

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

2. Revise § 91.12 to read as follows:

§ 91.12 Contest eligibility.

(a) U.S. citizens, nationals, or resident aliens are eligible to participate in the contest.

(b) Any person who has won the contest during the preceding 3 years will be ineligible to submit an entry in the current year's contest. For the 75th contest (2007) only, any artist, even those who won the 2005 and 2006 contests, may enter. However, 2005 and 2006 winners must still fulfill their 3-year ineligibility terms after the 2007 contest. The 2007 contest will not be counted toward fulfilling ineligibility terms of 2005 or 2006 winners.

(c) All entrants must be at least 18 years of age by the contest opening date (see § 91.11) to participate in the contest.

(d) Contest judges and their relatives are ineligible to submit an entry.

(e) All entrants must submit a nonrefundable fee of \$125.00 by cashier's check, certified check, or money order made payable to U.S. Fish and Wildlife Service. Personal checks will not be accepted.

(f) All entrants must submit a signed Reproduction Rights Agreement and a signed Display and Participation Agreement.

3. Add a new paragraph (d) to § 91.21 to read as follows:

§ 91.21 Selection and qualification of contest judges.

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(d) *Term:* Judges serve for the period of one contest only. No former judge will be eligible to serve in any successive contests.

4. Revise § 91.24 paragraph (g) and paragraph (h) to read as follows:

§ 91.24 Contest procedures.

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(g) In the second round of judging, each entry selected in the first round, plus the additional entries selected by judges per paragraph (d) of this section, will be shown one at a time to the judges by the Contest Coordinator or by a contest staff member. Each judge will vote by indicating a numerical score of one (1), two (2), three (3), four (4), or five (5) for each entry. The scores will be totaled to provide each entry's score. The five entries receiving the five highest scores will be advanced to the third round of judging.

(h) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two, except that they will indicate a numerical score of three (3), four (4), or five (5) for each entry. The

Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

* * * * *

5. Revise § 91.31 to read as follows:

§ 91.31 Return of entries after contest.

(a) All entries will be returned by certified mail to the participating artists within 120 days after the contest, unless the artwork is selected to appear at one or more wildlife art expositions. If artwork is returned to the Service because it is undelivered or unclaimed (this may happen if an artist changes address), the Service will not be obligated to trace the location of the artist to return the artwork. Any artist who changes his or her address is responsible for notifying the Service of the change. All unclaimed entries will be destroyed 1 year after the date of the contest.

(b) Artists in the third round of judging will be chosen to appear in a national art tour that will last 1 year. The artwork will be returned to the artists after that period in accordance with the signed participation agreement.

(c) An artist may choose to remove his or her artwork from the tour, but will forfeit contest eligibility for three (3) successive contests.

Dated: September 19, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060901235-6235-01; I.D. 082406C]

RIN 0648-AQ87

Fisheries of the Northeastern United States; Amendment 1 to the Atlantic Herring Fishery Management Plan

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 1 to the Atlantic Herring Fishery Management Plan (FMP). Amendment 1

was developed by the New England Fishery Management Council (Council) to establish a limited access program, and to make other changes in the management of the Atlantic herring fishery. The Amendment 1 measures being proposed include: A limited access program; an open access incidental catch permit; a change in the management area boundaries; establishment of a purse seine/fixed gear-only area; establishment of a maximum sustainable yield (MSY) proxy; an approach to determining the distribution of area-specific Total Allowable Catches (TACs); a multi-year specifications process; a research quota set-aside for herring-related research; a set-aside for fixed gear fisheries; a change in the midwater trawl gear definition; and additional measures that could be implemented through the framework adjustment process. The intent of this action is to provide efficient management of the Atlantic herring fishery and to meet conservation objectives.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern daylight time on November 13, 2006.

ADDRESSES: Copies of supporting documents used by the Council, including the Final Supplemental Environmental Impact Statement (FSEIS) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The FSEIS/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov>.

Written comments on the proposed rule may be sent by any of the following methods:

- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments Herring Amendment 1"

- Fax to Patricia A. Kurkul (978) 281-9135;

- E-mail to the following address: HerrAmend1@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: "Comments HerrPropRuleAmend1."

- Electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information

requirements contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to

David_Rotsker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978) 281-9259, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: The primary purpose of Amendment 1 is to modify the management program for the Atlantic herring fishery by implementing a limited access program to better match the capacity of the fleet to the resource. The amendment also would modify other management measures so that the Atlantic herring resource is managed more efficiently and sustainably.

In July 1999, the Council voted to develop a limited or controlled access program for the herring fishery, and NMFS, at the request of the Council, established September 16, 1999 (64 FR 50266), as a control date for the Atlantic herring fishery in Federal waters.

Scoping meetings for an amendment to FMP were conducted in February 2000, shortly after completion of the FMP, with public hearings taking place that month in Maine, Massachusetts, Rhode Island, and New Jersey. In April 2003, the Council re-initiated scoping, holding public hearings in April and May of that year in Maine, Massachusetts, and New Jersey.

During both rounds of scoping, comments were sought on limited/controlled access in the herring fishery, particularly in Area 1A, the inshore Gulf of Maine (GOM), because at that time the concern about excess capacity in the fishery was focused on Area 1A. The TAC in this area has represented at least 60 percent of the total landings of this fishery since the FMP was implemented, and the area has been closed to directed fishing because the TACs for that area was caught every year. As a result, the Council concluded that the capacity in this area should be restricted to avoid problems that result from excess fishing capacity, such as a race to fish as increasing numbers of vessels try to catch herring before the TAC is attained and the directed fishery is closed.

Although TACs in Areas 1B, 2, and 3 (southern New England, the Mid-Atlantic, and Georges Bank (GB), have not been fully harvested since the implementation of the FMP (with the exception of Area 1B during the 2001 and 2004 fishing years), the Council concluded that sufficient capacity currently exists for the fleet to harvest the TACs in those areas, and this

amendment proposes a limited access program for these areas as well. By taking such action now, the Council hopes to avoid future problems with excess capacity in these areas.

During the development of Amendment 1, both as a result of issues raised by the Council and by the public during scoping, a variety of elements were added to Amendment 1, all of which are intended to improve the management of the fishery and contribute to the sustainability of the stock. These include an open access incidental catch permit; a change in the management area boundaries; establishment of a purse seine/fixed gear-only area (PS/FG); establishment of an MSY proxy; an approach to determining the distribution of area-specific TACs; a multi-year specifications process; a research quota set aside for herring-related research; a set-aside for fixed gear fisheries; the inclusion of the Maine fixed gear fishery catch in New Brunswick weir fishery catch; measures to address bycatch of multispecies in the herring fishery; a change in the midwater trawl gear definition; and additional measures that can be implemented through the framework adjustment process.

Relation to Existing Herring Regulations

In Amendment 1, the Council noted that it intended to maintain existing herring management measures in effect unless they were explicitly revised in Amendment 1. However, NMFS is proposing to revise existing provisions in § 648.13 related to the transfer of fish at sea in order to enforce the possession restrictions proposed in Amendment 1. These revisions do not make any substantive change to the regulations, nor do they apply any requirements beyond those proposed by the Council. They simply make it clear that the possession limits proposed in Amendment 1 apply whether the permitted herring vessel is landing on shore or transferring at sea. /NMFS invites public comment on these revisions in order to ensure that they are consistent with the Council's intent in creating the varying possession restrictions.

Amendment 1 would establish four classes of vessel permits with associated possession limits: (1) The limited access permit for all areas would authorize a vessel to harvest herring from any herring management area without possession restrictions until 95 percent of the management area TAC is attained; (2) the limited access permit for Areas 2 and 3 would authorize a vessel to harvest herring from those management

areas without possession restrictions until 95 percent of the management area TAC is attained; (3) the limited access incidental catch permit would authorize a vessel to harvest up to 55,000 lb (25 mt) of herring per trip (with one landing allowed per calendar day) from any herring management area until 95 percent of the management area TAC is attained; and (4) the open access incidental catch permit would authorize a vessel to harvest up to 6,600 lb (3 mt) of herring per trip (with one landing allowed per calendar day) from any area until 95 percent of the management area TAC is attained. Upon attainment of 95 percent of any management area TAC, the directed fishery would be closed and all herring vessels would be limited to 2,000 lb (907.2 kg) of herring per trip harvested from that area (with only one landing allowed per calendar day).

To assure that vessels harvest herring only as authorized by the conditions of their vessel permit, NMFS proposes to specify that the transfer of fish at sea can occur only if the vessel transferring the herring complies with the possession limit restrictions outlined above. This is intended to assure that the provision maintains the integrity of the possession limits.

In addition, NMFS notes that some of the restrictions currently specified in Letters of Authorization (LOAs) for transferring herring at sea and serving as a carrier for herring were not reflected in the regulations. To rectify this inconsistency, NMFS has added text to the regulations to reflect all of the requirements of the LOAs.

Finally, NMFS has revised the permitting requirements for at-sea processing vessels. The existing herring regulations require such vessels to be issued a vessel permit for at-sea processing. In addition, such vessels are subject to dealer reporting requirements in § 648.7(a). This proposed rule would require at-sea processing vessels to obtain dealer permits rather than vessel permits. This would be consistent with the reporting requirement, and with the at-sea processor requirement of the Atlantic mackerel fishery.

Particular Issues of Concern

NMFS requests particular scrutiny of the regulations at § 648.200(b)(3) concerning the specification of TAC reserves in the specifications-setting process. As currently written, the regulations allow the Council to set aside a reserve of herring from any of the management areas, to be allocated at the discretion of the Regional Administrator based on the progress of the fishery toward the utilization of the area TACs. Because the reserve has

never been tapped, and in recent years the Council has not elected to set a reserve, NMFS requests the Council and the public to consider the need to maintain the reserve option as part of the specifications process.

Background

At its final meeting for Amendment 1, the Council separated the measures to address bycatch in the herring fishery from Amendment 1 to the FMP, and agreed to submit these measures separately as Framework 43 to the Northeast Multispecies FMP (Framework 43). The measures contained in Framework 43 were included in the Draft Supplemental Environmental Impact Statement (DSEIS) and public hearing document for Amendment 1 to the Atlantic Herring FMP. The Council voted on February 2, 2006, to adopt the measures in Amendment 1 and Framework 43, but to submit Framework 43 in advance of Amendment 1 in order to establish measures for the fishery as soon as possible during the 2006 summer season. The proposed rule for Framework 43 was published in the **Federal Register** on June 21, 2006 (71 FR 35600), with public comment through July 6, 2006. The final rule was published on August 15, 2006 (71 FR 46871), and was effective upon publication. The Council intended that all of the provisions in Framework 43, which applied to Category 1 vessels, would apply to limited access herring vessels if and when Amendment 1 was implemented. The background section for the final rule to Framework 43 included the following text, explaining this transition. "the public should be aware that the Council is proposing to revise the Atlantic herring vessel permit requirements in Amendment 1. Amendment, which has been submitted to NMFS for review, would revise the vessel permitting requirements for the herring fishery by establishing limited access permits for vessels that fish for large amounts of herring, and maintain an open access permit for vessels that catch herring incidentally. If the limited access permit measures proposed in Amendment 1 are approved and implemented by NMFS, the measures proposed in this rule would, in the future, be applicable to all vessels issued limited access permits." As a result, NMFS proposes to revise the Framework 43 regulations to clarify that the bycatch provisions, which under Framework 43 apply to Category 1 herring vessels, would apply to vessels permitted under the new limited access program established under Amendment 1.

The notice of availability for the DSEIS, which analyzed the impacts of all of the measures under consideration in Amendment 1 and Framework 43, was published in the **Federal Register** on September 9, 2005 (70 FR 53657), with public comment accepted through October 24, 2005. Public hearings were held in October, in six locations from Maine to New Jersey. At its January 31–February 2, 2006, meeting, the Council voted to adopt Amendment 1 for submission to NMFS, and it submitted the document and associated analyses on May 3, 2006.

A Notice of Availability (NOA) for Amendment 1, as submitted by the Council for review by the Secretary of Commerce, was published in the **Federal Register** on September 6, 2006 (71 FR 52521). The comment period on Amendment 1 ends on November 6, 2006. In addition to the implementing measures proposed in this rule, Amendment 1 contains changes to the herring overfishing definition that are not reflected in the regulations.

