

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 648**

[Docket No. 000105004-0004-01; I.D. 063099A]

RIN 0648-A178

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; 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 the Atlantic Herring Fishery Management Plan (FMP). This proposed rule would: Establish target total allowable catch (TAC) levels for each of three management areas, one of which is divided into inshore and offshore sub-areas; establish a procedure for the development and revision of annual specifications; establish initial specifications for the 2000 fishing year; establish incidental harvest limits when a management area is closed to directed fishing for Atlantic herring; establish a vessel monitoring system (VMS) requirement; establish vessel size limits; establish a framework adjustment process; establish permitting and reporting requirements; impose restrictions on transfers at sea; and implement other measures for administration and enforcement. The purpose of this proposed action is to manage the Atlantic herring (*Clupea harengus*) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of the Atlantic herring resource.

**DATES:** Comments must be received at the appropriate address or fax number, (See **ADDRESSES**), on or before 5:00 p.m., local time, on April 21, 2000.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Atlantic Herring FMP." Comments also may be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

Copies of the FMP, its Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA) and the Supplement to the IRFA, and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, Fishery Policy Analyst, 978-281-9272, fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:****Background**

The FMP was developed by the New England Fishery Management Council (Council) in response to concerns that the continued development and increased landings in the Atlantic herring fishery required implementation of management measures to prevent overfishing and to allow for the orderly development of the fishery. Development of the FMP was coordinated closely with the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission (Commission) to ensure that complementary management measures in both state and Federal waters were developed.

Atlantic herring were first managed by a Council fishery management plan approved by the Secretary of Commerce (Secretary) and implemented on December 28, 1978. This fishery management plan used a quota system to control catches in the fishery. The quota system, however, proved ineffective at controlling harvests because of unresolved ambiguities over catches in state waters. On September 28, 1982, the Secretary withdrew approval of that fishery management plan. Management of the resource then relied upon efforts by the States of Maine, New Hampshire, Massachusetts, and Rhode Island to adopt complementary regulations through interstate fishery management plans. In 1995, NMFS adopted a Preliminary Management Plan for the Atlantic Herring of the Northwestern Atlantic (PMP) to regulate foreign joint venture activities for Atlantic herring in the exclusive economic zone (EEZ) (60 FR 37848, July 24, 1995). In 1996, the Council and the Commission resumed

the development of additional management measures. Rather than develop a joint FMP, the Council and the Commission began the process of closely coordinating separate FMPs for state and Federal waters.

The Council announced its intent to prepare an Environmental Impact Statement (EIS) for adoption, approval, and implementation of the FMP (62 FR 4384, August 2, 1997) and scoping hearings were held in Maine, Massachusetts, Rhode Island, and New Jersey in the fall of 1997. Preliminary discussions on the management measures began soon after. The Council published a draft EIS (DEIS) (63 FR 34871, June 26, 1998) and held public hearings in Maine, Massachusetts, Rhode Island, New Jersey, and Virginia in June and July 1998. These public hearings resulted in further refinements to the proposed management measures, which are presented in this proposed rule.

The Council formally submitted the FMP for Secretarial review and NMFS published a notice of availability (NOA) in the **Federal Register** on July 27, 1999 (64 FR 40542) requesting public comments. The public comment period for the FMP ended September 27, 1999. All comments received through September 27, 1999, were considered in the approval/disapproval decision on the FMP and will be addressed in the final rule. On October 27, 1999, NMFS, on behalf of the Secretary, approved all but four of the management measures contained in the FMP and informed the Council of its decision. The disapproved management measures were: (1) Effort limits through mandatory days out of the fishery; (2) spawning area closures; (3) adjustment of the TAC for Management Area 1A; and (4) a prohibition on specifying a total allowable level of foreign fishing (TALFF). The proposed scheme to restrict fishing to specific days based on the proportion of the TAC that is caught in a management area was disapproved because fishers could easily work around the days-out restrictions and undermine the conservation intent of National Standard 1 of the Magnuson-Stevens Act. Some fishers may fish on bad weather days to work around the days-out restrictions, raising a safety issue under National Standard 10 of the Magnuson-Stevens Act. The costs of imposing days out of the fishery outweigh the uncertain benefits. NMFS disapproved the spawning area closures because it was not demonstrated that the benefits of imposing the closures outweigh the costs. The spawning area closures would not apply to mobile, bottom-tending vessels which may

