

Service, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, Virginia 22203-1610. The DEA also is available on the Division of Migratory Bird Management Web pages at <http://www.fws.gov/migratorybirds/>.

**FOR FURTHER INFORMATION CONTACT:** Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703-358-1714.

**SUPPLEMENTARY INFORMATION:** We have prepared this DEA as part of the process we must follow under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) as we move toward finalizing two proposed rules on falconry and raptor propagation. We published proposed falconry regulations on February 9, 2005 (70 FR 6978), in which we proposed numerous changes governing the practice of falconry. We published proposed raptor propagation regulations on October 14, 2005 (70 FR 60052). We proposed few significant changes to the falconry regulations, but for both proposed rules we changed to simpler language for the regulations. We now make available our DEA on the effects of take from the wild for these two activities.

In the DEA, we considered three alternatives for take of raptors from the wild for use in falconry and in raptor propagation. The first, the No Action Alternative, would leave take regulated as it is now; take limits for falconry would not be established. Neither the dual Federal/State permitting system for falconry nor the permitting system for raptor propagation would be changed.

Under Alternative 2, we would establish upper limits on take of raptor species based on the published data for, and biology of, each species. We would not change falconry or captive propagation permitting; neither the dual Federal/State permitting system for falconry nor the permitting system for raptor propagation would be changed. Under this alternative, we would base allowed take on published data and evaluations of the effects of take for falconry and raptor propagation. Harvest of juvenile raptors would be limited to levels that would not harm wild populations.

Our preferred choice is Alternative 3. Under this alternative, we would establish upper limits on take of raptor species based on the published data for, and biology of, each species. We would eliminate Federal permitting for falconry, but would not change the captive propagation regulations in a manner that would impact take of raptors from the wild. We would base allowed take on published data and evaluations of the effects of take for

falconry and raptor propagation. Harvest of juvenile raptors would be limited to levels that would not harm wild populations. The Federal/State permitting system for falconry would be changed, with the responsibility for falconry permitting resting with the States, subject to the requirements of revised falconry regulations. The current permitting for raptor propagation would be maintained.

Based on our modeling of raptor populations using the best available survival data, we have concluded that the impact of any of these alternatives on raptor populations would be imperceptible. Our analyses indicate that most raptor populations can sustain significantly more take for falconry and raptor propagation than will occur under any reasonable take scenario.

#### Public Comments

We welcome comments on the DEA. When submitting written comments, please include your name and return address in your letter and identify it as comments on the DEA. To facilitate our compilation of the Administrative Record for this action, you must submit written comments on 8½ inch by 11 inch paper. Or, you may submit comments electronically via the Migratory Bird Management Web page at <http://www.fws.gov/migratorybirds/>, where a link for comments will be available. Please submit comments by only one method, do not send duplicate submissions. All comments received, including any personal information provided, will be available for public inspection at the address given above for hand delivery of comments. We will not consider anonymous comments.

Dated: June 12, 2006.

**H. Dale Hall,**

*Director, Fish and Wildlife Service.*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 648

[Docket No. 060606151-6151-01; 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:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Framework Adjustment 43 (Framework 43) to the NE Multispecies Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). Framework 43 proposes measures to address the incidental catch of NE multispecies by vessels fishing for Atlantic herring. The proposed measures would establish a Herring Exempted Fishery. Vessels issued a Category 1 Atlantic herring fishing permit (Category 1 vessels) would be authorized to possess incidentally caught haddock until the catch of haddock reached the level specified as an incidental haddock catch cap; upon attainment of the haddock catch cap, all herring vessels would be 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 would also be 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 would be 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 would be required to cull and report all haddock.

**DATES:** Comments must be received by July 6, 2006.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (RIR/IRFA), 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 EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.gov>.

Written comments on the proposed rule may be sent by any of the following methods: • Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Herring Framework 43"; • Fax to Patricia A. Kurkul, 978-281-9135;