Proposed Measures

NMFS is publishing the Council's proposed regulations for the measures in Amendment 1, with one exception. Amendment 1 included a measure that would have allowed the harvest of herring by fixed gear fishermen in Downeast Maine (East of Cutler, Maine—the Downeast Maine Fixed Gear Fishery) to be exempt from the TACs that govern the fishery. Catch from the Downeast Maine fixed gear fishery (weirs and stop seines East of Cutler) would be included as part of the assumed catch from the New Brunswick (NB) weir fishery when determining area-specific TACs and herring fishery specifications (currently 44 million lb (20,000 mt)). During the fishing season, catch from the Downeast Maine Fixed Gear Fishery would not be counted against the TAC for Area 1A, and the fixed gear fishery would be allowed to continue to operate once the Area 1A TAC has been reached. This measure would apply to fixed gear (stop seine and weir) catches in waters north of a line drawn from Spruce Point (44° 36.2' N. lat and 67° 16.8' W. long), Cross Island, Cutler, Maine, due east magnetic to the international boundary with Canada. The Council recognized that fixed gear fishing occurs primarily in inshore waters, but extending the exemption line throughout the Exclusive Economic Zone (EEZ) was proposed to simplify the administration and enforcement of this measure.

NMFS is not publishing proposed regulations to implement these measures because they have been

determined, *prima facie*, to be inconsistent with National Standard 1 of the Magnuson-Stevens Act. The measures would essentially allow a portion of the fishery to remain completely unregulated without corresponding conservation benefits. Even though the Council has pointed out that recent catches from the fixed gear fishery east of Cutler are virtually non-existent, that does not mean that would remain the case. If the fixed-gear landings from this area were to increase dramatically, NMFS would have no means of regulating that catch to ensure the integrity of the TACs established for the fishery. This measure also has been determined to be inconsistent with National Standard 3, the requirement to manage an individual stock unit throughout its range.

1. Exemption From Vessel Permit Requirements

This action would continue to allow the following vessels to fish for, catch, possess, transport, or land Atlantic herring in or from the Exclusive Economic Zone without a Federal permit: A skiff or other similar craft used exclusively to deploy the net in a purse seine operation conducted by a vessel that is permitted to fish for Atlantic herring under the proposed program; and a vessel that possesses herring solely for its own use as bait, providing the vessel does not use or have on board purse seine, midwater trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on any trip in which herring is fished for, possessed, or landed, and does not transfer, sell, trade, or barter such herring. NMFS has clarified the existing provision for this exemption to indicate that such vessels cannot transfer, sell, trade, or barter such herring.

2. Limited Access Vessel Permits

Amendment 1 would implement two categories of limited access permits that would authorize vessels to fish for herring without being limited by a possession limit: (1) an All Areas Limited Access Herring Permit, which would authorize vessels to fish in all management areas; and (2) an Areas 2 and 3 Limited Access Herring Permit, which would authorize vessels to fish only in management areas 2 and 3. The limited access directed fishery eligibility criteria are intended to qualify vessels with significant fishing history and participation in the herring fishery. Most of these vessels are currently issued a Category 1 herring permit that is required of vessels that land, or intend to land, > 1.1 million lb (500 mt) of herring annually. These

vessels land the vast majority of Atlantic herring during each fishing year. While vessels that qualify for the limited access directed fishery permits would not be restricted by a possession or trip limit for herring, they would be subject to the other regulations established through the Atlantic Herring FMP. If 95 percent of an area TAC is reached in a management area, the directed fishery for herring would be closed, and limited access directed fishery permit holders would be limited to 2,000 lb (907.2 kg) of herring per trip in that management area.

A vessel would be eligible for either an All Areas Limited Access Herring Permit or an Areas 2 and 3 Limited Access Herring Permit if it meets one of the two following permit history criteria: The vessel must have been issued a Federal herring permit (Category 1 or 2) that was valid as of November 10, 2005; or the vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel at the time it sank or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer and the owner/seller documenting that the vessel owner/seller retained the herring permit and all herring fishing and landings history. This written agreement must be consistent with the permit splitting provisions outlined in Section 4.

To qualify for the All Areas Limited Access Herring Permit, the vessel and/or any vessel it replaced must have landed and sold at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by NMFS records or documented through dealer receipts. To qualify for an Areas 2 and 3 Limited Access Herring Permit, the vessel and/or any vessel it replaced must have landed at least 250 mt of herring in any one calendar year between January 1, 1993 and December 31, 2003, as verified by NMFS records or documented through dealer receipts.

For vessels that meet the limited access permit eligibility requirements, but have not been replaced, see section 4, and the information about confirmation of permit history (CPH).

3. Limited Access Incidental Catch Herring Permit

The Council determined that there are a number of vessels that are not heavily dependent on herring in terms of a percentage of their total catch, but rely on herring as part of an overall harvest strategy, and proposes to establish a Limited Access Incidental Catch Herring Permit to accommodate such vessels. Many of these vessels have an incidental catch of herring while fishing in other small-mesh, high-volume fisheries for species including Atlantic mackerel, *Loligo* squid, and whiting (silver hake). This measure is intended to provide such vessels with an opportunity to land relatively small amounts of herring rather than increase the potential for regulatory discarding of herring in such fisheries.

A vessel is eligible for and may be issued either a limited access Incidental Catch Herring Permit if it meets one of the two following permit history criteria: The vessel must have been issued a Federal permit to fish for Atlantic herring, *Loligo* or *Illex* squid, mackerel, butterfish, and/or whiting (NE multispecies), during the 2005 fishing year as of November 10, 2005; or the vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel at the time it sank or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer and the owner/seller documenting that the vessel owner/seller retained the herring permit and all herring fishing and landings history. This written agreement must be consistent with the permit splitting provisions outlined in Section 4.

To qualify for a limited access incidental catch herring permit, the vessel and/or any vessel it replaced must have landed and sold at least 33,000 lb (15 mt) of herring in any calendar year between January 1, 1988, and December 31, 2003, as verified by NMFS records or documented through dealer receipts. For vessels that meet the limited access permit eligibility requirements, but have not been replaced, see section 4, and the information about CPH.

NMFS requests comments on whether vessels that sank, were destroyed or sold in the manner described in the previous

paragraph, should be required to have been issued a Federal herring permit (Category 1 or 2) any time between November 10, 2003, and November 9, 2005. Specifically, NMFS would like to know if the Council intended that such a vessel should not be allowed to meet the permit requirement if it had been issued a Federal permit to fish for *Loligo* or *Illex* squid, mackerel, butterfish, and/or whiting (NE multispecies), during the 2005 fishing year as of November 10, 2005, and have landed at least 33,000 lb (15 mt) of herring in any calendar year between January 1, 1988, and December 31, 2003. If a vessel could qualify for a limited access incidental catch permit with a *Loligo* or *Illex* squid, mackerel, butterfish, and/or whiting (NE multispecies) permit, there appears no reason that the requirements should necessarily differ for vessels that sank, were destroyed, or were sold.

Vessels with limited access incidental catch permits would be restricted by a possession limit of 55,000 lb (25 mt) of herring and limited to one landing of herring per calendar day. If 95 percent of an area TAC is reached in a management area, the directed fishery for herring would be closed, and limited access incidental catch permit holders would be limited to 2,000 lb (907.2 kg) of herring per trip.

Amendment 1 would allow a vessel to be issued multiple herring permits. For instance, a vessel could have landings history sufficient to qualify for the Areas 2 and 3 Limited Access Herring Permit, but not the All Areas Limited Access Herring Permit. Such a vessel could also qualify for a Limited Access Incidental Catch Permit. In this case, the vessel could not possess herring in excess of the Limited Access Incidental Catch Herring Permit possession limit of 55,000 lb (25 mt) if it fishes any part of a trip in Area 1, regardless of whether it catches herring from Areas 2 or 3. However, the vessel could catch and land herring in excess of 55,000 lb (25 mt) in or from areas 2 and 3, provided it stowed its gear while transiting Area 1.

4. Limited Access Vessel Permit Provisions

Amendment 1 would establish measures to govern future transactions related to limited access vessels, such as purchases, sales, or reconstruction. These measures would apply to all limited access vessels. The provisions proposed in this amendment are consistent with those that govern most of the other Northeast region limited access fisheries, e.g., there are some differences in the limited access program for American lobster.

Initial Eligibility

Initial eligibility for a herring limited access permit would have to be established during the first year after the implementation of Amendment 1. A vessel owner would be required to submit an application for a herring limited access permit or CPH within 12 months of the effective date of the final regulations.

CPH

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, or been destroyed, or transferred to another person, would be required to apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant would have to show that the qualifying vessel meets the eligibility requirements for the limited access herring permit in question, and that all other permit restrictions are satisfied (e.g., permit splitting). Issuance of a valid CPH would preserve the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time. A CPH would have to be applied for in order for the applicant to preserve the limited access eligibility of the qualifying vessel. Vessel owners who were issued a CPH could obtain a vessel permit for a replacement vessel based upon the previous vessel's history that would utilize the CPH consistent with the vessel size upgrade restrictions.

The owner of a qualifying vessel that has sunk, been destroyed, or been transferred to another person without the Atlantic herring fishing history, but not yet replaced, would be required to apply for a CPH within the first year after the implementation of Amendment 1.

Landings History

Unless NMFS data already demonstrate that a vessel made landings of herring that satisfy the eligibility criteria for a limited access permit, applicants would have to submit dealer receipts that verify landings. Amendment 1 specifies that the owners of pair trawl vessels may divide the catch history between the two vessels in the pair through third party verification and supplemental information, such as vessel trip reports (VTR) or dealer reporting. The two owners must apply for a limited access permit jointly and must submit proof that they have agreed to the division of landings.

Extension of Qualification Period

A vessel owner who could prove that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, and landed the amount of fish required by the limited access program as of December 31, 2004, would be able to apply for and obtain a limited access permit as long as it meets the permit eligibility criteria. This measure would provide such vessels with a 1-year extension of the qualification period for the landings portion of the eligibility criteria.

Permit Transfers

An Atlantic herring limited access permit and fishery history would be presumed to transfer with a vessel at the time it is bought, sold, or otherwise transferred from one owner to another, unless it is retained through a written agreement signed by both parties in the vessel sale or transfer.

Permit Splitting

Amendment 1 adopts the permit splitting provision currently in effect for other limited access fisheries in the region. Therefore, a limited access permit may not be issued to a vessel if the vessel's permit or fishing history has been used to qualify another vessel for a limited access permit. This means all limited access permits, including herring limited access permits, must be transferred as a package when a vessel is replaced or sold. Amendment 1 explicitly states that the permit-splitting provision is intended to apply to the transfer/sale of herring fishing history prior to the implementation of Amendment 1, if any limited access permits were issued to the subject vessel. Thus vessel owners who sold vessels with limited access permits and retained the herring history with the intention of qualifying a different vessel for the herring limited access program would not be allowed to do so under Amendment 1, unless the limited access permits on the sold vessel are permanently relinquished by the owner.

Qualification Restriction

Consistent with previous limited access programs, no more than one vessel would be able to qualify, at any one time, for a limited access permit or CPH based on that or another vessel's fishing and permit history. If more than one vessel owner claimed eligibility for a limited access permit or CPH, based on one vessel's fishing and permit history, the Regional Administrator would determine who is entitled to qualify for the permit or CPH.

Appeal of Permit Denial

Amendment 1 specifies an appeals process for applicants who have been denied a limited access Atlantic herring permit. Such applicants would be able to appeal in writing to the Regional Administrator within 30 days of the denial, and any such appeal would have to be based on the grounds that the information used by the Regional Administrator was incorrect.

The appeals process would allow an opportunity for a hearing before a hearing officer designated by the Regional Administrator. The owner of a vessel denied a limited access herring permit could fish for herring, provided that the denial had been appealed, the appeal was pending, and the vessel had on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator would issue such a letter for the pendency of any appeal. If the appeal was ultimately denied, the Regional Administrator would send a notice of final denial to the vessel owner; and the authorizing letter would become invalid 5 days after receipt of the notice of denial.

