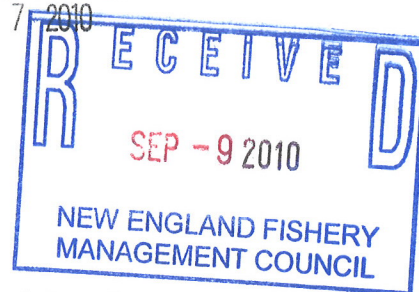




UNITED STATES DEPARTMENT OF COMMERCE  
 National Oceanic and Atmospheric Administration  
 NATIONAL MARINE FISHERIES SERVICE  
 NORTHEAST REGION  
 55 Great Republic Drive  
 Gloucester, MA 01930-2276

SEP - 7 - 2010



Paul J. Howard, Executive Director  
 New England Fishery Management Council  
 50 Water Street  
 Newburyport, MA 01950

Re: Proposed Rule on Herring Midwater Trawl Access to Closed Area I

Dear Paul:

On September 7, 2010, NOAA's National Marine Fisheries Service (NMFS) published a proposed rule re-promulgating one provision of the regulations implementing the Council's request for 100% observer coverage for midwater trawl vessels fishing for Atlantic herring in Northeast multispecies Closed Area I. A public comment period will run for 30 days, through October 7, 2010.

This proposed rule is part of a Court-approved joint motion to stay in a pending lawsuit (*Taylor et al. v. Locke*, 09-CV-02289-HHK). Through this proposed rule, NMFS is seeking public comment on a provision of the regulations implemented by a November 2, 2009, final rule, as well as comments on three proposed alternatives to replace this provision. The current provision allows a midwater trawl vessel with an All Areas and/or Areas 2 and 3 Atlantic herring limited access permit fishing in Closed Area I to release fish that cannot be pumped from the net and, thus, remain in the net at the end of pumping operations, without those fish being sampled by a NMFS at-sea observer. Based on comments we received, NMFS may keep the current provision unchanged, modify the provision, or remove the provision entirely.

A copy of the proposed rule is attached for your reference. Current regulations as published in the November 2, 2009, final rule remain in place during this rulemaking process.

Sincerely,

Patricia A. Kurkul  
 Regional Administrator





# Proposed Rules

Federal Register

Vol. 75, No. 172

Tuesday, September 7, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-HQ-OAR-2010-0107; FRL-9197-2]

RIN 2060-AQ45

#### Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public hearing; correction.

**SUMMARY:** In this document, EPA is making a correction to the Action to Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan; Public Hearing to be held on September 14, 2010 (published in the *Federal Register* on August 30, 2010, 75 FR 52916). We inadvertently within the summary section of the document stated that the hearing will be held in Arlington, VA. This document corrects the location to Washington, DC.

**ADDRESSES:** *Public Hearing:* The September 14, 2010 hearing will be held at the EPA Ariel Rios East building, Room 1153, 1301 Constitution Avenue, Washington, DC 20460. The public hearing will convene at 9 a.m. (eastern standard time) and continue until the later of 6 p.m. or 1 hour after the last registered speaker has spoken. The EPA will make every effort to accommodate all speakers that arrive and register. A lunch break is scheduled from 12:30 p.m. until 2 p.m. Because this hearing is being held at U.S. Government facilities, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. In addition, you will need to obtain a property pass for any

personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on Federal property for security reasons. The EPA Web Site for the rulemaking, which includes the proposal and information about the public hearing, can be found at: <http://www.epa.gov/nsr>.

*Docket:* The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2010-0107. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742. The EPA Web Site for the rulemaking, which includes the proposal and information about the public hearing, can be found at <http://www.epa.gov/nsr>.

**FOR FURTHER INFORMATION CONTACT:** Pamela Long, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C504-03, Research Triangle Park, NC 27711; telephone number (919) 541-0641, e-mail address: [long.pam@epa.gov](mailto:long.pam@epa.gov).

Dated: August 31, 2010.

