

be exceeded. This is contrary to NMFS's obligation under the Magnuson-Stevens Act to prevent overfishing. Further, if the sub-ACLs are exceeded, this would trigger the implementation of accountability measures that will have negative economic impacts on the participants in the common pool. Giving effect to this rule as soon as possible will prevent these unnecessary impacts

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

Dated: September 28, 2011.

**Steven Thur,**

*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. 0907301205-0289-02]

RIN 0648-XA649

#### Fisheries of the Northeastern United States; Atlantic Herring Fishery; Sub-ACL (Annual Catch Limit) Harvested for Management Area 3

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that, effective 0001 hr, October 3, 2011, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring (herring) in or from Management Area 3 (Area 3) per calendar day until January 1, 2012, when the 2012 sub-ACL (annual catch limit) for Area 3 becomes available, except when transiting as described in this notice. This action is based on the determination that 95 percent of the herring sub-ACL allocated to Area 3 for 2011 is projected to be harvested by October 3, 2011.

**DATES:** Effective 0001 hr local time, October 3, 2011, through December 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Lindsey Feldman, Fishery Management Specialist, (978) 675-2179.

#### SUPPLEMENTARY INFORMATION:

Regulations governing the herring fishery are found at 50 CFR part 648. The regulations require annual specification of the overfishing limit, acceptable biological catch, annual catch limit (ACL), optimum yield, domestic harvest and processing, U.S. at-sea processing, border transfer, and sub-ACLs for each management area. The 2011 Domestic Annual Harvest is 91,200 metric tons (mt); the 2011 sub-ACL allocated to Area 3 is 38,146 mt and 0 mt of the sub-ACL is set aside for research (75 FR 48874, August 12, 2010).

The regulations at § 648.201 require the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the herring fishery in each of the four management areas designated in the Fishery Management Plan for the herring fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of herring is projected to reach 95 percent of the management area sub-ACL. When such a determination is made, NMFS is required to publish notification in the **Federal Register** and prohibit herring vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 3 with more than 2,000 lb (907.2 kg) of herring on board is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other available information that 95 percent of the total herring sub-ACL allocated to Area 3 for 2011 is projected to be harvested. Therefore, effective 0001 hr local time, October 3, 2011, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of herring

in or from Area 3 per calendar day through December 31, 2011. Vessels may transit through Area 3 with more than 2,000 lb (907.2 kg) of herring on board, provided such herring was not caught in Area 3 and provided all fishing gear aboard is stowed and not available for immediate use as required by § 648.23(b). Effective October 3, 2011, federally permitted dealers are also advised that they may not purchase herring from federally permitted herring vessels that harvest more than 2,000 lb (907.2 kg) of herring from Area 3 through 2400 hr local time, December 31, 2011.

#### Classification

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

NMFS 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 closes the herring fishery for Management Area 3 until January 1, 2012, under current regulations. The regulations at § 648.201(a) require such action to ensure that herring vessels do not exceed the 2011 sub-ACL allocated to Area 3. The herring fishery opened for the 2011 fishing year on January 1, 2011. Data indicating the herring fleet will have landed at least 95 percent of the 2011 sub-ACL allocated to Area 3 have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the sub-ACL for Area 3 for this fishing year can be exceeded, thereby undermining the conservation objectives of the FMP. NMFS further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30 day delayed effectiveness period for the reasons stated above.

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

Dated: September 28, 2011.

**Steven Thur,**

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

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