Vessel Upgrades

A vessel could be upgraded in size, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, only if the upgrade complies with limitations in Amendment 1. The vessel's horsepower (HP) could be increased only once, whether through refitting or replacement. Such an increase could not exceed 20 percent of the HP of the vessel's baseline specifications, as applicable. The vessel's length, gross registered tonnage (GRT), and net tonnage (NT) could be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size could not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade could be done separately from an engine HP upgrade.

Amendment 1 maintains the existing Herring FMP specification of maximum length, size, and HP for vessels engaged in the Atlantic herring fishery (165 ft (50.2 meters), 750 GRT (680.3 mt), and 3,000 HP). In addition, existing regulations that exempt USAP vessels from these size limits would be maintained.

Establishing Vessel Baselines

A vessel's baseline refers to those specifications (length overall, GRT, NT, and HP) from which any future vessel size change is measured. The vessel baseline specifications for Atlantic herring vessels issued limited access permits would be the specifications of the vessel that was initially issued a limited access permit as of the date that the initial vessel applied for such a permit. If a vessel owner is initially issued a CPH instead of a permit, the vessel that provided the CPH eligibility would establish the size baseline against which future vessel size limitations would be evaluated.

Vessel Replacements

The term vessel replacement (vessel replacement), in general, refers to replacing an existing limited access vessel with another vessel. In addition to addressing increases in vessel size and HP, Amendment 1 would establish a restriction that requires that the same entity must own both the limited access vessel (or fishing history) that is being replaced, and the replacement vessel.

Voluntary Relinquishment of Eligibility

Amendment 1 includes a provision to allow a vessel owner to voluntarily exit a limited access fishery. Such relinquishment would be permanent. In some circumstances, it could allow vessel owners to choose between different permits with different restrictions without being bound by the more restrictive requirement (e.g., lobster permit holders may choose to relinquish their other Northeast Region limited access permits to avoid being subject to the reporting requirements associated with those other permits). If a vessel's limited access permit history for the herring fishery is voluntarily relinquished to the Regional Administrator, no limited access permit for that fishery could ever be reissued or renewed based on that vessel's history.

Permit Renewals and CPH

Amendment 1 specifies that a vessel owner must maintain the limited access permit status for an eligible vessel by renewing the permits on an annual basis or applying for issuance of a CPH. A CPH is issued to a person who does not currently own a particular fishing vessel, but who has legally retained the fishing and permit history of the vessel for the purpose of transferring it to a replacement vessel at a future date. The CPH provides a benefit to a vessel owner by securing limited access eligibility through a registration system when the individual does not currently own a vessel.

A vessel's limited access permit history would be cancelled due to the failure to renew, in which case, no limited access permit could ever be reissued or renewed based on that vessel's history or to any other vessel relying on that vessel's history.

All limited access permits must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a CPH has been issued. A complete application for such permits must be received no later than 30 days before the last day of the fishing year.

5. Open Access Vessel Permit and Possession Limit

Any vessel could be issued an open access incidental catch permit that would authorize the possession and landing of up to 6,600 lb (3 mt) of herring per trip, with a limit of one landing per calendar day. When the TAC in a management area is projected to be reached and the limited access fishery closes, the possession limit for these vessels would be reduced to 2,000 lb (907.2 kg) per trip, with a limit of one landing per calendar day, when fishing in the area. Open access vessels that land more than 2,000 lb (907.2 kg) of herring in any week would be required to report their catches on a weekly basis through the Interactive Voice Recording (IVR) reporting program described in section 6.

Amendment 1 requires an Atlantic herring carrier vessel to have an Atlantic herring permit, not have any gear on board capable of catching or processing herring, and have on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel. Amendment 1 specified that carrier vessels would not be required to qualify for a limited access permit to possess/transport herring. NMFS had drafted the regulations to specify that a carrier vessel must be issued either an open access or a limited access herring permit.

6. Reporting Requirements

All limited access directed and limited access incidental fishery permit holders would be required to report herring catches weekly through the IVR call-in system, and to file a negative report if there were no catches in a specific week. Amendment 1 would require all vessels issued a limited access directed fishery or limited access incidental catch permit (with the exception of fixed gear fishermen) to install and maintain operable Vessel Monitoring System (VMS) units, and to comply with all VMS notification and

reporting requirements. Such vessels may power down the VMS unit when in port, but must re-power the VMS unit and enter an appropriate trip designation prior to leaving port.

7. Adjustments to Management Area Boundaries

Herring management measures, including TACs, are specified for four management areas (Areas 1A, 1B, 2, and 3). Amendment 1 would revise the area boundaries consistent with recommendations from the Transboundary Resource Assessment Committee (TRAC), a group comprised of both U.S. and Canadian scientists. The boundary between Areas 1B and 3 would be revised to assure that fish caught in Franklin Swell are attributed to the GB spawning component of the stock. The Area 2/3 boundary would be moved west from 69°00' W. long. to 70°00' W. long. to better relate catch to the TRAC conclusion that there are two spawning components of the stock: The GOM and GB/Nantucket Shoals components.

8. Maximum Sustainable Yield

In February 2003, during the development of Amendment 1, the TRAC met to try to come to consensus regarding the status of the stock and the most appropriate values for biological reference points. The two herring assessments presented at the TRAC Meeting produced different results, and no overall consensus was reached regarding which assessment is most accurate. Consequently, no specific biological reference points were provided by the joint peer review group. In the face of this scientific uncertainty, the Council decided that it was appropriate to set a relatively conservative proxy for MSY in Amendment 1, until a stock assessment could be completed that specified an analytical MSY value. Based on input from the Council's Scientific and Statistical Committee (SSC), the Council revised the reference points in the overfishing definition for Atlantic herring as follows: $MSY = 220,000$ mt; $B_{MSY} (B_{Target}) = 1,100,000$ mt; and $B_{threshold} = 550,000$ mt. The reference points in the Atlantic Herring FMP were: $MSY = 317,000$ mt; $B_{MSY} (B_{Target}) = 1,100,000$ mt; and $B_{threshold} = 550,000$ mt (the $B_{threshold}$ established in the FMP is $1/2 B_{MSY}$).

The Amendment 1 document explains that the proposed proxy reference points would be revised if a new, peer-reviewed stock assessment recommends different reference points. In May 2006, the TRAC reconvened and completed another herring assessment. The TRAC

recommended the following reference points: $MSY = 194,000$ mt, and $B_{msy} = 629,000$ mt. Based on this and the FMP's guidance, B_{target} would be 629,000 mt, and $B_{threshold}$ would be 314,500 mt ($1/2 B_{MSY}$). If approved in Amendment 1, these values would become the new reference points for the Atlantic herring fishery.

9. Specification of Management Measures Including TACs.

The Amendment 1 management program includes the specification of management measures for 3-year periods. This measure would maintain flexibility for the Council to adjust the fishery specifications in the interim years. If the Council determines that the specifications should be adjusted during the 3-year time period, it could do so during one or both of the interim years. No action would be required by the Council to maintain the same specifications for all 3 fishing years; Council action would only be required if adjustments to the specifications during the interim years were to be made.

Amendment 1 outlines the process for establishing the specifications. The Herring Plan Development Team (PDT), which advises the Council on technical matters pertaining to herring management, would meet with the Atlantic States Marine Fisheries Commissions' (Commission's) Technical Committee (TC) to review the status of the stock and the fishery and prepare a Stock Assessment and Fishery Evaluation (SAFE) report every 3 years. While a SAFE report would only be prepared every three years, the Herring PDT would meet at least once during interim years to review the status of the stock relative to the overfishing definition, if information is available to do so. When conducting a 3-year review and preparing a triennial SAFE Report, the PDT/TC would report to the Council/Commission and recommend any necessary adjustments to the specifications for the upcoming 3 years. Specifications and TACs would be conveyed to NMFS once approved by the Council and published for public comment. If determined to be consistent with the FMP, final specifications would be implemented.

Amendment 1 would authorize the Herring PDT, in consultation with the Herring Committee, Advisory Panel, and other interested parties, to utilize the most appropriate analytical approach for determining the area-specific TACs during the fishery specification process, provided the PDT justifies its approach. The most appropriate analytical approach may be the current approach

described in the FMP, the risk assessment approach, or another approach developed by the PDT based on the best available scientific information. This measure allows the Council to fully utilize the best scientific information and methodology available when specifications for the herring fishery are developed.

Amendment 1 specifies that the seasonal allocation of the Area 1A TAC may be reviewed and revised, if necessary, through the specification process. The Area 1A TAC is currently allocated to two periods: January-May and June-December. Amendment 1 would authorize the Council to revise the seasonal allocation, as well as to specify the TAC allocation for each seasonal period.

10. TAC Set-Asides to Support Herring-Related Research

Amendment 1 would authorize the Council, in consultation with the Commission, to set aside 0–3 percent of the TAC from any management area(s) as a research set aside (RSA) to support herring-related research. The RSA would be used to support herring-related research in any management area(s), consistent with the research priorities identified by the Council. Projects funded under an RSA allocation would have to enhance understanding of the fishery resource and/or contribute to the body of information upon which management decisions are made.

The Council would determine the specific percentages for the RSA and the management area(s) to which it is applied during the fishery specification process. Amendment 1 specifies that the directed herring fishery would close in a particular management area when it was projected that 95 percent of the area TAC would be caught. The remaining 5 percent of the TAC would be set aside for catch under a 2,000-lb (907.2 kg) trip limit. The RSA would come out of the allocation for the directed fishery. For example, if the Council set aside 3 percent of the Area 1A TAC to support research, then the Area 1A directed fishery would close when 92 percent of the overall Area TAC was projected to be reached.

The RSA would be administered through a process similar to that specified by the Mid-Atlantic Fishery Management Council in several of its fishery management plans. That mechanism would include the following elements: Individual research projects may apply for the use of more than one herring research set-aside allocation; researchers may request that the set-aside be collected separately from the

research trip or as part of the research trip; and research compensation trips would not all necessarily have to be conducted by the same vessel, but would have to be conducted in the management area from which the set-aside was derived.

Multi-year projects could be funded, since the RSA process is intended to be consistent with the Council's proposed 3-year specification process. The RSA would have to be utilized in the same fishing year in which it was allocated (i.e., RSA and compensation trips could not be rolled over into future years). However, the money generated from the RSA may be rolled over into, or used to fund research in future years, consistent with the multi-year proposal.

Specification of RSA amounts (percentages) for the upcoming fishing years would be incorporated into the Council's fishery specification package every 3 years, and submitted to NMFS with additional analysis required, as part of the specification package. For each proposal cycle, NMFS would publish a Request for Proposals (RFP) that specifies research priorities identified by the Council and application procedures for funding through the RSA. Since specifications would be set for three fishing years, the proposal cycle would also cover 3 fishing years, unless the Council identifies new/different research priorities during the interim years and decides to publish a second RFP.

Research proposals, whenever possible, would be reviewed and approved prior to the publication of final quota specifications for the upcoming fishing years. In the event that the approved proposals did not make use of any or all of the set-asides, NMFS would be authorized to release the unutilized portion of the RSA back to its respective management area(s) when the final specifications were published. If there were unutilized RSA available, NMFS, at the request of the Council, could publish another RFP for either the second or third years of the three-year specifications. In such case, NMFS would release the unutilized portion of the set-aside back to its respective management area(s) for the first year of the specifications and any other year that yields unutilized RSA after an additional RFP is published. The Council also may decide not to publish another RFP, in which case NMFS would be authorized to release the unutilized portion of the RSA back to its respective management area(s) for all 3 fishing years covered by the specifications.

First Round Following Amendment 1 (2007–2009 Fishery Specifications)

Under the existing FMP, the Council must develop specifications for the 2007 Atlantic herring fishery during the summer/fall 2006. In anticipation of Amendment 1 implementation, the specifications will also specify multi-year specifications for the 2007–2009 fishing years. The timing of both the completion of this amendment and the fishery specification process precludes the Council from making a RSA available for the 2007 fishing year. However, the Council recommendations for 2007–2009 may include RSAs for the 2008 and 2009 fishing years. If this is the case, the Council would identify research priorities, NMFS would publish the RFP, and proposals would be reviewed and approved during the 2007 fishing year so that funds could be made available for projects at the start of the 2008 fishing year.

11. Purse Seine/Fixed Gear Only Area

Amendment 1 proposes to prohibit vessels using single or paired midwater trawls from fishing for Atlantic herring in Area 1A from June 1 September 30 of each year. There would be no restrictions on the use of midwater trawl gear in Area 1A from October 1 May 31.