disturb spawning herring, but only to purse seiners and mid-water trawlers participating in the directed fishery for Atlantic herring. The conservation benefits of this measure are uncertain. Further, the NMFS Northeast Region Office of Law Enforcement stated that spawning area closures that allow the possession of herring on board pose enforcement problems. NMFS also disapproved the in-season adjustment of the TAC for Management Area 1A because there is no real-time mechanism by which the Administrator, Northeast Regional Office, NMFS (Regional Administrator) can monitor the Canadian catch or that catch information would be provided in a timely fashion in future years. This measure is not consistent with section 303(a)(1)(A) of the Magnuson-Stevens Act as it is not a necessary and appropriate conservation and management measure because it may not work. It is also inconsistent with National Standard 7 of the Magnuson-Stevens Act because it will only impose costs to NMFS without assured benefits. Lastly, NMFS disapproved the prohibition on specifying a TALFF because this prohibition would be inconsistent with sections 201(d) and (303)(a)(4)(B) of the Magnuson-Stevens Act which require that any fishery management plan prepared by a Fishery Management Council, or by the Secretary, assess and specify the portion of optimum yield (OY) which, on an annual basis, will not be harvested by domestic fishing vessels and can be made available for foreign fishing. NMFS informed the Council that the proposed rule would provide for the annual specification of a TALFF, even if, in any given year, it is determined that the amount should be zero. Consequently, a TALFF is specified, albeit at zero, for the proposed initial specifications for the 2000 fishing year.

Herring landings have steadily increased in the last 10 years, with an increasing proportion taken in the EEZ, rather than in state waters. About 70 percent of the landings is now taken in the inshore Gulf of Maine (GOM). As recently as the late 1970s the stop seine and weir fishery accounted for the majority of the landings. Now the fishery is prosecuted primarily by purse seine and mid-water trawl vessels and the proportion of the landings taken by fixed gear in state waters is insignificant. The two major markets for herring are the bait market and sardine canneries. The lobster fishery has grown to depend almost entirely on herring for bait in the absence of an alternative, and it is estimated that 60 to 70 percent of

the herring caught is used for bait in the lobster or tuna fisheries; about 30 percent is used by the sardine canneries; and some is processed into meal, frozen for use as bait in other fisheries, or used for animal feed.

The robust status of the herring resource, coupled with increasing regulation in other fisheries, has generated interest by fishermen to exploit the stock. The resource, serving as an alternative to the groundfish fishery for some fishermen, can support additional landings if spread throughout the range, but protection needs to be provided to individual spawning components. Scientists caution that the landings in the GOM inshore area should not increase; instead, any increase in landings of Atlantic herring should come from other areas.

Therefore, the FMP contains an approved measure that has target TACs, assigned by management areas, that would help prevent overfishing of components of the stock complex.

Atlantic herring is a key prey species in the North Atlantic Ocean and a food source for a wide variety of other fish species, marine mammals, and birds. If herring landings were to increase without any controls in place to prevent overfishing, there could be broad impacts on the entire ecosystem. For this reason, the Council has been cautious in setting the proposed specifications and target TACs for the fishery.

The biological, economic, and social impacts of these measures and the cumulative impacts associated with other FMPs and regulations are discussed in the FMP and FEIS.

#### Status of the Stocks

In 1998, the 27th Northeast Regional Stock Assessment Workshop (SAW 27) was convened to examine the status of several species, including the coastal stock complex of Atlantic herring. SAW 27 reported that the abundance of herring in continental shelf waters between Cape Hatteras and the GOM has been increasing steadily since the mid-1980s, and the Georges Bank (GB)/Nantucket Shoals component has fully recovered from over-exploitation brought about by heavy foreign fishing in the 1960s and 1970s. As indicated in its June 1998 plenary report, SAW 27 estimated the current biomass of Atlantic herring as 2.9 million metric tons (mt), and spawning stock biomass as 1.8 million mt. Fishing mortality rate (F) of the entire stock complex is very low while recruitment in recent years appears to be very large. However, SAW 27 cautioned that there is considerable uncertainty over the current stock size

estimate, so that any increase in landings should be allowed gradually.