**Mary Henigin,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. C1-2010-22208 Filed 9-3-10; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No.: 100813358-0392-01]

RIN 0648-BA16

#### Fisheries of the Northeastern United States; Discard Provision for Herring Midwater Trawl Vessels Fishing in Groundfish Closed Area I

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS seeks public comment on a provision of the regulations implemented by a November 2, 2009, final rule, as well as comments on proposed alternatives to replace this provision. The provision allows a midwater trawl vessel with an All Areas and/or Areas 2 and 3 Atlantic herring limited access permit fishing in Northeast (NE) multispecies Closed Area I (CA I) to release fish that cannot be pumped from the net and, thus, remain in the net at the end of pumping operations, without those fish being sampled by a NMFS at-sea observer. Based on comments that it receives, NMFS may keep the current provision unchanged, modify the provision, or remove the provision entirely. This action is part of a Court-approved joint motion to stay.

**DATES:** Written comments must be received no later than 5 p.m. local time on October 7, 2010.

**ADDRESSES:** You may submit comments, identified by 0648-BA16, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the 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, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: "Herring Midwater Trawl Discard Provision; RIN 0648-BA16."

- *Fax:* (978) 281-9135.

**Instructions:** All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, (978) 281-9341, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 4, 2009, NMFS published a proposed rule (74 FR 45798) to implement changes to access requirements for midwater trawl vessels fishing in CA I, at the request of the New England Fishery Management Council (Council), with the intended goal of collecting better information on bycatch in the midwater trawl fishery. A final rule was published on November 2, 2009 (74 FR 56562) that implemented regulations requiring 100-percent observer coverage of trips by limited access Atlantic herring All Areas and/or Areas 2 and 3 category permitted vessels fishing for herring in CA I with midwater trawl gear. The rule also prohibited these vessels from releasing fish from the codend of the net, transferring fish to another vessel that is not carrying an observer, or otherwise discarding fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer. The regulations provide the following exemptions to this prohibition:

- The vessel operator has determined there is a compelling safety reason; or
- A mechanical failure precludes bringing the fish aboard the vessel for inspection; or
- After pumping of fish onto the vessel has begun, the vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator must take reasonable measures (such as strapping and splitting the net) to remove all fish that can be pumped from the net prior to release; or
- When there are small amounts of fish that cannot be pumped and remain in the net at the completion of pumping operations.

If a codend is released in accordance with one of the first three exemptions, the vessel operator must complete and sign an affidavit to NOAA's Office of Law Enforcement (OLE) detailing the vessel name and permit number; the vessel trip report (VTR) serial number; where, when, and for what reason the catch was released; the total weight of fish caught on that tow; and the weight of fish released (if less than the full tow). Completed affidavits are to be submitted to OLE at the conclusion of the trip. Following a released codend under one of the first three exemptions, the vessel may not fish in CA I for the remainder of the trip.

Although not specifically mentioned in the proposed rule, the final rule added a narrow, additional exemption, based on public comment, which allowed for small amounts of fish that cannot be pumped from the net (sometimes called operational discards) to be released unobserved from the net in the water. NMFS considered this additional exemption to be a logical outgrowth of the proposed rule that needed no further public comment because it addressed a foreseeable practical problem that a small amount of fish may be left in a net after pumping operations were completed.

Following publication of the final rule, a suit was filed by three fishermen challenging the exemption that allows release of small amounts of fish that remain after pumping (*Taylor et al. v. Locke*, 09-CV-02289-HHK), on grounds that this additional exemption violated the Administrative Procedure Act because it was not a "logical outgrowth" of the proposed rule and should have been subjected to public comment, and that it violated conservation requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by allowing fish to be released from herring nets unobserved. Plaintiffs also claimed that the terms "small amounts of fish" and "at the completion of pumping operations" were not adequately defined.