Amendment 1 notes that the Council adopted this measure in response to significant and growing concern about the status of the inshore component of the herring resource, and the potential impacts of midwater trawl fishing effort, which can be highly concentrated at times, in the inshore GOM. These concerns relate primarily to the importance of herring as a forage species for other fish, marine mammals, and seabirds, and the impact that midwater trawl fishing effort may be having on localized schools of herring in nearshore areas.

Amendment 1 concluded that data suggest that there may be differences in bycatch rates, the species composition of bycatch, and bycatch mortality between purse seine and midwater trawl gear. It noted that restricting midwater trawl gear in Area 1A during the summer months may reduce bycatch and indirectly benefit other recovering stocks in the inshore GOM (groundfish stocks, for example). In addition, the Council noted that some purse seiners suggest that midwater gear disperses herring schools, making it difficult to use purse seines. Fixed gear participants argue that midwater gear keeps herring schools from coming inshore, limiting fishing opportunities for this gear type. The amendment noted that gear conflict stemming from any localized impact or

perceived impact of midwater trawling on herring also may be resolved by this measure.

12. Measures to Address Fixed Gear Fisheries

Amendment 1 would set aside 500 mt of the Area 1A TAC for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of Cutler, Maine. This set-aside would be available for harvest using fixed gear west of Cutler in Area 1A until November 1 each year. If the set-aside were not utilized by the fixed gear fisheries west of Cutler in Area 1A by November 1, then it would become part of the overall allocation for Area 1A. If 95 percent of the Area 1A TAC has already been reached by November 1 (and the directed fishery in 1A is therefore closed), the reallocation of the set-aside would not result in re-opening the directed fishery, but would be available for landings under the 2,000-lb (907.2-kg) possession limit.

This measure would require real-time monitoring of fixed gear catches in Area 1A. To ensure that this set-aside is effectively monitored and enforced, fixed gear fishermen in Area 1A would be required to report their herring catches through the IVR reporting system. Because fixed gear fishermen fish exclusively in state waters and are not required to obtain a Federal limited access permit, this IVR reporting requirement has been implemented in state waters by the Commission in Amendment 2 to the Interstate FMP for Atlantic Herring, and proposed regulations relating to this measure are not included in this proposed rule.

13. Measures to Address Bycatch

As noted above, measures to address bycatch in the herring fishery were developed in conjunction with Amendment 1, but submitted separately as Framework 43. Framework 43's regulatory requirements apply to Category 1 herring vessels. These proposed regulations would eliminate the Category 1 vessel permit designation, and implement a limited access program. Therefore, this action proposes changes to the regulations that make it clear that the measures established in Framework 43 would apply to all limited access herring vessels.

14. Regulatory Definition of Midwater Trawl Gear

This action would modify the regulatory definition of midwater trawl gear to reflect the recommendations made by the Council's Enforcement Committee to improve the enforceability of the definition and clarify the public's

understanding of how the gear should be fished. The restrictions included in the proposed definition would better ensure that the gear cannot be fished on the ocean bottom. This measure would improve enforcement because it would provide specific references that enforcement agents can use to ensure that the gear is being fished properly (as opposed to the current definition, which simply states that the gear is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time).

15. Framework Measures

Amendment 1 would maintain the framework adjustment process in the FMP. This action would add the following measures to the list of measures that could be implemented through a framework adjustment to the FMP in the future.

In-Season Adjustments to TACs: Amendment 1 would clarify that in-season adjustments to management area TACs could be enacted by the Council and NMFS through a framework adjustment.

Measures to Address Bycatch and Bycatch Monitoring: Amendment 1 proposes that any management measures to address bycatch and bycatch monitoring in the herring fishery could be implemented through a framework adjustment to the FMP, as well as through the herring fishery specification process.

TAC Set-Aside Amounts, Provisions, Adjustments: The Council could adjust TAC set-asides established in Amendment 1 through a framework adjustment, including the amounts and provisions related to RSA and the 500-mt set-aside for fixed gear fisheries occurring west of Cutler in Area 1A.

Classification

At this time, NMFS has not made a final determination that the FMP/amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared and NMFS has adopted a draft FSEIS for Amendment 1; a notice of availability was published on April 14, 2003 (68 FR 17903). The draft FSEIS describes the impacts of the proposed management program in detail. The overall conclusion is that the direct biological impacts of the management action on the Atlantic

herring resource will be beneficial in the long term, but are not likely to be significant. The proposed measures would maintain the existing procedures for establishing the allowed level of annual removals from the resource, and the process would incorporate updated scientific information as it becomes available.

Because herring is a primary prey species for seals, porpoises and some whales, protected species interactions with this fishery are likely. The proposed measures, however, include a limited access program that would control capitalization of the fleet, including growth of the midwater trawl sector, and a seasonal purse seine/fixed gear only area that should, at a minimum, not increase interactions with protected species beyond the status quo, and may have indirect positive benefits by imposing more controls on the fishery.

The proposed management measures that would be most likely to directly impact fishery-related businesses and communities are the proposed limited access program and the PS/FG. Both of these measures may affect access to the herring fishery for some vessel owners, and could have some socioeconomic impacts. These impacts are further described below in the IRFA summary.

Amendment 1 concludes that additional measures to minimize, mitigate or avoid impacts on Essential Fish Habitat (EFH) were not necessary, warranted, or practicable as the result of the proposed action.

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

This proposed rule contains new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control No. 0648-0202. Under the proposed limited access program, vessel owners would be required to submit to NMFS application materials to demonstrate their eligibility for a limited access permit. The proposed rule also modifies three existing reporting and recordkeeping reporting, recordkeeping, or other compliance requirements: (1) The VMS requirement for vessels fishing under limited access permits; (2) IVR reporting requirements for vessels fishing under the limited access permits; and (3) application materials for the RSA program. These requirements do not change the reporting burden for respondents, and simply modify existing collections approved by OMB under the Northeast

Region Permit Family of Forms (OMB Control No. 0648-0202).

The public reporting burden for the new requirements pertaining to the limited access program is estimated to average 0.75 hr per application, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (see **ADDRESSES**), and email to David_Rostker@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble and in Amendment 1. A copy of the IRFA can be obtained from the Council or NMFS (see **ADDRESSES**) or via the Internet at <http://www.nero.noaa.gov>. A summary of the analysis follows:

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

During the 2004 fishing year, 86 vessels landed herring, 40 of which averaged more than 2,000 lb (907.2 kg) of herring per trip. There are no large entities, as defined in section 601 of the RFA, participating in this fishery. Therefore, there are no disproportionate economic impacts between large and small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Reporting Requirements

It is estimated that there will be 200 applicants for a limited access herring permit with an average processing time of 45 minutes per application for a total burden of 150 hours. Only 90 are expected to qualify and consequently renew their application each year. The renewal application is estimated to take 30 minutes on average to process for a total burden of 45 hours. Up to 10 applicants are expected to appeal the denial of their permit application. The appeals process is estimated to take 2 hours to complete, on average, with a total burden of 20 hours. The 3 year average total public cost burden for permit applications, appeals and renewals, at an hourly rate of \$15, is \$1,200.

New limited access herring vessels would be subject to the same replacement, upgrade, and permit history restrictions as other limited access vessels. Completion of a replacement or upgrade application requires an estimated 3 hours per response. It is estimated that no more than 20 of the 90 vessels possessing these limited access permits will request a vessel replacement or upgrade annually. This resultant burden would be up to 60 hours. Completion of a confirmation of permit history (CPH) application requires an estimated 30 minutes per response. It is estimated that no more than 10 of the 90 vessels possessing a limited access permit will request a CPH annually. The resultant burden would be up to 5 hours. At an hourly rate of \$15/hour, the total public cost burden for replacement/upgrade and CPH applications is \$975.

Other Compliance Requirements

The proposed PS/FG area could impose compliance costs on the owners of vessels that currently use midwater trawl gear. Some vessel owners may decide that it is essential to their fishing operation to continue to operate within Area 1A during the June-September period, and in such cases these vessel owners would need to re-rig their vessels to use purse seine gear. The costs of re-rigging are estimated in Amendment 1 to range from \$300,000 to \$500,000, per vessel.

Economic Impacts of the Proposed Action Compared to Significant Non-selected Alternatives

The Proposed Action management measures that are most likely to directly impact fishery-related businesses and

communities are the proposed limited access program, the PS/FG area, the open access incidental catch permit, and the vessel size upgrade restrictions.

Limited Access Program

The FSEIS estimates the numbers of vessels that would qualify for limited access permits under the different alternatives. There were six alternatives in addition to the proposed action and Alternative 1 (No Action). The alternatives distinguish between limited access directed fishery permits, that have no associated possession restrictions, and limited access incidental catch permits, that would have associated limits on the amount of herring that could be possessed. A combination of dealer and logbook data were used to estimate how many vessels would qualify under each of the proposed limited access alternatives. The FSEIS developed estimates for all the alternatives of the number of qualifying vessels, as well as the number of active vessels that would qualify. Active vessels were defined as those vessels that averaged more than 1 mt of herring per trip from 2002–2004. The analysis of active qualifiers was conducted presuming that these vessels would be most likely to participate in the fishery after the establishment of a limited access program. The FSEIS noted that the estimates of qualifying vessels are minimum estimates, as vessel owners may produce additional records demonstrating eligibility during the application process.

Under the Proposed Action, 31 vessels (28 active) would qualify for limited access directed fishery permits to fish in all management areas, and 3 additional vessels (1 active) would qualify for limited access directed fishery permits to fish in Areas 2/3 only, resulting in 34 vessels qualified for directed fishery permits. Another 56 vessels would qualify for limited access incidental catch permits with a 25–mt possession limit, resulting in a total of 90 vessels qualifying for various types of limited access permits.

Under Alternative 2, 36 vessels (31 active) would qualify for limited access directed fishery permits to fish in all management areas, and 10 additional vessels (4 active) would qualify for limited access directed fishery permits to fish in Areas 2/3 only, resulting in 46 (35 active) vessels qualified for directed fishery permits. Another 37 vessels (1 active) would qualify for limited access incidental catch permits.

The eligibility criteria for the limited access directed fishery permit for all management areas in Alternative 2 would have required a vessel to

currently possess a herring permit and have landed at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003. To qualify for a limited access directed fishery permit for Areas 2/3, a vessel would have been required to currently possess a herring permit and meet one of the following two criteria: (1) Landings of 100 mt of herring in any consecutive 12 months between September 16, 1993, and September 15, 1999; or (2) landings of 250 mt of herring in any consecutive 12 months between September 16, 1999, and September 15, 2001. To qualify for a limited access incidental catch permit (possession limit of 55,000 lb or 25 mt), the vessel would have been required to currently possess a permit for squid, mackerel, butterfish, and/or whiting and have landed at least 55,000 lb (25 mt) of herring in any calendar year between January 1, 1988, and December 31, 2002.

Under Alternative 3, 57 vessels (38 active) would qualify for limited access directed fishery permits to fish in all management areas. There were no additional vessels that would qualify for the limited access directed fishery permit to fish in Areas 2/3 only. Another 3 vessels (none active) would qualify for the limited access incidental catch permit (possession limit of 55,000 lb or 25 mt).

The eligibility criteria for the limited access directed fishery permit for all management areas in Alternative 3 would have required a vessel to currently possess a herring permit and have landed at least 100 mt of herring in any one calendar year between January 1, 1988, and December 31, 2003. For Areas 2/3, a moratorium on the issuance of vessel permits would have been established on the date Amendment 1 measures were implemented. Under the moratorium, a vessel would have been deemed eligible for a directed fishery permit for Area 2/3 if it possessed a herring permit (Category 1 or 2) on or before September 18, 2003, and had landed at least 1 pound of fish in any New England or Mid-Atlantic fishery prior to September 18, 2003. Alternative 3 would have established a controlled access program for Area 2/3 that would be implemented when landings reached 75 percent of the TAC specified for either of the management areas. Once that trigger was reached, a more restrictive limited access program would be implemented at the start of the next fishing year that would require a vessel to currently possess a herring permit and have landed at least 250 mt of herring in any one calendar year between January 1, 1988, and December 31, 2003. To

qualify for a limited access incidental catch permit (possession limit of 55,000 lb or 25 mt), the vessel would have been required to currently possess a permit to fish for squid, mackerel, butterfish, and/or whiting and have landed at least 100 mt of herring between January 1, 1988, and December 31, 2002.