SAW 27 estimated the maximum sustainable yield (MSY) as 317,000 mt, based on a conditioned run of a surplus production model. The Stock Assessment Review Committee (SARC), in reviewing this MSY estimate, expressed concern that it may be unrealistic. The SARC suggested that a yield-per-recruit model be used to estimate MSY. This model produced MSY estimates ranging from 108,000 to 290,000 mt. The SARC advised it would not be prudent to consider MSY to be above 200,000 mt until the size of recent year classes could be better estimated.

SAW 27 also considered the status of various stock components. The NMFS Northeast Fisheries Science Center fall trawl survey data were examined in order to determine the relative abundance of herring in three different areas during spawning season. SAW 27 concluded that, during spawning season, 25 percent of the stock complex occupies the GOM area, 65 percent is in the Nantucket Shoals area, and 10 percent is on GB. Analysis of this data shows that the proportion on GB appears to be increasing. While the overall complex is underutilized, SAW 27 concluded that the GOM component, which provides most of the commercial harvest, is fully utilized. The SARC recommended that any increases in Atlantic herring catches should not come from the GOM stock component.

#### Overfishing Definition

This FMP establishes an overfishing definition for Atlantic herring in accordance with the national standards of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of October 1996. Under the revised standards, overfishing definitions must be composed of two reference points, one for F and one for stock biomass. "Overfishing" occurs whenever a stock or stock complex is subjected to an F value that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis. "Overfished" describes a stock or stock complex with a sufficiently low biomass to require a change in management practices to achieve the appropriate level or rate of stock rebuilding to the biomass target. Comments on the overfishing definition for this FMP were solicited in the NOA, because, although not codified in the regulatory text of the proposed rule, the overfishing definition is part of the FMP. The overfishing definition was approved by NMFS on October 27, 1997.

**Annual Specifications**

The proposed rule would establish a procedure for establishing OY that is based on the allowable biological catch (ABC). ABC would be determined by multiplying the estimate of current stock size by the target F. OY could not exceed ABC, adjusted by the Canadian GB and New Brunswick fixed gear catches, which could not exceed 20,000 mt for the Canadian New Brunswick fixed gear harvest and 10,000 mt for the Canadian GB harvest. The proposed rule would limit the amount of Canadian catch that would be considered when setting OY. OY also would 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. However, OY would not exceed MSY prior to the 2001 fishing year. Because of some uncertainty in the current stock size estimates, the Council recommended, for purposes of setting the initial ABC, that the current stock size be assumed to equal B<sub>MSY</sub> (the biomass level that produces maximum sustainable yield), rather than basing it on actual estimates of current stock size, which exceed B<sub>MSY</sub>. This precautionary approach would limit catches until the estimates can be improved. The resulting ABC and OY, however, are still more than twice the amount of current landings.

The proposed rule would establish four additional specifications: Total amount allocated to processing by foreign ships (JVpt), either in state waters (IWP) or in the EEZ (JVP); amount of the domestic annual processing (DAP) allocated for at-sea processing by domestic vessels that exceed the vessel size limits established in the FMP (USAP); total amount of herring that can be taken in U.S. waters and transferred to Canadian herring carriers for transshipment to Canada (BT) as authorized by the Sustainable Fisheries Act (Pub. L. 104-297, section 105(e)); and, TALFF, if any, from that portion of OY that would not be harvested by domestic vessels. The Council and the Commission would consult annually to determine the allocation of JVpt to IWP and JVP.

**Initial Specifications**

This proposed rule would establish initial specifications for the 2000 fishing year. The FMP established specifications for the 1999 fishing year that would remain in effect for the 2000 fishing year, unless revised through the specification process. Because the 1999 fishing year has passed (the fishing year coincides with the calendar year), this

proposed rule would establish the initial specifications for the 2000 fishing year at the levels specified in the FMP for the 1999 fishing year.