- E-mail to the following address: [HerringFramework43@NOAA.gov](mailto:HerringFramework43@NOAA.gov). Include in the subject line of the e-mail comment the following document identifier: "Comments on Herring Framework 43;" or
- Electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, 978-281-9259, e-mail at [eric.dolin@noaa.gov](mailto:eric.dolin@noaa.gov), fax at 978-281-9135.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Currently, regulations established under the FMP for the Northeast (NE) multispecies (groundfish) fishery prohibit vessels fishing for Atlantic herring from possessing or landing any groundfish species, including haddock. In July 2004, NMFS's Office of Law Enforcement (OLE) observed prohibited juvenile haddock in catches being landed by midwater trawl vessels fishing for herring on GB. Representatives from the herring industry reported that they were encountering haddock unusually high in the water column and were unable to avoid catching them, even with midwater trawl gear. Many midwater trawl vessels ceased fishing for herring on GB in the summer of 2004 due to concerns about haddock bycatch and the fact that possession of haddock was prohibited, and the herring landings from the GB area decreased. As a result, NMFS, at the Council's request, implemented an emergency rule that established an incidental catch allowance for haddock to allow the herring fishery to operate on GB during 2005 while the Council developed a long-term solution. The emergency rule was published by NMFS in the **Federal Register** on June 13, 2005 (70 FR 34055), and extended for 180 days on December 8, 2005 (70 FR 72934). The emergency rule expires on June 6, 2006, and the Council developed Framework 43 to address this issue on a permanent basis.

The Council requested emergency action on March 30, 2005. 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 measures contained in Framework 43 were included in the Draft Environmental Impact Statement and public hearing document for Amendment 1 to the Atlantic Herring FMP (Amendment 1). The Council

voted on February 2, 2006, to adopt the measures in Amendment 1 and Framework 43, but to submit Framework 43 in advance of Amendment 1 in order to establish measures for the fishery as soon as possible during the 2006 summer season.

The proposed measures would apply to all Category 1 vessels on all trips that do not use NE multispecies days-at-sea (DAS). The Atlantic herring regulations establish two vessel permits: Category 1 permits are issued to vessels that have landed, or intend to land, 500 metric tons (mt) or more of herring in the upcoming year; Category 2 permits are issued to vessels that do not intend to land 500 mt or more of herring. However, the public should be aware that the Council is proposing to revise the Atlantic herring vessel permit requirements in Amendment 1. Amendment, which has been submitted to NMFS for review, would revise the vessel permitting requirements for the herring fishery by establishing limited access permits for vessels that fish for large amounts of herring, and maintain an open access permit for vessels that catch herring incidentally. If the limited access permit measures proposed in Amendment 1 are approved and implemented by NMFS, the measures proposed in this rule would, in the future, be applicable to all vessels issued limited access permits.

The proposed measures in Framework 43 would: (1) Authorize the possession of haddock by Category 1 vessels up to the amount established as a cap on total haddock catch by such vessels; (2) establish a cap on the amount of haddock that could 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; and (3) establish a Herring Exempted Fishery and define a GOM/GB Herring Exemption Area in which any herring permitted vessel that catches any herring from this area would be limited to 2,000 lb (907 kg) per trip when the haddock catch cap is attained; (4) authorize 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) suspend the minimum fish size for NE multispecies possessed by Category 1 vessels; (6) prohibit Category 1 vessels from selling haddock for human consumption and prohibit dealers from purchasing haddock from such vessels for human consumption; (7) prohibit Category 1 vessels from

discarding haddock at sea; (8) require herring processors that cull landings to report all culled haddock, and retain such haddock for 12 hr for inspection by enforcement officials; and (9) require Category 1 vessels to provide advance notification of landing via the Vessel Monitoring System (VMS).

The haddock catch cap specified would be applicable to 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 herring fishery, the 2,000-lb (907-kg) limit on herring in the GOM/GB Herring Exemption Area would be in effect until the end of the NE multispecies fishing year. For example, the 2006 haddock catch cap would be specified for the period May 1, 2006 April 30, 2007, and the 2007 haddock catch cap for the period May 1, 2007 April 30, 2008. If the catch of haddock by Category 1 vessels reached the 2006 catch cap at any time prior to the end of the NE multispecies 2006 fishing year (April 30, 2007), the catch of herring by Category 1 vessels would be limited to 2,000 lb (907 kg) per trip in the GOM/GB Herring Exemption Area through April 30, 2007 (which is 4 months after the end of the 2006 herring fishing year), at which time the 2007 catch cap would go into effect. The final rule to establish the NE multispecies haddock TACs was published on April 28, 2006 (71 FR 25095). Based on the haddock TACs in that rule, the proposed haddock catch cap would be 161,377 lb (73.2 mt) for the period May 1, 2006 - April 30, 2007 [GB + GOM haddock TAC = 35,309 + 1,279 = 36,588 mt; 0.2 percent x 36,588 mt = 73.2 mt]. Upon implementation of Herring Amendment 1, if approved, the haddock landings from May 1, 2006 forward would be applied to the catch cap for the NE multispecies 2006 fishing year.