Under Alternative 4, 38 vessels (31 active) would qualify for limited access directed fishery permits to fish in all management areas, and 7 additional vessels (2 active) would qualify for limited access directed fishery permits to fish in Areas 2/3 only (after the trigger was reached). Another 14 vessels (4 active) would qualify for limited access incidental catch permits.

The eligibility criteria for the limited access directed fishery permit for all areas in Alternative 4 would have required that a vessel to currently possess a herring permit and have landed at least 500 mt of herring in any one calendar year between January 1, 1988, and December 31, 2003. Areas 2/3 would be subject to the same moratorium on permits and subsequent controlled access program as outlined in Alternative 3. The incidental catch permit requirements and limits under this alternative are also identical to those under Alternative 3.

Under Alternative 5, 29 vessels (25 active) would qualify for limited access directed fishery permits to fish in all management areas, and 13 (6 active) additional vessels would qualify for limited access directed fishery permits to fish in Areas 2/3 only. Another 38 vessels (11 active) would qualify for limited access incidental catch permits.

The eligibility criteria for the limited access directed fishery permit for all management areas in Alternative 5 would have required that a vessel must currently possess a herring permit and meet one of the following two criteria: (1) Demonstrated landings of 500 mt of herring in any consecutive 12 months between September 16, 1993, and September 15, 1999; or (2) demonstrated landings of 500 mt of herring in any consecutive 12 months between September 16, 1999, and September 15, 2001. To qualify for a limited access directed fishery permit for Areas 2/3, a vessel would have been required to currently possess a herring permit and meet one of the following two criteria: (1) Demonstrated landings of 100 mt of herring in any consecutive 12 months between September 16, 1993, and September 15, 1999; or (2) demonstrated landings of 250 mt of herring in any consecutive 12 months between September 16, 1999, and September 15, 2001. This alternative would establish an additional Area 1A Historic Inshore

Priority Permit for vessels that met one of the following two criteria: (1) Possession of a limited access directed fishery permit, and demonstrated landings of at least 4,000 mt of herring from Area 1A in any consecutive 12 months between September 16, 1993, and September 15, 1999; or (2) possession of a limited access directed fishery permit, and demonstrated landings of at least 2,000 mt of herring from Area 1A in any consecutive 12 months between September 16, 1999, and December 31, 2001. When 50 percent of the Area 1A TAC was projected to have been caught in any fishing year, access to Area 1A would have been limited to vessels that possess an Historic Inshore Priority Permit for the remainder of the fishing year (or until the remainder of the Area 1A TAC is caught). The incidental catch permit requirements and limits under this alternative are identical to those under Alternative 2.

Under Alternative 6, 32 vessels (21 active) would qualify for limited access directed fishery permits to fish in all management areas, and 13 additional vessels (12 active) would qualify for limited access directed fishery permits to fish in Areas 2/3 only. Another 39 vessels (12 active) would qualify for limited access incidental catch permits (possession limit of 55,000 lb or 25 mt).

The eligibility criteria for the limited access directed fishery permit for all management areas in Alternative 6 would have required a vessel to currently possess a herring permit and have landed at least 250 mt of herring in any one calendar year between January 1, 1988, and September 16, 1999. To qualify for a limited access directed fishery permit for Areas 2/3, a vessel would have been required to currently possess a herring permit and have landed at least 250 mt of herring in any one calendar year between January 1, 1988, and December 31, 2003. The incidental catch permit requirements are identical to those specified under Alternative 3.

Under Alternative 7, 23 vessels (18 active) would qualify for limited access directed fishery permits to fish in all management areas, and 22 additional vessels (15 active) would qualify for limited access directed fishery permits to fish in Areas 2/3 only. Another 37 vessels (13 active) would qualify for limited access incidental catch permits (possession limit of 33,000 lb or 15 mt).

The eligibility criteria for the limited access directed fishery permit for all management areas in Alternative 7 would have required a vessel to currently possess a herring permit and have landed at least 500 mt of herring

in any one calendar year between January 1, 1988, and September 16, 1999. To qualify for a limited access directed fishery permit for Areas 2/3, a vessel would have been required to currently possess a herring permit and have landed at least 250 mt of herring in any one calendar year between January 1, 1988, and December 31, 2003. To qualify for a limited access incidental catch permit, the vessel would have been required to currently possess a permit to fish for squid, mackerel, butterfish, and/or whiting and have landed at least 15 mt (33,000 lb) of herring in any calendar year between January 1, 1993, and December 31, 2002.

The FSEIS analyzed active qualifiers and used two measures to estimate how much herring those qualifiers might land in the future under the various management alternatives. The first measure multiplies a vessel's highest number of days-at-sea per year observed from 2002 through 2004 by their average metric tons landed per day-at-sea over the same time period. The sum of the products are reported to provide a first level estimation of what the group of vessels that qualify under a given alternative are likely to land. The second measure is similar to the first except that days-at-sea are multiplied by the highest yearly average metric tons per day-at-sea observed over the 2002 to 2004 time period. The sum of these vessel-level products represents a second-level estimation of potential catch by alternative. This second measure provides an estimate of potential landings under the assumption that vessels produce at their highest average catch rates and at their highest level of effort observed in recent years. These two potential catch measures are used to evaluate future profits under the various alternatives.

One way to consider the economic impacts of the alternatives is to see how those alternatives might affect landings, because landings potentially relate to profits, depending on the the TACs that are established. For 28 active vessels that qualify for all areas under the proposed alternative, the potential catch of the limited access fleet ranges from 161,030 to 198,710 mt. The additional active vessel that qualifies for Area 2/3 increases the potential catch slightly, though the specific amount of the increase cannot be provided in the document due to data confidentiality restrictions.

The Proposed Action ranks in the middle of the alternatives relative to the potential catch in Area 1A. Four alternatives (no action and Alternatives 2, 3, and 4) would result in higher potential catch, and three alternatives

(Alternatives 5, 6, and 7) would result in lower potential catch from the area. When the catch from all of the management areas is evaluated, there are six alternatives (no action, and Alternatives 2, 3, 4, 6, and 7) that result in potential catch higher than the Proposed Action. The highest potential catch is associated with the no-action alternative, at 170,087 to 209,368 mt. Alternative 5 has a lower potential catch than the Proposed Action.

In terms of number of vessels, the Proposed Action qualifies the fewest vessels into the limited access directed fishery (34 vessels). This result differs for the two types of limited access directed fishery permits. Four alternatives would qualify more vessels than the Proposed Action to fish in any of the management areas, while two would qualify fewer vessels. The fact that the Proposed Action is the most restrictive in terms of the total number of vessels that qualify for the directed fishery is due to the nature of the Area 2/3 qualification criteria. The Area 2/3 criteria specified in the Proposed Action are the most restrictive of the alternatives considered due to the selection of 1993 as a start date for the qualification period (versus 1988). Only three additional vessels would qualify for limited access directed fishery permits in Areas 2/3.

The majority of vessels that would not qualify for a limited access permit under the Proposed Action have not been active in the herring fishery in recent years, and in some cases, for many years. Some have switched to other fisheries, including those targeting Atlantic mackerel and squid. The limited access incidental catch permit would likely accommodate the catch of herring on these vessels and allow them to continue normal operations in other fisheries. This should help to mitigate the impacts of not qualifying for a directed fishery permit in Areas 2/3. The Proposed Alternative is the least restrictive alternative for the limited access incidental catch permit that was considered in this amendment.

Purse Seine/Fixed Gear Only

The impact of this measure was evaluated by considering how many of the vessels that would qualify for the limited access directed fishery permit to fish in all management areas utilize midwater trawl gear. The analysis showed that a total of 22 vessels used midwater trawl gear (6 used single trawls and 16 used pair trawls) and would be affected by the measure that would establish Area 1A from June through September as a PS/FG area. Amendment 1 noted that landings data

show that 4 of the midwater trawl vessels and 13 of the pair trawl vessels actively fished in Area 1A during the June through September period. To compensate for potential losses from not being able to fish in the PS/FG area, the excluded vessels could fish in other management areas or be re-rigged to utilize purse seine gear in Area 1A during the time of the restriction.

Four of the alternatives, in addition to the proposed action, included a measure to establish a PS/FG area. Under alternatives 3, 4, and 6, vessels using single and paired midwater trawls would have been prohibited from fishing for Atlantic herring in Area 1A east of 69° W. long. from June 1 - September 30 of each fishing year. Under the Proposed Action and Alternative 7, the purse seine/fixed gear only area would be for all of Area 1A, from June 1 - September 30 of each fishing year.

In terms of numbers of vessels, Alternative 3 would result in the greatest number of vessels excluded from the respective gear restricted area. However, while the Proposed Action and Alternative 7 impact fewer vessels, the impacts of the PS/FG measure are the highest in these alternatives because the gear restricted area is much larger for these alternatives (all of Area 1A versus 1A east of 69° W. long). This means that a greater share of the midwater trawl vessels' landings from Area 1A could be lost. This impact is especially important during the summer months, when demand for herring to be used as lobster bait is at its peak.

Of all the alternatives, the gear restriction in the Proposed Action would likely result in the greatest economic loss when the impacts of this measure is considered independent of the other measures and other alternatives in the document. This is the case even though Alternative 7 includes the identical management measure. The reason for this is that more midwater trawl vessels qualify for limited access directed fishery permits in Area 1 under the Proposed Action than under Alternative 7, and consequently, more vessels may incur losses due to the gear restricted area. However, when compared to Alternative 7 and considered in the context of the limited access program, the overall impacts of this measure are mitigated to some extent. There are midwater trawl vessels that qualify for limited access under the Proposed Action that would be negatively impacted by the gear restriction. However, under Alternative 7 they would be restricted entirely from Area 1A because they would not qualify under the limited access program,

resulting in a comparatively greater negative impact. These vessels are less impacted by the Proposed Action even though it appears that the impacts from the gear restricted area are greater. This is because they can fish in Area 1 from October to May under the Proposed Action when they would not have qualified at all for the directed fishery in Area 1 under other alternatives (Alternative 7, for example).

During 2002 through 2004, the affected midwater trawl vessels landed an average of 12 million lb of herring (5,472 mt, worth about \$892,000), and the pair trawl vessels landed 47 million lb of herring (21,298 mt, worth about \$3,472,000) per season (June through September) from Area 1A. These landings represent 68 percent and 60 percent of the total Area 1A landings by these single and paired midwater trawl vessels, respectively. The midwater trawl vessel landings ranged from 586,429 lb to 7.4 million lb (266 to 3,372 mt), and the pair trawl vessel landings ranged from 190,416 lb to 7.2 million lb (90 to 3,263 mt). To compensate for potential losses, midwater trawl vessels would have the choice to either seek alternative fishing grounds or fisheries and/or to re-rig to purse seine in Area 1A during the time of the restriction. All of the above choices have financial costs.

Open Access Incidental Catch Permit

In addition to the Proposed Action, Amendment 1 considered another alternative for the open access incidental catch permit that would have allowed vessels that did not qualify for a limited access permit to obtain an open access incidental catch permit, which would restrict the vessel to a possession limit of 11,000 lb (5 mt) of herring per trip. This alternative would have provided a small added economic benefit to those vessels that received such a permit.

Vessel Upgrade Restrictions

With respect to vessel upgrade restrictions, Amendment 1 included two alternatives to the Proposed Action. One, no action, would have allowed herring vessels to increase in size up to 165 ft (50.3 m) in length overall, 750 GRT (680.4 mt), and 3,000 horsepower. Alternative 3 would have allowed a vessel to increase its HP only once, whether through refitting or replacement. Such an increase could not have exceeded 50 percent of the HP of the vessel's baseline specifications, as applicable. The vessel's length, GRT, and NT could have been increased only once, whether through refitting or replacement. Any increase in any of

these three specifications of vessel size could not exceed 25 percent of the vessel's baseline specifications, as applicable.