The proposed specifications include an ABC equal to 300,000 mt and an OY equal to 224,000 mt. Because the Council determined that the domestic annual harvest (DAH) is equal to the OY, TALFF would be specified at zero for the 2000 fishing year. Estimates of DAP are based on recent processing estimates and allow for possible errors in estimates of the bait market and increased development of processing capacity. No herring would be allocated to USAP for the 2000 fishing year, which would prohibit at-sea processing by domestic vessels exceeding the proposed size limits. Table 1 contains the proposed initial specifications for the 2000 Atlantic herring fishery.

TABLE 1—PROPOSED ANNUAL SPECIFICATIONS<sup>1</sup> (MT) FOR THE ATLANTIC HERRING FISHERY, JANUARY 1 THROUGH DECEMBER 31, 2000

Specification	Atlantic Herring
ABC .....	300,000
OY .....	224,000
DAH .....	224,000
DAP .....	180,000
USAP .....	0
BT .....	4,000
JVpt .....	
JVP - Management Area 2 .....	10,000
JVP - Management Area 3 .....	5,000
JVP - Subtotal .....	15,000
IWP .....	25,000
JVpt - Total .....	40,000
TALFF .....	0
Reserve .....	0

<sup>1</sup> See Table 2 for Area TACs for Fishing Year 2000.

**Management Areas**

The proposed rule would establish three management areas based on the existing areas established by the PMP and the Commission's FMP. However, Management Area 1 would be divided into an inshore (Area 1A) and an offshore (Area 1B) area. The Council would use the management areas as the basis for recommending the distribution of the TAC to different spawning components for the distribution of JVP allocations and could use the management areas as the basis for implementation of other management measures in the future.

**Total Allowable Catch**

The proposed rule would establish a target TAC for the 2000 fishing year. The FMP established a target TAC for the 1999 fishing year that would remain

in effect for the 2000 fishing year, unless revised through the specification process. Because the 1999 fishing year has passed, this proposed rule would establish the target TAC for the 2000 fishing year at the level specified in the FMP for the 1999 fishing year. The TAC would be re-specified for each new fishing year. The TAC for a given year would be distributed to the management areas based on existing knowledge of fishing patterns, herring stock structure, and herring migration. For the 2000 fishing year the proposed percentage allocations for the various areas are: Area 1A - 20 percent; Area 1B - 11 percent; Area 2 - 22 percent; Area 3 - 22 percent; Reserve Area 2 - 24 percent. (See Table 2 for resultant management area target TACs.) Each year the Council's Herring Plan Development Team would examine available data and recommend a TAC and its distribution to the Council. The Council would then consult with the Commission before it recommends a TAC to NMFS. NMFS would review the Council's recommendations and set the TAC, publish the proposed TAC in the **Federal Register** for public comment, make a final determination, and publish the final TAC and responses to public comments in the **Federal Register**. All harvests of Atlantic herring, from both state and Federal waters, would be applied against the TAC.

The directed fishery for herring would be closed in a management area after the date on which 95 percent of the area TAC would be caught, as projected by NMFS. Closure of the directed fishery with 5 percent remaining for an area TAC would allow the incidental harvest of herring in other fisheries to continue, while minimizing the likelihood the area TAC would be exceeded. This percentage is based on estimates of the incidental harvest of herring in other fisheries. If the percentage allocated to the incidental harvest overestimates the amount caught (incidental harvests after a closure are less than 5 percent), the 5 percent remainder for a given area TAC could be reduced by NMFS during the annual specification process the following year. If the percentage allocated to the incidental harvest underestimates the amount caught (incidental harvests after a closure are more than 5 percent), the 5 percent remainder for a given area TAC could be increased the following year through a framework adjustment. After an area is closed, vessels would be allowed to possess, transfer, or land only 2,000 lb (907.2 kg) of herring, in or from, the closed area. Vessels that harvest herring in an open area would be allowed to

transit the closed area, provided all gear is stowed.

The industry would be notified of the closure of the directed fishery for herring in a management area through notification published in the **Federal Register** and a variety of other methods, including news releases, and through state agencies.

#### Area TACs for Fishing Year 2000

Table 2 lists the proposed area TACs for the 2000 fishing year.