Without admitting any fault in publishing the final rule, NMFS and the plaintiffs have agreed to stay the litigation while NMFS repromulgates the challenged provision, solicits public comment, and based on those comments, decides whether to retain, delete or amend the provision. As part of the agreement to stay the litigation, NMFS is publishing this proposed rule, and seeks public comment on the measure at § 648.80(d)(7)(ii)(D) that authorizes the release of fish before being sampled by the observer "when there are small amounts of fish that

cannot be pumped and remain in the net at the completion of pumping operations." In addition, NMFS intends to publish a new final rule if there is a change to this provision, or, in the alternative, to issue a **Federal Register** notice if the agency decides to retain the existing regulations.

Therefore, NMFS is seeking comments on the current provision and on the following proposed alternatives:

1. Removing the provision at § 648.80(d)(7)(ii)(D). This would mean that a vessel would be required to bring the net on board the vessel for observation after the completion of pumping operations. The only exception from this requirement would be if one of the other exemptions (safety, mechanical failure, or clogging by spiny dogfish) is applicable. This alternative would result in additional time and effort by the vessel when compared to the current regulation, but would ensure that the observer is able to document the amount and type of fish that are released after pumping operations are completed.

2. Specifying a maximum amount of fish, for example up to 200 lb (90.7 kg), that may be in the net without bringing the net on board, provided the vessel lifts the net out of the water for observation. Under this alternative, if the observer estimates that there is more than 200 lb (90.7 kg) of fish in the net, the vessel must bring the net on board for further observation. This alternative provides more flexibility to the vessel than alternative 1, but also may put the observer in the difficult position of requesting the captain of the vessel to bring the net on board the vessel based on a visual estimation of the amount of fish in the net.

3. Requiring that the net either be raised out of the water or brought on board, at the discretion of the vessel captain, before release of fish left in the net. This alternative may be a preferable compromise between alternatives 1 and 2, to allow some flexibility to the vessel in deciding how to allow an observer to determine what other fish may be in a net after pumping. However, this flexibility comes at the cost of less than ideal observation conditions if the vessel only lifts the net from the water.

The public is invited to submit comments specifically on the measure at § 648.80(d)(7)(ii)(D), and the proposed alternatives discussed above, as well as any other alternatives to ensure adequate observation of all fish caught by mid-water trawl vessels fishing in CA I. To be most useful, comments should be as detailed as possible and include specific documentation in support of the comments. Current regulations as

published in the November 2, 2009, final rule remain in place during this rulemaking process.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined preliminarily that this proposed rule is consistent with the Atlantic Herring and NE Multispecies FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Regional Administrator has preliminarily determined that this proposed rule would constitute a minor addition, correction, or change to a management plan and would therefore be categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act (NEPA). However, NMFS expects that measures in a final rule may differ from those proposed, based on public comment received on this proposed rule and other

relevant factors. A final determination of the appropriate level of environmental review under NEPA will be made during the development of a final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. None of the three proposed alternatives significantly affect the practices of any fishing operation. A total of 45 vessels currently have either an All Areas or an Areas 2 and 3 Atlantic herring limited access permit. Not all of these vessels fish in Closed Area I, and part of the intent of the increased observer coverage in CA I was to determine how many midwater trawl trips there are into this closed area. The requirement for 100-percent observer coverage became effective on November 2, 2009, so there is not yet a full year's worth of data available. Estimates based on VTR data suggest an average of 15 trips using midwater trawl gear into CA I, annually. Vessels that do fish in CA I may make multiple trips into CA I in a single year,

so this action would impact fewer than 15 small entities. The average midwater trawl trip makes less than three tows. Alternative 1 would have the greatest potential impact on vessel operations. The time to bring a near-empty codend aboard the vessel under this alternative is estimated to range between 30 minutes and 60 minutes. The total impact to an average fishing trip would be at most 3 hours of additional time under alternative 1, or less time under alternative 2 or 3; plus associated cost of fuel. Therefore, any potential delay from the three alternatives in fishing operations to allow an at-sea observer to document catch remaining in the net at the end of pumping operations is expected to have a minimal impact. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: September 2, 2010.

**Eric C. Schwaab,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

[FR Doc. 2010-22347 Filed 9-2-10; 4:15 pm]

**BILLING CODE 3510-22-P**