For some fishery participants (particularly those if any with immediate plans to upgrade vessels), the proposed vessel upgrade restrictions may constrain future business opportunities. However, the restrictions included in this measure will reduce the likelihood of further capitalization of the industry. Introducing this measure is also likely to help sustain the viability of a diverse fleet.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 18, 2006.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition of "Category 1 herring vessel" is removed, the definitions of "Atlantic herring carrier" and "Midwater trawl" are revised, and the definition of "Limited access herring vessel" is added to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic herring carrier means a fishing vessel that is issued a herring permit, and that does not have any gear on board capable of catching or processing herring, and that has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel.

* * * * *

Limited access herring vessel means a vessel that has been issued a valid permit for any type of limited access herring vessel permit described in § 648.4.

* * * * *

Midwater trawl gear means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The gear may not include discs, bobbins, or rollers on its footrope, or chafing gear as part of the net.

* * * * *

3. In § 648.4, paragraphs (a)(10) and (c)(2)(vi) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(10) *Atlantic herring vessels*—(i)

Except as provided herein, any vessel of the United States must have been issued and have on board a valid Atlantic herring permit to fish for, possess or land Atlantic herring in or from the EEZ. This requirement does not apply to the following:

(A) A vessel that possesses herring solely for its use as bait, providing the vessel does not use or have on board purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on any trip in which herring is fished for, possessed, or landed, and does not transfer, sell, trade, or barter such herring;

(B) A skiff or other similar craft used exclusively to deploy the net in a purse seine operation during a fishing trip of a vessel that is duly permitted under this part; or

(C) At-sea processors that do not harvest fish, provided that at-sea processor vessels are issued the at-sea processor permit specified under § 648.6 (a)(2).

(ii) *Atlantic herring carrier vessels*. An Atlantic herring carrier vessel must have been issued and have on board a herring permit and a letter of authorization to transport Atlantic herring caught by another permitted fishing vessel. The letter of authorization exempts such a vessel from the VMS and IVR vessel reporting requirements as specified in subpart K of this part, except as otherwise required by this part. An Atlantic herring carrier vessel must request and obtain a letter of authorization from the Regional Administrator, and must report all herring carried from each vessel on a given trip in its Fishing Vessel Trip Report. The Fishing Vessel Trip Report must include the vessel name. Carrier vessels under a letter of authorization may not possess, transfer, or land any species except for Atlantic herring; may not conduct fishing activities or possess any fishing gear on board the vessel; must be used exclusively as an Atlantic herring carrier vessel; and must carry observers if required by NMFS. There is a minimum enrollment period of 7 calendar days.

(iii) *Vessel size limitation*. A vessel of the United States is eligible for and may be issued an Atlantic herring permit to fish for, possess, or land Atlantic herring in or from the EEZ, except for any vessel that is ≥ 165 ft (50.3 m) in length overall (LOA), or > 750 GRT (680.4 mt), or the vessel's total main

propulsion machinery is $> 3,000$ horsepower. Vessels that exceed the size or horsepower restrictions are eligible to be issued an at-sea processing permit specified under § 648.6 (a)(2).

(iv) *Limited access herring permits*.

(A) A vessel of the United States that fishes for, possesses, or lands more than 6,600 lb (3 mt) of herring, except vessels that fish exclusively in state waters for herring, must have been issued and carry on board one of the limited access herring permits described in paragraphs (a)(10)(iv)(A)(1) – (3) of this section, including both vessels engaged in pair trawl operations.

(1) *All Areas Limited Access Herring Permit*. A vessel may fish for, possess, and land unlimited amounts of herring from all herring areas, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(2) *Areas 2 and 3 Limited Access Herring Permit*. A vessel may fish for, possess, and land unlimited amounts of herring from herring Areas 2 and 3, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(3) *Limited Access Incidental Catch Herring Permit*. (i) A vessel that does not qualify for either of the permits specified in paragraphs (a)(10)(iv)(A)(1) and (2) of this section may fish for, possess, and land up to 55,000 lb (25 mt) of herring from any herring area, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(ii) A vessel that does not qualify for an All Areas Limited Access Herring Permit specified in paragraphs (a)(10)(iv)(A)(1) of this section, but qualifies for the Areas 2 and 3 Limited Access Herring Permit specified in paragraph (a)(10)(iv)(A)(2) of this section, may fish for, possess, and land up to 55,000 lb (25 mt) of herring from Area 1, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(B) *Eligibility for All Areas and Areas 2 and 3 Limited Access Herring Permits, and Confirmation of Permit History (CPH)*. A vessel is eligible for and may be issued either an All Areas or Areas 2 and 3 Limited Access Herring Permit if it meets the permit history criteria in paragraph (a)(10)(iv)(B)(1) of this section and the relevant landing requirements in paragraphs (a)(10)(iv)(B)(2) and (3) of this section.

(1) *Permit history criteria for All Areas and Areas 2 and 3 Permits*. (i) The vessel must have been issued a Federal herring permit (Category 1 or 2) that was valid as of November 10, 2005; or

(ii) The vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring fishing and landings history.

(2) *Landings criteria for the All Areas Limited Access Herring Permit*. (i) The vessel must have landed and sold at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by NMFS records or documented through dealer receipts. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph

(a)(10)(iv)(B)(2)(iii) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(1)(ii) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(ii) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction, or purchase contract*. An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(2)(i) of this section until December 31, 2004.

(iii) *Landings criteria for vessels using landings from pair trawl operations*. To qualify for a limited access permit using landings from pair trawl operations, the owners of the vessels engaged in that operation must agree on how to divide such landings between the two vessels and apply for the permit jointly, as supported by the required NMFS dealer reports or signed dealer receipts.

(3) *Landings criteria for the Areas 2 and 3 Limited Access Herring Permit*. (i) The vessel must have landed and sold at least 250 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by NMFS records or documented through dealer receipts. The owners of vessels

that fished in pair trawl operations may provide landings information as specified in paragraph

(a)(10)(iv)(B)(2)(iii) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(1)(ii) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(ii) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(3)(i) of this section until December 31, 2004.

(iii) *Landings criteria for vessels using landings from pair trawl operations.* See paragraph (a)(10)(iv)(B)(2)(iii) of this section.

(4) *CPH.* A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(B) that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(1)(ii) of this section and consistent with (a)(10)(iv)(N) of this section.

(C) *Eligibility for Incidental Catch Limited Access Herring Permit, and CPH.* A vessel is eligible for and may be issued an Incidental Limited Access Herring Permit if it meets the permit history criteria specified in paragraph (a)(10)(iv)(C)(1) of this section and the landings criteria in paragraph (a)(10)(iv)(C)(2) of this section.

(1) *Permit history criteria.* (i) The vessel must have been issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, *Loligo* or *Illex* squid, or butterfish that was valid as of November 10, 2005; or

(ii) The vessel meets the vessel replacement requirements criteria specified in paragraph

(a)(10)(iv)(B)(1)(ii) of this section.

(2) *Landings criteria for Incidental Catch Limited Access Herring Permit.* (i) The vessel must have landed and sold at least 15 mt of herring in any calendar year between January 1, 1988, and December 31, 2003, as verified by NMFS records or documented through dealer receipts. The owners of vessels that

fished in pair trawl operations may provide landings information as specified in paragraph

(a)(10)(iv)(B)(2)(iii) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(1)(ii) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(ii) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(C)(2)(i) of this section until December 31, 2004.

(3) *CPH.* A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(C) that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(1)(ii) of this section and consistent with (a)(10)(iv)(N) of this section.

(D) *Application/renewal restrictions.*

(1) No one may apply for an initial limited access Atlantic herring permit or a CPH under paragraph (a)(10)(iv)(L) of this section, more than 12 months after the effective date of the final regulations establishing these permits, or after the abandonment or voluntary relinquishment of permit history as specified in paragraph (a)(10)(iv)(M) of this section.

(2) An applicant who submits written proof that an eligible vessel was sold, with the seller retaining the herring history through a written agreement signed by both parties to the sale or transfer, may not utilize such history if the vessel's history was used to qualify another vessel for another limited access permit.

(3) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section.

(E) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(F) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(H) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(I) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(J) *Vessel baseline specifications.* See paragraph (a)(1)(i)(H) of this section. If a herring CPH is initially issued, the vessel that provided the CPH eligibility would establish the size baseline against which future vessel size limitations would be evaluated.

(K) *Limited access permit restrictions.* [Reserved].

(L) *Confirmation of Permit History.* See paragraph (a)(1)(i)(J) of this section.

(M) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(N) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section. Furthermore, vessel owners who sold vessels with limited access permits and retained the herring history before applying for the initial limited access herring permit may not use the herring history to qualify a vessel for the initial limited access herring permit, if the issuance of such permit would violate the restrictions on permit splitting.

(O) *Appeal of denial of permit.—(1) Eligibility.* Any applicant eligible to apply for a limited access herring permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on the grounds that the information used by the Regional Administrator was based on incorrect data, must be in writing, and must state the grounds for the appeal.

(2) *Appeal review.* The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(3) *Status of vessels pending appeal.* A vessel denied a limited access herring permit may fish under the limited access herring permit, provided that the denial has been appealed, the appeal is

pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator shall issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(v) *Open access herring permit.* A vessel that has not been issued a limited access Atlantic herring permit may obtain an open access incidental Atlantic herring permit to possess up to 6,600 lb (3 mt) of herring per trip, and is limited to one landing per calendar day.

* * * * *

(c) * * *

(2) * * *

(vi) Prior to issuance of a limited access Atlantic herring permit, a VMS unit provided by a NMFS-approved vendor must be installed and NMFS must receive a notice from the vendor that the VMS is activated.

* * * * *

4. In § 648.6, paragraph (a)(2) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(2) (i) *At-sea mackerel processors.* Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess, and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

(ii) *Atlantic herring processing permit.* A vessel of the United States, including a vessel that is > 165 ft (50.3 m) LOA, or > 750 GRT (680.4 mt), is eligible to obtain an Atlantic herring processing permit to receive and process Atlantic herring subject to the U.S. at-sea processing (USAP) allocation published by the Regional Administrator pursuant to § 648.200. Such a vessel may not receive or process Atlantic herring caught in or from the EEZ unless the vessel has been issued and has on board an Atlantic herring processing permit.

* * * * *

5. In § 648.7, paragraph (b)(2)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) *IVR system reports*—(i) *Atlantic herring owners or operators.* The owner or operator of a vessel issued a permit to fish for Atlantic herring must report catches (retained and discarded) of herring each week to an IVR system, as specified in paragraphs (A) and (B) of this paragraph. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, week in which species are caught, pounds retained, pounds discarded, management area fished, and pounds of herring caught in each management area for the week. The IVR reporting week begins on Sunday at 0001 hrs (12:01 AM) local time and ends Saturday at 2400 hrs (12:00 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern Time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(A) The owner or operator of any vessel issued a limited access herring permit must submit an Atlantic herring catch report via the IVR system each week, regardless of how much herring is caught (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) An owner or operator of any vessel issued an open access permit for Atlantic herring that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

* * * * *

6. In § 648.9, paragraph (c)(2)(i)(C) is revised to read as follows:

§ 648.9 VMS requirements.

(c) * * *

(2) * * *

(i) * * *

(C) The vessel has been issued a limited access herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such vessels must activate the VMS unit and enter the appropriate activity code prior to leaving port.

* * * * *

7. In § 648.13, paragraph (f) is revised to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(f) *Atlantic herring.* With the exception of transfers made to an at-sea processing vessel issued the required permit under § 648.6(a)(2), any person or vessel, including any vessel issued an Atlantic herring permit, is prohibited from transferring, receiving, or attempting to transfer or receive any Atlantic herring taken from the EEZ, except as authorized below:

(1) *Personal use as bait.* (i) The operator of a vessel that is not issued an Atlantic herring permit may purchase and/or receive Atlantic herring at sea for personal use as bait, provided the vessel receiving the transfer does not have purse seine, midwater trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board;

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to another vessel for personal use as bait:

(A) Provided the transferring vessel is issued a letter of authorization to transfer fish, and reports all transfers on the Fishing Vessel Trip Report. The operator of the transferring vessel must show the letter of authorization to a representative of the vessel receiving fish or any authorized officer upon request; and

(B) Provided that the transfer of herring at sea to another vessel for personal use as bait does not exceed the possession limit specified for the transferring vessel in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred per trip and/or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to fishing as specified in § 648.201.

