

**JUSTIFICATION NONSUBSTANTIVE MODIFICATION  
NORTHEAST REGION PERMIT FAMILY OF FORMS  
OMB CONTROL NO. 0648-0202**

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of Commerce (Secretary) has responsibility for the conservation and management of marine fishery resources off the coast of the United States (U.S.). The majority of this responsibility has been delegated to the Regional Fishery Management Councils and National Oceanic and Atmospheric Administration (NOAA)'s National Marine Fisheries Service Fisheries Service (NMFS). The New England Fishery Management Council (Council) develops management plans for fishery resources in New England.

The Council voted at the April 8, 2009, Council meeting to request that the Regional Administrator modify the Herring Midwater Trawl Gulf of Maine/Georges Bank Letter of Authorization (LOA) to increase observer coverage of midwater trawl vessels fishing in Closed Area I (CA I) to 100 percent; be prohibited from slipping codends (the practice of opening the codend of the net and releasing the catch before all of it is brought on board); and be required to pump aboard the vessel all fish caught, to allow sampling by the observer.

The final rule implementing Framework Adjustment 18 (FW 18) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (February 17, 1998, 63 FR 7727) authorized midwater trawl vessels to fish in the groundfish year-round closed areas with specific conditions regarding bycatch of regulated multispecies. The FW 18 implementing regulations (50 CFR 648.81(a)(2)(iii)), grant the Regional Administrator the authority to place restrictions and conditions in the LOA if it is determined that the bycatch of regulated multispecies in the groundfish closed areas exceeds or is likely to exceed one percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation. Recent analysis of at-sea observer data presented by NMFS at the April 8, 2009, Council meeting demonstrated that the bycatch of regulated multispecies in groundfish CA I exceeded one percent of herring caught on at least two individual fishing trips between May 2004 and October 2008. Based on this information, the intent of the Council's motion is to collect additional information on bycatch by the midwater trawl directed herring fishery in CA I to determine whether revisions should be made to the exemption allowing these vessels to fish in groundfish closed areas.

The proposed rule 0648-AX93, "Fisheries of the Northeastern United States, Modification to the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Authorization Letter," published 09/04/2009<sup>1</sup> would require vessels using midwater trawl gear in the directed herring fishery to indicate their intention to fish in CA I when scheduling an observer through the Northeast Fishery Observer Program. This notification is intended to allow NMFS to ensure an observer is deployed on all vessels that intend to fish in CA I with midwater trawl gear. To ensure 100-percent observer coverage, midwater trawl vessels would not be permitted to fish in CA I without an observer.

The observer notification of a vessel's intention to fish in CA I will be added to the information collection for the Herring Vessel Observer Program Notification, which has been approved by Office of Management and Budget (OMB) under OMB Control No. 0648-0202. The public

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<sup>1</sup> The Final Rule 06-48-AX93 is estimated to publish in mid-October 2009.

reporting burden will not change; it is simply adding this piece of information into an already required telephone call.

If the Northeast Fishery Observer Program is unable to provide an observer for a vessel that indicates an intention to fish in CA I, the vessel may still fish, but would be prohibited from fishing inside CA I on that trip.