

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: December 4, 2009.

Emily H. Menashes,

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. 061228342-7068-02]

RIN 0648-XT19

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Rescission of Prohibition on Atlantic Herring Fishing in Management Area 2

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

ACTION: Temporary rule; rescission of prohibition on herring fishing.

SUMMARY: NMFS announces rescission of the prohibition on fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring in or from Atlantic herring Management Area 2 (Area 2). The rescission of this prohibition is due to the fact that catch data indicate that 95 percent of the total allowable catch (TAC) threshold in Area 2 has not been fully attained. Vessels issued a Federal permit to harvest Atlantic herring may resume fishing for and landing herring in amounts greater than 2,000 lb (907.2 kg) effective 0001 hours, December 10, 2009, until it is determined that the 95-percent quota threshold is projected to be harvested.

DATES: Effective 0001 hours, December 10, 2009, through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Aja Peters-Mason, Fishery Management Specialist, 978-281-9195.

SUPPLEMENTARY INFORMATION:

Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2009 TAC allocated to Area 2 (72 FR 17807, April 10, 2007) is 30,000 mt. The initial TAC included a Research Set-aside of 900 mt, which was restored to the fishery when it was not allocated for research (73 FR 74631, December 9, 2008).

The regulations at § 648.201 require the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the Atlantic herring fishery in each of the four management areas designated in the Atlantic herring Fishery Management Plan (FMP) and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to prohibit vessels from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 mt) per trip or calendar day through a publication in the **Federal Register**.

NMFS issued a notification in the **Federal Register** on April 14, 2009 (74 FR 17106), projecting that the Atlantic herring quota available in Area 2 had been harvested, based upon information that the area's quota would be reached by April 15, 2009; the prohibition was effective through December 31, 2009.

The Regional Administrator has since determined, based upon the latest dealer reports and upon other available

information, that there is approximately 1,450 mt of Atlantic herring quota still available in Area 2. Therefore, effective December 10, 2009, vessels issued a Federal permit for the Atlantic herring fishery may fish for, possess, and land in accordance with the possession limits defined for each permit category until it is projected that 95 percent of the TAC threshold has been harvested. Such closure would be announced through notification in the **Federal Register**. Effective December 10, 2009, federally permitted dealers are also advised that they may purchase Atlantic herring landed in Area 2 from federally permitted vessels for the remainder of the 2009 fishing year or until it is determined that 95 percent of the threshold quota is projected to be fully harvested.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action rescinds the prohibition on the Atlantic herring fishery in Management Area 2 until December 31, 2009, under current regulations. The Atlantic herring fishery opened for the 2009 fishing year at 0001 hours on January 1, 2009. The Atlantic herring fleet was prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 mt) per trip or calendar day on April 15, 2009 based on projections that 95 percent of the available Area 2 herring quota had been harvested. Data indicating the Atlantic herring fleet did not harvest the full amount of available quota have only recently become available. If implementation of this rescission is delayed to solicit prior public comment, the remaining quota will not be available for harvest before the end of the 2009 fishing year on December 31. The AA finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the thirty (30) day delayed effectiveness period for the reasons stated above.

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

Dated: December 4, 2009.

Emily H. Menashes,

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

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