TABLE 2—PROPOSED AREA TACs FOR FISHING YEAR JANUARY 1, 2000, THROUGH DECEMBER 31, 2000

Management Area	TAC (mt)
Area 1A .....	45,000
Area 1B .....	25,000
Area 2 .....	50,000
Area 3 .....	50,000
TAC Reserve - Area 2 .....	54,000
TAC Total .....	224,000

#### Transfers at Sea

There would be no specific restrictions on transfers of herring at sea, unless a management area is closed to directed fishing for Atlantic herring and/or other restrictions in the regulations apply. When a management area is closed to directed fishing for Atlantic herring, transfers would be limited to no more than 2,000 lb (907.2 kg) of herring per day, in or from, an area subject to the closure. A vessel could not transfer more than 2,000 lb (907.2 kg) of herring taken from a closed area, nor transfer or sell any herring taken from a closed area to a joint venture vessel.

U.S. vessels could not transfer herring to Canadian herring carriers that transship U.S.-caught herring, if authorized pursuant to the Sustainable Fisheries Act (Pub. L. 104-297, section 105(e)), after the amount of herring transshipped equals the amount of the BT specification. Canadian herring carriers could not receive U.S.-caught herring after the amount transshipped equals the amount of the BT specification.

#### Vessel Size Limits

Domestic vessels  $\geq$  165 feet (50.3 m) in length overall (LOA), or  $>$  750 gross registered tons (GRT)/(680.4 mt), or  $>$  3,000 horsepower would not be permitted to catch, take, or harvest herring in or from the EEZ. Domestic vessels  $>$  165 feet (50.3 m) LOA, or  $>$  750 GRT (680.4 mt) would be allowed, however, to process or receive herring in the EEZ, but would be limited to the

allocated amount specified pursuant to the specification process for USAP.

NMFS notes discrepancies in the size, capacity, and/or horsepower restrictions between the Atlantic Herring and Atlantic Mackerel FMPs. However, NMFS in its October 27, 1999, letter to the Council indicated that it intends to work with the New England and Mid-Atlantic Councils to resolve inconsistencies in vessel size measures between their Atlantic Herring and Atlantic Mackerel FMPs.

#### Roe Fishery

The harvest of Atlantic herring for roe would be allowed, provided the carcasses are not discarded. The Council would monitor the development of a roe fishery and could, in the future, recommend a limit on the amount of herring that may be harvested for roe.

In the NOA for the FMP, NMFS identified the specification of the amount of herring to be used for roe as a measure of concern because of an erroneous interpretation of the Council's intent with respect to the manner in which limitations on the amount of herring harvested for roe would be implemented. Any restriction would be implemented through the framework adjustment process in accordance with 50 CFR § 648.206 rather than through notice action.

#### Foreign Fishing Vessel Restrictions

Foreign fishing vessel permitting and reporting requirements are established by 50 CFR 600, Subpart F, which include regulations on harvesting by foreign fishing vessels and joint ventures and internal waters processing and support. The Council would be allowed to recommend joint ventures and TALFF in all management areas, subject to an annual review. The Council could choose to determine joint venture specifications and TALFF by management area. If joint venture allocations and TALFF are specified by area, all herring supplied to the joint venture and/or TALFF would have to come from that management area.

#### Vessel Monitoring Systems

The proposed rule would require the installation and use of a VMS unit on vessels in the directed herring fishery that caught  $>$  500 mt in the previous year, or vessels whose owner intends to harvest  $>$  500 mt in the current year. A VMS would help facilitate the monitoring of area-specific TACs and would assist with the enforcement of closures of management areas to directed fishing for Atlantic herring, as well as facilitate the enforcement of closures imposed under regulations

implementing other FMPs. If a vessel owner does not declare the intention to harvest  $>$  500 mt at the start of the year, and does not install a VMS unit on the vessel, the vessel may not harvest  $>$  500 mt in that fishing year. The VMS unit must be installed prior to the beginning of the fishing year in order to land  $>$  500 mt in that fishing year. Because in this application VMS is intended primarily to monitor areas fished as opposed to days-at-sea effort, a VMS unit would have to be operating any time an Atlantic herring vessel is underway, but would not have to be operating when a vessel is moored or maneuvering in a harbor. This would minimize communication costs to vessel operators and remove the necessity to provide power to a moored vessel with a VMS unit.