Prior to Framework 43, herring midwater trawl gear (single trawls and pair trawls) and purse seine gear were each defined by the NE Multispecies FMP as exempted gear, that is, gear that is not capable of catching NE multispecies. The Council determined that this classification was not consistent with the available information documenting catches of NE multispecies. Framework 43 would instead establish the Herring Exempted Fishery to enable the fishery to be prosecuted as an exempted fishery, and authorize an incidental catch of small amounts of NE multispecies. The total amount of haddock set-aside for the herring fishery is not expected to cause either the GB or GOM haddock TACs to be exceeded or impact the availability of

haddock for groundfish vessels, because the haddock set-aside is set in consideration of the fact that haddock bycatch has previously occurred in the herring fishery.

### Management Measures

#### *(1) Authorize the Possession of Haddock by Category 1 Vessels*

While temporarily authorized under the emergency regulations, the NE multispecies regulations prohibit vessels using midwater trawl or purse seine gear from possessing or landing NE multispecies. This action would allow Category 1 vessels to possess and land haddock of unlimited amounts until the haddock bycatch cap is attained, and to possess and land up to 100 lb (45 kg) of other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) on all trips that do not use a NE multispecies DAS. This provision is intended to reflect the incidental catch of NE multispecies by Category 1 vessels.

#### *(2) Establish Cap on Amount of Haddock Caught by Category 1 Vessels*

This action would establish a catch cap for Category 1 vessels equal to 0.2 percent of the total combined target TAC for GOM and GB haddock specified for each NE multispecies fishing year. The haddock catch cap specified for the period May 1, 2006 - April 30, 2007, would be 161,377 lb (73.2 mt). The haddock catch cap is intended to limit the total amount of haddock caught by the directed herring fishery while allowing the fishery to operate with a small amount of incidental catch. The information that would be used to monitor the haddock catch cap includes: at-sea observer reports, Federal dealer/processor reports, and haddock landings reported by law enforcement agents as a result of catch inspections. These measures are supported by the provisions that would require specified dealers/processors to report and retain culled haddock (see measure 8) and require vessels to provide advance notification of landing (see measure 9). Once the haddock cap has been caught, all vessels issued a herring permit or fishing in the Federal portion of the GOM/GB Herring Exemption Area (see 3) would be prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907 kg) of herring per trip in or from the GOM/GB Herring Exemption Area, except that such vessels may possess more than 2,000 lb (907 kg) of herring that was caught outside of the area and

may transit the area, with gear properly stowed.

#### *(3) Define the GOM/GB Herring Exemption Area*

The herring fishery is prosecuted at various times of the year throughout the GOM and GB. Herring vessels would be authorized to fish for amounts of herring allowed under their applicable permits until the haddock catch cap applicable to the fishery is projected to be attained. Framework 43 identifies the area where 90 percent of the haddock catch historically has occurred and defines the area as the GOM/GB Herring Exemption Area. Once the cap is determined to be attained, the Regional Administrator would announce that all herring vessels would be limited to the 2,000-lb (907-kg) catch limit for herring if any of the herring is caught in the GOM/GB Herring Exemption Area. In the event that the haddock catch cap is reached, the measures that would require processors/dealers to retain and report culled haddock, and the requirement for Category 1 vessels to provide advance notification of landing, would remain in effect to enhance the enforceability of the closure. Category 1 vessels and other herring vessels would not be subject to the 2,000-lb (907-kg) herring limit if all herring caught, possessed, or landed by the vessel is from outside the GOM/GB Herring Exemption Area, and provided the vessel complies with the gear stowage requirements in the Exemption Area as specified in the regulations.

#### *(4) Establish a Regulated NE Multispecies Possession Allowance for Category 1 Vessels*

This action would establish a possession allowance for Category 1 vessels to authorize them to possess and land up to 100 lb (45 kg) of regulated multispecies other than haddock (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) on all trips that do not use a NE multispecies DAS. Vessels fishing under a NE multispecies DAS would be subject to the possession limits specified for such fishing activity.

#### *(5) Suspend the Minimum Fish Size for NE Multispecies Possessed by Category 1 Vessels*

This action would exempt Category 1 vessels from the minimum size requirements for haddock and the other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake). The suspension of the minimum size is

necessary because, in a high-volume fishery such as the herring fishery, it is difficult, if not impossible, to cull fish that resemble herring in size and shape. Herring are often pumped directly from the nets into the holds, with no sorting of the catch. Thus, it is impracticable to sort out haddock and other regulated multispecies that are smaller than the current minimum fish size.