(2) *Atlantic herring carrier vessels.* (i) A vessel issued an Atlantic herring permit may operate as a herring carrier vessel and receive herring provided it is issued a carrier vessel letter of authorization and complies with the terms of that authorization, as specified in § 648.4(a)(10)(ii).

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to an authorized herring carrier vessel up to the possession limit specified in § 648.204, except no more than 2,000 lb (907.2 kg) of herring may be caught or transferred per trip and/or per calendar day if the vessel is in, or the fish were harvested from, an area closed to directed fishing as specified in § 648.201.

(3) If a herring management area has been closed to fishing as specified in § 648.201, a vessel may not transfer

Atlantic herring harvested from or in the area to an IWP or Joint Venture vessel.

(4) If the amount of herring transshipped equals the amount of the BT specified pursuant to § 648.200, a vessel may not transfer Atlantic herring to a Canadian transshipment vessel permitted in accordance with Public Law 104-297.

(5) *Transfer to at-sea processors.* A vessel issued an Atlantic herring permit may transfer herring to a vessel issued an at-sea processing permit specified in § 648.6(a)(2), up to the possession limit specified in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred per trip and/or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to directed fishing as specified in § 648.201.

* * * * *

8. In § 648.14, paragraph (bb)(8) is removed and reserved; paragraphs (a)(166)-(169), (bb) (7), (bb)(10)-(12), (bb)(14)-(18), (bb)(20), and (bb)(24)-(26) are revised; and paragraphs (bb)(19), and (bb)(21)-(23) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(166) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies, or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) for, or intended for, human consumption landed by a limited access vessel as defined in § 648.2.

(167) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a limited access herring vessel, and to retain such catch for at least 12 hr, with the vessel that landed the haddock clearly identified by name.

(168) Sell, purchase, receive, trade, barter, or transfer, or attempt to sell, purchase, receive, trade, barter, or transfer to another person any haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) separated out from a herring catch offloaded from a limited access herring vessel as defined in § 648.2.

(169) While operating an at-sea herring processor, fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a limited access herring

vessel, and to retain such catch for at least 12 hr after landing, with the vessel that offloaded the haddock clearly identified by name.

* * * * *

(bb) * * *

(7) Possess, transfer, receive, or sell, or attempt to transfer, receive, or sell ≤ 2,000 lb (907.2 kg) of Atlantic herring per trip, or land, or attempt to land ≤ 2,000 lb (907.2 kg) of Atlantic herring per day in or from a management area closed pursuant to § 648.201(a), if the vessel has been issued a valid Atlantic herring permit.

(8) Reserved

* * * * *

(10) Transit an area of the EEZ that is subject to a closure or other restraints on fishing to fishing for Atlantic herring pursuant to § 648.201(a) with > 2,000 lb (907.2 kg) of herring on board, unless all fishing gear is stowed as specified by § 648.23(b).

(11) Catch, take, or harvest Atlantic herring in or from the EEZ with a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii).

(12) Process Atlantic herring caught in or from the EEZ in excess of the specification of USAP with a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii).

* * * * *

(14) Catch, take, or harvest Atlantic herring in or from the EEZ for roe in excess of any allowed limit that may be established pursuant to § 648.206(b)(24).

(15) Catch, take, or harvest Atlantic herring in or from the EEZ, unless equipped with an operable VMS unit if the vessel is a limited access herring vessel as defined in § 648.2.

(16) Receive Atlantic herring in or from the EEZ solely for transport, unless issued a letter of authorization from the Regional Administrator.

(17) Fail to comply with any of the requirements of a letter of authorization from the Regional Administrator.

(18) If the vessel is a limited access herring vessel and is fishing for herring, fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS at least 6 hr prior to landing or crossing the VMS demarcation line on its return trip to port.

(19) If the vessel is a limited access herring vessel and is fishing for herring in the GOM/GB Exemption Area specified in § 648.80(a)(17), fail to notify NMFS at least 72 hours prior to departing on a trip for the purposes of observer deployment.

(20) Possess, land, transfer, receive, sell, purchase, trade, or barter, or attempt to transfer, receive, purchase,

trade, or barter, or sell more than 2,000 lb (907 kg) of Atlantic herring per trip taken from the GOM/GB Herring Exemption Area defined in § 648.86(a)(3)(ii)(A)(1) following the effective date of the determination that the haddock cap has been reached pursuant to § 648.86(a)(3), unless all of the herring possessed or landed by a vessel was caught outside of that area.

(21) If fishing with midwater trawl or a purse seine gear, fail to comply with the requirements of § 648.80(d) and (e).

(22) If a limited access herring vessel, discard haddock at sea that has been brought on deck or pumped into the hold.

(23) Transit the GOM/GB Herring Exemption Area when that area is limited to the 2,000-lb (907.2-kg) limit specified in § 648.86(a)(3)(ii)(A)(1) with more than 2,000 lb (907.2 kg) of herring, unless all the herring on board was caught outside of that area and all fishing gear is stowed and not available for immediate use as required by § 648.23(b).

(24) Fish for herring in Area 1A between June 1 and September 30 with any gear other than purse seines or fixed gear.

(25) Transit Area 1A between June 1 and September 30 with more than 2,000 lb (907.2 kg) of herring on board with mid water trawl gear not properly stowed as per § 648.23(b).

(26) Possess or land more herring than is allowed for by the vessel's Atlantic herring permit.

* * * * *

9. In § 648.15, paragraphs (d)(1) and (e) are revised to read as follows:

§ 648.15 Facilitation of enforcement.

* * * * *

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that receive herring from limited access herring vessels, and that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from a Category 1 herring vessel. Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hr for dealers and processors on land, and for 12 hr after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Law enforcement

officials must be given access to inspect the haddock.

* * * * *

(e) *Retention of haddock by limited access herring vessels.* All limited access herring vessels must retain all the haddock that they catch.

10. In § 648.80, paragraphs (d)(4) through (6) and (e)(4) through (6) are revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(4) The vessel does not fish for, possess or land NE multispecies, except that limited access herring vessels may possess and land haddock or other regulated species consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated NE multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated NE multispecies that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Limited access herring vessels may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, limited access herring vessels must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All limited access herring vessels on a declared herring trip must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

(e) * * *

(4) The vessel does not fish for, possess or land NE multispecies, except that limited access herring vessels, as

defined in § 648.2, may possess and land haddock or other regulated species consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated species that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Limited access herring vessels may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, limited access herring vessels must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All limited access herring vessels must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

11. In § 648.83, paragraph (b)(4) is revised to read as follows:

§ 648.83 Multispecies minimum fish sizes.

* * * * *

(b) * * *

(4) Limited access herring vessels may possess and land haddock and other regulated species that are smaller than the minimum size specified under § 648.83, consistent with the bycatch caps specified in §§ 648.86(a)(3) and 648.86 (k). Such fish may not be sold for human consumption.

* * * * *

12. In § 648.85, paragraph (d) is revised to read as follows:

§ 648.85 Special management programs.

* * * * *

(d) *Incidental catch allowance for limited access herring vessels.* The incidental catch allowance for limited

access herring vessels is defined as 0.2 percent of the combined target TAC for Gulf of Maine haddock and Georges Bank haddock (U.S. landings only) specified according to § 648.90(a) for a particular multispecies fishing year.

13. In § 648.86, paragraphs (a)(3), and (k) are revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(a) * * *

(3)(i) *Incidental catch allowance for limited access herring vessels.* Limited access herring vessels may possess and land haddock on all trips that do not use a NE multispecies DAS, subject to the requirements specified in § 648.80(d) and (e).

(ii) *Haddock Incidental Catch Cap.*

(A)(1) When the Regional Administrator has determined that the incidental catch allowance in § 648.85(d) has been caught, all vessels issued an Atlantic herring permit or fishing in the Federal portion of the GOM/GB Herring Exemption Area, defined below, are prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from the GOM/GB Herring Exemption Area, unless all herring possessed and landed by the vessel were caught outside the GOM/GB Herring Exemption Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the Exemption Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for all limited access herring vessels, regardless of where they were fishing. In making this determination, the Regional Administrator shall use haddock landings observed by NMFS-approved observers and law enforcement officials, and reports of haddock catch submitted by vessels and dealers pursuant to the reporting requirements of this part. The GOM/GB Herring Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GB/GOM HERRING EXEMPTION AREA

Point	N. lat.	W. long.
1	41° 33.05'	70° 00'
2	41° 20'	70° 00'
3	41° 20'	69° 50'
4	41° 10'	69° 50'
5	41° 10'	69° 30'
6	41° 00'	69° 30'
7	41° 00'	68° 50'
8	39° 50'	68° 50'
9	39° 50'	66° 40'
10	40° 30'	66° 40'
11	40° 30'	64° 44.34'
12	41° 50'	66° 51.94'
13	41° 50'	67° 40'
14	44° 00'	67° 40'
15	44° 00'	67° 50'
16	44° 10'	67° 50'
17	44° 27'	67° 59.18'
18	ME, NH, MA Coastlines	
19	41° 33.05'	70° 00'

(2) The haddock incidental catch cap specified is for the NE multispecies fishing year (May 1 April 30), which differs from the herring fishing year (January 1 December 31). If the haddock catch cap is attained by the limited access herring fishery, the 2,000-lb (907.2-kg) limit on herring possession and landings in the GOM/GB Herring Exemption Area will be in effect until the end of the NE multispecies fishing year. For example, the 2006 haddock catch cap would be specified for the period May 1, 2006 April 30, 2007, and the 2007 haddock catch cap would be specified for the period May 1, 2007 April 30, 2008. If the catch of haddock by limited access herring vessels reached the 2006 catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2007), the 2,000-lb (907.2-kg) limit on possession or landing herring in the GOM/GB Herring Exemption Area would extend through April 30, 2007, at which time the 2007 catch cap would go into effect.

* * * * *

(k) *Other regulated NE multispecies possession restrictions for limited access herring vessels.* Limited access herring vessels may possess and land up to 100 lb (45 kg) of other regulated NE multispecies on all trips that do not use a multispecies DAS, subject to the requirements specified in § 648.80(d) and (e). Such fish may not be sold for human consumption.

14. Subpart K is revised to read as follows:

Subpart K—Management Measures for the Atlantic Herring Fishery

- Sec.
648.200 Specifications.
648.201 Closures and TAC controls.

- 648.202 Season and area restrictions.
648.203 Gear restrictions.
648.204 Possession restrictions.
648.205 VMS requirements.
648.206 Framework provisions.
648.207 Herring research quota (RQ).

Subpart K—Management Measures for the Atlantic Herring Fishery

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVpt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), reserve (if any), and the amount to be set aside for the research quota (RQ from 0 to 3 percent of the TAC from any management area). The PDT and PRT shall also recommend the total allowable catch (TAC) for each management area and sub-area, including seasonal quotas as specified at § 648.201(f). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

(1) The PDT will meet with the Commission's PRT to review the status of the stock and the fishery and prepare a Stock Assessment and Fishery Evaluation (SAFE) report every 3 years. The Herring PDT will meet at least once during interim years to review the status of the stock relative to the overfishing definition if information is available to do so. When conducting a 3-year review and preparing a SAFE Report, the PDT/PRT will recommend to the Council/Commission any necessary adjustments to the specifications for the upcoming three years.

(2) If the Council determines, based on information provided by the PDT/PRT or other stock-related information, that the specifications should be adjusted during the 3-year time period, it can do so through the same process outlined in this section during one or both of the interim years.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial

and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) OY must be equal to or less than the allowable biological catch (ABC), as adjusted by subtracting an estimate of the expected Canadian New Brunswick fixed gear and GB herring catch.

(2) OY shall not exceed MSY, unless an OY that exceeds MSY in a specific year is consistent with a control rule that ensures the achievement of MSY and OY on a continuing basis.

(3) Factors to be considered in assigning an amount, if any, to the reserve shall include:

(i) Uncertainty and variability in the estimates of stock size and ABC;

(ii) Uncertainty in the estimates of Canadian harvest from the coastal stock complex;

(iii) The requirement to insure the availability of herring to provide controlled opportunities for vessels in other fisheries in the Mid-Atlantic and New England;

(iv) Excess U.S. harvesting capacity available to enter the herring fishery;

(v) Total world export potential by herring producer countries;

(vi) Total world import demand by herring consuming countries;

(vii) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(viii) Increased/decreased revenues to U.S. harvesters (with/without joint ventures);

(ix) Increased/decreased revenues to U.S. processors and exporters; and

(x) Increased/decreased U.S. processing productivity.