#### Permitting Requirements

All commercial vessels meeting certain eligibility requirements fishing for, possessing, or landing herring in or from the EEZ would be required to obtain a Federal Atlantic herring permit. Domestic vessels  $\geq$  165 feet (50.3 m) LOA, or  $>$  than 750 GRT (680.4 mt), or  $>$  3,000 horsepower would not be eligible to be issued a permit to harvest or take herring. However, domestic vessels  $>$  165 feet (50.3 m) LOA, or  $>$  750 GRT (680.4 mt), regardless of horsepower, would be eligible to obtain a processing permit to process or receive herring in the EEZ, limited to the amount allocated for USAP pursuant to the specification process. Other than this restriction on vessel size, there would be no restrictions or qualification criteria necessary for a domestic vessel to receive a permit. A vessel with a Federal Atlantic herring fishing permit would have to be marked in accordance with 50 CFR 648.8.

An Atlantic herring carrier vessel would be required to obtain, in addition to a Federal Atlantic herring permit, a letter of authorization from the Regional Administrator that would allow such vessel to transport herring caught by another fishing vessel.

Operators of vessels issued an Atlantic herring fishing or processing permit would be required to obtain an operator permit. There would be no qualification or test for this permit. Dealers of Atlantic herring would be required to obtain a dealer permit and to comply with reporting requirements. To limit the number of entities that would have to comply with dealer permitting and reporting requirements, given the nature of herring fishing and processing, this rule narrowly defines Atlantic herring dealers as persons owning or operating a shore-based

pump that offloads herring from vessels with a Federal Atlantic herring permit, persons that purchase herring that is offloaded directly from vessels with a Federal Atlantic herring permit other than for their own use as bait, and persons owning or operating a processing vessel that receive Atlantic herring from vessels with a Federal Atlantic herring permit. The purpose of narrowly defining who is a dealer is to minimize the burden of dealer reporting requirements. Many persons purchase the herring that is offloaded through a shore-based pump from one vessel. Under these circumstances, this definition would require only the pump operator to obtain a dealer permit and to file dealer reports, rather than all the persons who receive herring from the pump operator.

This proposed rule would require Atlantic herring processors to obtain a processing permit and to comply with reporting requirements. Atlantic herring processors are defined as persons who receive or obtain unprocessed Atlantic herring for the purposes of rendering it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage. These requirements could result in a person needing both a dealer and a processor permit. For example, a person who purchases herring directly from a vessel and then sells it as bait would need both permits.

#### Reporting Requirements

This proposed rule would extend the existing Vessel Trip Report (VTR) system to vessels with Atlantic herring permits. This would require the owner/operator to submit monthly reports on fishing effort, landings, and discards on forms supplied by the Regional Administrator. In addition, in order to improve real-time monitoring of the harvest, an Interactive Voice Response (IVR) system would be required to be used. The FMP uses area-specific TACs to control fishing mortality. To be effective, harvests need to be closely monitored to ensure that the TAC is not exceeded. Since only vessel operators can identify where they harvest herring, the area specific TACs could not be monitored effectively through only the dealer reporting system. The VTR system relies on monthly reports, on paper, that are entered into a database. Accurate harvest statistics from this system are typically not available until 30 to 45 days after fish are landed. Given the high harvest rates in the herring fishery at certain times of the year, this would make it difficult to accurately project landings in a timely way. In order to improve the timely collection of harvest information, this

proposed rule would require that an owner/operator of a vessel required to be equipped with a VMS unit report its harvest (landings and discards), by area, on a weekly basis. These reports would be called in (using a toll free number) to an automated response system. An owner/operator of a vessel with a VMS unit would have to call in a report for each week of the year, even if still at sea, including weeks they do not harvest herring. In addition, an owner/operator of a vessel that harvests  $\geq 2,000$  lb (907.2 kg) of herring on a trip would also call in a report by Tuesday of the following week, even if the herring had not yet been landed. This system would improve the timeliness of information on harvests of herring, which would facilitate more accurate predictions about when the TAC will be attained.