#### *(6) Prohibit the Purchase or Sale for Human Consumption of NE Multispecies Landed by Category 1 Vessels*

To eliminate any incentive for Category 1 vessels to target haddock or other regulated multispecies, this action would prohibit the sale of haddock and those other species caught by Category 1 vessels for human consumption. It also prohibits Atlantic herring dealers and processors from purchasing such fish to be sold for human consumption. It is not feasible to establish a similar prohibition on the sale of haddock or the other regulated multispecies for use as bait because herring catches landed for use as bait are generally offloaded by pumping the fish from the vessel hold into tanker trucks. As a result, some haddock and other regulated multispecies could remain mixed in with the herring catch. The Council concluded that it would be impossible to require all such landings to be culled or sorted, and would be inequitable to make downstream purchasers of such bait legally liable for the presence of haddock or other regulated multispecies.

#### *(7) Prohibit Discarding of Haddock at Sea by Category 1 Vessels*

In order to more fully account for all the haddock caught by Category 1 vessels, this action would prohibit the discarding of haddock at sea.

#### *(8) Require Specified Herring Dealers/Processors to Retain Haddock Landed by Category 1 Vessels*

This action would require herring dealers and processors that sort herring as part of their operations to separate out, report, and retain for 12 hr all haddock landed by a Category 1 vessel in order to facilitate monitoring and enforcement of the haddock catch cap. The haddock would have to be set aside and retained for 12 hr to facilitate inspection by enforcement officials, and the vessel that landed the haddock must be clearly identified. The sale of these culled haddock, for any purpose, would be prohibited. All herring dealers and processors would have to continue to comply with the current reporting requirements that require federally

permitted dealers and processors to report all fish purchased or received with a vessel trip identifier via the weekly electronic dealer reporting system as specified under § 648.7(a).

*(9) Require Category 1 Vessels to Provide VMS Notification Prior to Landing*

This action would require Category 1 vessels to provide notification to NMFS of their intent to land at least 6 hr prior to landing. This provision is intended to facilitate the enforcement and monitoring of the haddock catch cap by giving enforcement agents sufficient notice of landing to enable them to meet a fishing vessel at the dock to observe offloading or sample the catch.

**Classification**

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, which describes the economic impacts this proposed rule, if adopted, would have on small entities. A copy of the IRFA can be obtained from the Council or NMFS (see **ADDRESSES**) or via the Internet at <http://www.nero.noaa.gov>. A summary of the analysis follows:

*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 this 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 RFA, 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 proposed rule (requiring Category 1 vessels to provide notification to NMFS of their intent to land at least 6 hr prior to landing) has already been approved by OMB as follows: Haddock Bycatch Notification of Landing, Office of Management and

Budget (OMB) control number 0648 0525, (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 are most likely to encounter groundfish. The herring fishery has not fully harvested the allowed catch from Area 3 and the resource in that area can support increased fishing effort. Estimate foregone revenues from not fishing in Area 3 would be \$2,123,727 based on preliminary reported herring landings during 2005 (13,029 mt) and an average price for herring of \$163 per mt. Foregone revenues could be as high as \$8,150,000 based on 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 on every trip and therefore represents an upper bound to the range of expected impacts. Also, the proposed action would have the least impact on small entities because it would not impose a 1,000 lb (453 kg) possession limit, thereby allowing vessels that unintentionally run into a large amount of haddock to continue fishing, while still imposing an upper limit on

haddock catches by shutting down 90 percent of the area where haddock is caught if the herring fleet reaches the haddock TAC.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 14, 2006.

**James W. Balsiger,**

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

**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, paragraph (bb)(20) is revised, and paragraphs (a)(166), (a)(167), (a)(168), and (bb)(21) through (24) 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.

(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.

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

(23) Discard haddock at sea if a Category 1 herring vessel.

(24) 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 for at least 12 hours with the vessel that landed the haddock clearly identified, and 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) Retention of haddock by Category 1 herring vessels. All Category 1 herring vessels must retain all the haddock that they catch.

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 must carry 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 must retain all haddock they catch;

(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 must retain all haddock they catch;

(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, paragraph (i) is moved and reserved and 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, 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'
14	44° 00'	67° 40'
15	44° 00'	67° 50'
16	44° 10'	67° 50'
17	44° 27'	67° 59.18'
18	ME, NH, MA Coast lines	
19	41° 33.05'	70° 00'

(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 would be specified for the period May 1, 2006 April 30, 2007, and the 2007 haddock catch cap would be specified for the period May 1, 2007 April 30, 2008. If the catch of haddock by Category 1 vessels reached 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 would extend through April 30, 2007, at which time the 2007 catch cap would 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).

\* \* \* \* \*

(i) [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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