(4) Adjustments to TALFF, if any, will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications for a 3-year period. The

Council shall review these recommendations and, after considering public comment, shall recommend appropriate 3-year specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission, and shall publish notification in the **Federal Register** proposing 3-year specifications. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in paragraph (b) of this section.

(d) NMFS shall make a final determination concerning the specifications for Atlantic herring. Notification of the final specifications and responses to public comments shall be published in the **Federal Register**. If the final specification amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section. The previous year's specifications shall remain effective until they are revised through the specification process.

(e) *In-season adjustments.* (1) The specifications and TACs established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(2) If a total allowable catch reserve (TAC reserve) is specified for an area, NMFS may make any or all of that TAC reserve available to fishers after consulting with the Council. NMFS shall propose any release of the TAC reserve in the **Federal Register** and provide an opportunity for public comment. After considering any comments received, any release of the TAC reserve shall be announced through notification in the **Federal Register**.

(f) *Management areas.* The specifications process establishes TACs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(1) *Management Area 1 (Gulf of Maine):* All U.S. waters of the Gulf of Maine (GOM) north of a line extending

from the eastern shore of Monomoy Island at 42°53'14" N. lat., 67° 44'35" W. long., thence northerly along the Hague Line to the U.S.-Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

Point	N. lat.	W. long.
1	41°58'	70°00'
2	42°38'	70°00'
3	42°53'	69°40'
4	43°12'	69°00'
5	43°40'	68°00'
6	43°58'	67°22' (the U.S.-Canada Maritime Boundary).

(2) *Management Area 2 (South Coastal Area):* All waters west of 70° 00' W. long., south of 41°39' N. lat., to include state and Federal waters adjacent to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.

(3) *Management Area 3 (Georges Bank):* All U.S. waters east of 70°00' W. long. and southeast of the line that runs from a point at 70°00' W. long. and 41°39' N. lat., northeasterly to the Hague Line at 42°53'14" N. lat., 67°44'35" W. long.

§ 648.201 Closures and TAC controls.

(a) If NMFS determines that catch will reach 95 percent of the annual TAC allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A TAC allocated to the first seasonal period as set forth in paragraph (f) of this section, NMFS shall prohibit a vessel, beginning the date the catch is projected to reach 95 percent of the TAC, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip and/or >2,000 lb (907.2 kg) of Atlantic herring per day in such area pursuant to paragraph (e) of this section, except as provided in paragraphs (c) and (d) of this section. These limits shall be enforced based on a calendar day, without regard to the length of the trip.

(b) The percent of the TAC that triggers imposition of the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section may be adjusted through the specification process described in § 648.200. Any lowering of the percent of the TAC that triggers the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section must be accomplished through the framework adjustment or amendment processes.

(c) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with ≤ 2,000 lb (907.2 kg) of herring on board, providing such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(d) A vessel may land in an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, providing such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(e) NMFS shall implement fishing restrictions as specified in paragraph (a) of this section by publication of a notification in the **Federal Register**, without further opportunity for public comment.

(f) The TAC for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal TACs for Area 1A, including the specification of the seasonal periods, shall be set through the annual specification process described in § 648.200.

(g) 500 mt of the Area 1A TAC shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44° 36.2' N. Lat. and 67° 16.8' W. Long (Cutler, Maine). This set-aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the TAC allocation for Area 1A.

§ 648.202 Season and area restrictions.

Purse Seine/Fixed Gear Only Area (PS/FG). Limited access herring vessels may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A limited access herring vessel with midwater trawl gear on board may transit Area 1A from June 1–September 30, provided such midwater trawl gear is

stowed pursuant to § 648.23(b). Vessels may use any authorized gear type to harvest herring in Area 1A from October 1 May 31.

§ 648.203 Gear restrictions.

(a) Midwater trawl gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), and in the Nantucket Lightship Area as described in § 648.81(c)(1), provided it complies with the midwater trawl gear exemption requirements specified under the NE multispecies regulations at § 648.80(d), including issuance of a Letter of Authorization.

(b) Purse seine gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), provided it complies with the purse seine exemption requirements specified under the NE multispecies requirements at § 648.80(e), including issuance of a Letter of Authorization.

§ 648.204 Possession restrictions.

(a) A vessel must be issued a valid limited access herring permit to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from or in the EEZ from any herring management area, provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(1) A vessel issued an All Areas Limited Access Herring Permit is authorized to fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(2) A vessel issued only an Areas 2 and 3 Limited Access Herring Permit is authorized to fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3 as defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201. Such a vessel may fish in Area 1 only if issued an open access herring permit or a Limited Access Incidental Catch Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Limited Access Incidental Catch Herring Permit is authorized to fish for, possess, or land up to 55,000 lb (25 mt) of Atlantic herring in any calendar day, from any management area defined in § 648.200(f), provided that the area has

not been closed due to the attainment of 95 percent of the TAC allocated to the area.

(4) A vessel issued an open access herring permit may not fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip and/or per calendar day, provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(5) Herring vessels may possess herring roe provided that the carcasses of the herring from which it came are not discarded at sea.

(b) Both vessels involved in a pair trawl operation must be issued valid permits to fish for, possess or land Atlantic herring harvested from any management area. Both vessels must be issued the permit appropriate for the amount of herring jointly possessed by both of the vessels participating in the pair trawl operation.

§ 648.205 VMS requirements.

The owner or operator of any limited access herring vessel (with the exception of fixed gear fishermen), must install and operate a VMS unit consistent with the requirements of § 648.9. The VMS unit must be installed on board, and must be operable before the vessel may begin fishing. Atlantic herring carrier vessels are not required to have VMS. At least 1 hour prior to leaving port, the owner or authorized representative of a herring vessel that is required to use VMS as specified in this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the herring fishery. VMS codes and instructions are available from the Regional Administrator upon request.

§ 648.206 Framework provisions.

(a) *Framework adjustment process.* In response to the triennial review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic Herring FMP, or to address gear conflicts as defined under § 600.10 of this chapter.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management measures over the span of at least two Council meetings. The Council may delegate authority to the Herring Oversight Committee to conduct an initial review of the options being considered. The Oversight Committee shall review the

options and relevant information, consider public comment, and make a recommendation to the Council.

(2) After the first framework meeting, the Council may refer the issue back to the Herring Oversight Committee for further consideration, make adjustments to the measures that were proposed, or approve of the measures and begin developing the necessary documents to support the framework adjustments. If the Council approves the proposed framework adjustments, the Council shall identify, at this meeting, a preferred alternative and/or identify the possible alternatives.

(3) A framework document shall be prepared that discusses and shows the impacts of the alternatives. It shall be available to the public prior to the second or final framework meeting.

(4) After developing management actions and receiving public testimony, the Council shall make a recommendation to NMFS. The Council's recommendation must include supporting rationale and, if changes to the management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(5) If the Council's recommendation to NMFS includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information NMFS may:

(i) Concur with the Council's recommended management measures and determine that the recommended management measures should be published as a final rule in the **Federal**

Register based on the factors specified in paragraphs (c)(4)(i)-(iv) of this section.

(ii) Concur with the Council's recommendation and determine that the recommended management measures should be first published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council's recommendation, the measures shall be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Council shall be notified in writing of the reasons for the non-concurrence.

(b) *Possible framework adjustment measures*. Measures that may be changed or implemented through framework action include:

- (1) Management area boundaries or additional management areas;
- (2) Size, timing, or location of new or existing spawning area closures;
- (3) Closed areas other than spawning closures;
- (4) Restrictions in the amount of fishing time;
- (5) A days-at-sea system;
- (6) Adjustments to specifications;
- (7) Adjustments to the Canadian catch deducted when determining specifications;
- (8) Distribution of the TAC;
- (9) Gear restrictions (such as mesh size, etc.) or requirements (such as bycatch-reduction devices, etc.);
- (10) Vessel size or horsepower restrictions;
- (11) Closed seasons;
- (12) Minimum fish size;
- (13) Trip limits;
- (14) Seasonal, area, or industry sector quotas;
- (15) Measures to describe and identify essential fish habitat (EFH), fishing gear management measures to protect EFH, and designation of habitat areas of particular concern within EFH;
- (16) Measures to facilitate aquaculture, such as minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other measures included in the FMP;
- (17) Changes to the overfishing definition;
- (18) Vessel monitoring system requirements;
- (19) Limits or restrictions on the harvest of herring for specific uses;
- (20) Quota monitoring tools, such as vessel, operator, or dealer reporting requirements;
- (21) Permit and vessel upgrading restrictions;

(22) Implementation of measures to reduce gear conflicts, such as mandatory monitoring of a radio channel by fishing vessels, gear location reporting by fixed gear fishermen, mandatory plotting of gear by mobile fishermen, standards of operation when conflict occurs, fixed gear marking or setting practices; gear restrictions for certain areas, vessel monitoring systems, restrictions on the maximum number of fishing vessels, and special permitting conditions;

(23) Limited entry or controlled access system;

(24) Specification of the amount of herring to be used for roe

(25) Any other measure currently included in the FMP;

(26) Measures to address bycatch and bycatch monitoring;

(27) Requirements for a herring processor survey;

(28) TAC set-aside amounts, provisions, adjustments; and

(29) In-season Adjustments to TACs.

(c) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

§ 648.207 Herring research quota (RQ).

(a) NMFS shall publish a Request for Proposals (RFP) in the **Federal Register**, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming 3 fishing years, based on research priorities identified by the Council.

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives; the relationship of the proposed research to herring research priorities and/or management needs; project design; participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS shall convene a review panel, including technical experts, to review proposals submitted in response to the RFP. Each panel member shall recommend which research proposals should be authorized to utilize research quota, based on the selection criteria described in the RFP.

(d) The Northeast Fisheries Science Center Director (NEFSC Director) and the NOAA Grants Office shall consider each panel member's recommendation, provide final approval of the projects and the Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in

each of the respective FMPs through written notification to the project proponent.

(e) The grant awards approved under the RFPs shall be for the upcoming 3 fishing years, unless the Council identifies new/different research priorities during the interim years and decides to publish a second RFP. Proposals to fund research that would start prior to, or that would end after the fishing year, are not eligible for consideration. The RSA must be utilized in the same fishing year in which it was distributed (i.e., RSA and compensation trips cannot be rolled over into future years). However, the money generated from the RSA may be rolled over into, or used to fund research in future years, consistent with the multi-year proposal.

(f) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the NEFSC Director determines that the allocated research quota cannot be utilized by a project, the Northeast Science and Research Director shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided that the reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified.

(g) Whenever possible, research proposals will be reviewed and approved prior to the publication of final quota specifications for the upcoming fishing years. In the event that the approved proposals do not make use of any or all of the set-asides, the unutilized portion of the set-aside would be released back to its respective management area(s) when the final specifications are published. If there is unutilized set-aside available, NMFS, at the request of the Council, could publish another RFP for either the second or third years of the 3-year specifications. In this case, NMFS would release the unutilized portion of the set-aside back to its respective management area(s) for the first year of the specifications and any other year that yields unutilized set-aside after an additional RFP is published. The Council also may decide not to publish another RFP, in which case NMFS would be authorized to release the unutilized portion of the set-aside back to its respective management area(s) for all 3 fishing years covered by the specifications.

(h) Any quota reallocated under subparagraphs (f) and (g) of this section may not be used solely as compensation for research.

(i) Individual research projects may apply for the use of more than one herring research set-aside allocation. Proposals may request that the set-aside be collected separately from the research trip or as part of the research trip. The research compensation trips do not necessarily have to be conducted by the same vessel but must be conducted in the management area from which the set-aside was derived.

(j) No more than 50 percent of the allocated set-aside should be taken before the research begins. If a research project is terminated for any reason prior to completion, any funds collected from the catch sold to pay for research expenses must be refunded to U.S. Treasury.

(k) NMFS shall provide authorization of the research activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(l) Upon completion of herring research projects approved under this part, researchers must provide the Council and NMFS with a report of research findings, which must include: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the herring research.

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