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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130919816-4205-02]

RIN 0648-XF044

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2016 Management Area 1B Directed Fishery Closure

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

ACTION: Temporary rule; directed fishery closure.

SUMMARY: NMFS is closing the directed herring fishery in management Area 1B, limiting catch from that area to 2,000 lb (907.2 kg) per trip and prohibiting landing more than once per calendar day, because it projects that 92 percent of the 2016 annual seasonal catch limit for that area will have been caught by the effective date. This action is necessary to comply with the regulations implementing the Atlantic Herring Fishery Management Plan and is intended to prevent over harvest of herring in Area 1B.

DATES: Effective 0001 hr local time, November 18, 2016, through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, Fishery Management Specialist, (978) 282-8457.

SUPPLEMENTARY INFORMATION: The reader can find regulations governing the herring fishery 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 2016 Domestic Annual Harvest is 103,045 metric tons (mt); the 2016 sub-ACL allocated to Area 1B is 4,600 mt, and 138 mt of the Area 1B sub-ACL is set aside for research (78 FR 61828, October 4, 2013). The 2016 Area 1B sub-ACL was decreased to 2,941 mt to account for the 1,521 mt overage in 2014 catch. For management Area 1B, the catch of sub-ACL is currently allocated to the seasonal period from May 1 through December 31. There is no catch currently allocated to the seasonal period from January 1 through April 30. Therefore, under current regulations, vessels are prohibited from fishing for herring in or from Area 1B during the January 1 through April 30 period.

The regulations at § 648.201 require that when the NMFS Administrator of the Greater Atlantic Region (Regional Administrator) projects herring catch will reach 92 percent of the sub-ACL allocated in any of the four management areas designated in the Atlantic Herring Fishery Management Plan (FMP), NMFS will prohibit herring vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip and landing more than once per calendar day in or from the specified management area for the remainder of the directed fishery closure period. The Regional Administrator monitors the herring fishery catch in each of the management areas based on dealer reports, state data, and other available information. NMFS publishes notification in the **Federal Register** of the date that the catch is projected to reach 92 percent of the management area sub-ACL, and of the closure of the directed fishery and a 2,000-lb (907.2-kg) trip possession limit in the management area for the remainder of the seasonal closure period. Vessels that have entered port before the closure date may offload and sell more than 2,000 lb (907.2 kg) of herring from Area 1B, from

that trip. During the directed fishery closure, vessels may transit Area 1B with more than 2,000 lb (907.2 kg) of herring on board only under the conditions specified below.

The Regional Administrator has determined, based on dealer reports and other available information, that the herring fleet will catch 92 percent of the total herring sub-ACL allocated to Area 1B for the 2016 seasonal period from May 1 through December 31, 2016, by November 18, 2016. Therefore, effective 0001 hr local time, November 18, 2016, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of herring per trip and land more than once per calendar day, in or from Area 1B through December 31, 2016, except that vessels that have entered port before 0001 hr on November 18, 2016, may offload and sell more than 2,000 lb (907.2 kg) of herring from Area 1B from that trip after the closure. During the directed fishery closure, November 18, 2016, through December 31, 2016, a vessel may transit through Area 1B with more than 2,000 lb (907.2 kg) of herring on board, provided the vessel did not catch more than 2,000 lb (907.2 kg) of herring in Area 1B and its fishing gear is not available for immediate use as defined by § 648.2. Effective 0001 hr, November 18, 2016, federally permitted dealers may not receive herring from federally permitted herring vessels that harvest more than 2,000 lb (907.2 kg) of herring from Area 1B through 2400 hr local time, December 31, 2016, unless it is from a trip landed by a vessel that entered port before 0001 hr on November 18, 2016. Under current regulations during the seasonal period from January 1, 2017, through April 30, 2017, vessels are prohibited from fishing for, catching, possessing, transferring, or landing herring from Area 1B during this seasonal period. Vessels may transit area 1B with herring on board provided such herring were caught in an area or areas with sub-ACL available and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a permit that authorizes the amount of herring on board for

the area where the herring was harvested. Beginning on May 1, 2017, the 2017 allocation for Area 1B is expected to become available.

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 and impracticable. The herring fishery opened for the 2016 fishing year on January 1, 2016, and Management Area 1B opened on May 1, 2016. Data indicating the herring fleet will have landed at least 92 percent of the 2016 sub-ACL allocated to Area 1B have only recently become available. Landings data is updated on a weekly basis, and NMFS monitors catch data on a daily basis as catch increases toward the limit for the area. Further, high-volume catch and landings in this fishery increase total catch relative to the sub-ACL quickly. This action is a required response to that recently available data and closes the directed herring fishery and imposes a 2,000-lb (907.2-kg) possession limit for Management Area 1B through December 31, 2016, under current regulations. The regulations at § 648.201(a) require such action to ensure that herring vessels do not exceed the 2016 sub-ACL allocated to Area 1B. If implementation of this closure is delayed to solicit prior public comment, the sub-ACL for Area 1B for this fishing year may be exceeded, thereby undermining the conservation objectives of the FMP. If sub-ACLs are exceeded, the excess must also be deducted from a future sub-ACL and would reduce future fishing opportunities. Also, the public had prior notice and full opportunity to comment on this

process when these provisions were put in place. Based on these considerations, 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: November 15, 2016.

Emily H. Menashes,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

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