent,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No.050629171-5171-01; I.D. 070105A]

RIN 0648-AT51

#### **Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Haddock Incidental Catch Allowance for the 2005 Atlantic Herring Fishery; Emergency Fishery Closure Due to the Presence of the Toxin That Causes Paralytic Shellfish Poisoning; Correction**

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

**ACTION:** Final rule; correcting amendment; extension of comment period.

**SUMMARY:** NMFS is clarifying emergency regulations that closed portions of Federal waters of the Gulf of Maine, Georges Bank, and southern New England to the harvest of bivalve shellfish due to the presence of the toxin that causes Paralytic Shellfish Poisoning (PSP). This correction will allow for the collection and testing of samples for the toxin that causes PSP. In addition, this rule will correct the effective date for the definition of a "Category 1 herring vessel" and reinstate a prohibition on the sale of certain haddock that was inadvertently overwritten by the emergency rule.

**DATES:** Effective July 7, 2005, except for the amendment to § 648.14(a)(166) which is effective June 14, 2005, through September 30, 2005, and the amendment to § 648.14(a)(169) which is effective June 13, 2005, through December 10, 2005.

The comment period for the original emergency action published at 70 FR 35047, June 16, 2005, is extended from July 18, 2005, through August 1, 2005.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- E-mail: PSPClosure@NOAA.gov.

Include in the subject line the following: "Comments on the PSP Emergency Rule."

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

• Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the PSP Emergency Rule."

- Fax: (978) 281-9135. Copies of the emergency rule are available from the mailing address listed here.

**FOR FURTHER INFORMATION CONTACT:**

Brian Hooker, Fishery Policy Analyst, phone: (978) 281-9220, fax: (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 10, 2005, the Food and Drug Administration (FDA) requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish intended for human consumption. The reason for the request is that shellfish testing has detected one of the largest toxic algal blooms (red tides) in history, which has moved in an easterly direction from state waters into Federal waters. On June 16, 2005, NMFS published an emergency rule (70 FR 35047) closing the area recommended by the FDA, i.e. the PSP Temporary Closure Area, through September 30, 2005. However, the emergency rule did not allow sufficient flexibility to allow for the collection of biological samples of shellfish for testing PSP toxin levels in the closure area by commercial fishing vessels working cooperatively with NMFS and the FDA. The emergency rule was not intended to impede, in any manner, the collection of biological samples of shellfish from the PSP Temporary Closure Area by commercial fishing vessels. This rule allows for the Administrator, Northeast Region, NMFS (Regional Administrator) to issue a Letter of Authorization (LOA) to commercial fishing vessels that are working cooperatively with NMFS and the FDA to collect biological samples of shellfish for testing. The request for an LOA would be from the FDA to the Regional Administrator. Vessels issued the LOA would be exempt from the prohibition on the possession of shellfish harvested from the PSP Temporary Closure Area, subject to the

terms and conditions of the LOA. This collection will facilitate the testing of shellfish for the toxin that causes PSP by the FDA and/or FDA-approved laboratories.

In addition the rule reinstates the prohibition on the sale and purchase of haddock for human consumption landed by Category 1 herring vessels that was published in the **Federal Register** on June 13, 2005 (70 FR 34055), and subsequently and inadvertently overwritten by the PSP Temporary Emergency Closure on June 16, 2005 (70 FR 35047). The definition for "Category 1 herring vessel" is revised so it will become permanent without an expiration date of December 10, 2005.

**Classification**

This rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) and 553(d)(3), respectively, to waive prior notice and the opportunity for public comment and the delayed effectiveness period on this action. Providing an opportunity for notice and public comment on this action would be contrary to the public interest. This rule clarifies the June 16, 2005 (70 FR 35047) emergency rule prohibiting the possession of shellfish harvested from the PSP Temporary Closure Area by allowing the harvest of shellfish by commercial fishing vessels working with NMFS and the FDA. Any delay in implementing this rule could seriously jeopardize public health by impeding the ability of the NMFS and the FDA from obtaining biological samples from the PSP Temporary Closure Area. Biological samples obtained from the PSP Temporary Closure Area are necessary to determine if the level of contaminants in shellfish in a certain area remains a public health risk, or if the area is once again safe for the harvest of bivalve shellfish for human consumption.

The correcting amendments that are set forth in this rule are exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 30, 2005.

**Rebecca Lent,**

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

For reasons set out in the preamble, 50 CFR part 648 is corrected by making the following correcting amendments:

**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 for "Category 1 herring vessel" is revised to read as follows:

**§ 648.2 Definitions.**

\* \* \* \* \*

*Category 1 herring vessel* means a vessel issued a permit to fish for Atlantic herring that is required to have an operable VMS unit installed on board pursuant to § 648.205(b).

\* \* \* \* \*

- 3. In § 648.14, paragraph (a) (166) was added at 70 FR 35047, June 16, 2005. In § 648.14, paragraph (a)(166) is revised and paragraph (a)(169) is added to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(166) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels, with the exception of sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said Letter, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated: (1) 43°00' N. lat., 71°00' W. long.; (2) 43°00' N. lat., 69°00' W. long.; (3) 40°00' N. lat., 69°00' W. long.; (4) 40°00' N. lat., 71°00' W. long., and then ending at the first point.

\* \* \* \* \*

(169) Sell, purchase, receive, trade, barter, or transfer haddock, or attempt to sell, purchase, receive, trade, barter, or transfer haddock for, or intended for, human consumption landed by a Category 1 herring vessel as defined in § 648.2.

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