Atlantic herring dealers would be required to submit weekly dealer reports by mail. Although dealers are required to submit a weekly report to an IVR system for other Northeast Region quota managed species, Atlantic herring dealers would not be required to submit a weekly report to an IVR system unless the Regional Administrator determines that there is a need for such reports.

Atlantic herring processors would be required to submit annually the Fishery Products Report, U.S. Processors, Annual Survey, (NOAA Form 88-13). This report, collecting information on the uses of herring, would facilitate the management of the fishery to achieve OY.

#### Essential Fish Habitat

The Council submitted an omnibus essential fish habitat (EFH) amendment to address EFH provisions for several FMPs for Northeastern fisheries. The omnibus EFH amendment document also included the EFH components of the proposed FMP, which was then still under development by the Council. Although the Atlantic herring EFH components were included in the omnibus EFH amendment, they were not considered during Secretarial review of the omnibus EFH amendment. For Atlantic herring, the NOA for the omnibus EFH amendment (63 FR 66110, December 1, 1998) stated that "the omnibus amendment includes the EFH components of the FMP that is being developed by the [NEFMC Council]. The EFH information for Atlantic Herring will be incorporated by reference into the FMP when that FMP is submitted for Secretarial approval." The NOA for the FMP invited comment on the approvability of the herring EFH provisions in the Council's omnibus EFH amendment. Under the proposed framework adjustment process for

Atlantic herring, measures could be added or adjusted to describe, identify, and protect EFH and designate habitat areas of particular concern within EFH.

#### Annual Monitoring and Framework Adjustment Measures

The FMP will be monitored on an annual basis. The status of the resource and the fishery will be reviewed by the Council's Atlantic Herring Oversight Committee in consultation with the Commission's Atlantic Herring Section. Recommendations on specifications will be developed, as well as any suggested changes to the management measures. These will be forwarded by the Herring Oversight Committee to the Council, which will take appropriate action. Specifications will be recommended to NMFS, and changes to management measures could be adopted through a framework adjustment or FMP amendment, as appropriate. This process will begin in July of each year so that changes could be implemented by January 1 of the following fishing year. The Commission will be expected to implement any corresponding changes in state waters.

The framework adjustment process adopted in the FMP is identical to that used in other Northeast Region fisheries. This process allows changes to be made to the regulations in a timely manner without going through the plan amendment process, as appropriate. It provides a formal opportunity for public comment that substitutes for the customary public comment period provided by publishing a proposed rule. If changes to the management measures were contemplated in the FMP and if sufficient opportunity for public comment on the framework action existed, NMFS could bypass the proposed rule stage and publish a final rule in the **Federal Register**. The management measures that could be implemented and adjusted through the framework process include the following: (1) Management area boundaries; (2) size, timing, or location of spawning area closures; (3) closed areas other than a 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) or requirements (such as bycatch-reduction devices); (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 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; and (25) any other measure currently included in the FMP.

#### **Clarification of Initial "Fishing-up" Period**

The Council, in its discussion of specifications for the Herring FMP, referred to an initial "fishing-up" period in which OY would not exceed MSY. A complete discussion is contained in section 3.2 of Volume I of the FMP.

NMFS interprets the initial "fishing-up" period to mean the 2000 fishing year.

#### **Preliminary Management Plan for the Atlantic Herring Fishery of the Northwestern Atlantic**

On July 24, 1995 (60 FR 37848), NMFS announced approval of the PMP to regulate foreign joint venture activities for Atlantic herring in the EEZ. The PMP, which set the initial specification for Atlantic herring, provided joint venture opportunities in the exclusive economic zone by allocating a portion of the allowable biological catch for joint venture processing. The PMP also established permit conditions and restrictions for foreign vessels that participate in joint ventures. Because the FMP addresses issues related to Atlantic herring foreign joint venture activities, NMFS proposes to withdraw approval of the PMP and to

remove existing regulations related to Atlantic herring (50 CFR 600.525) at the time the final rule implementing the FMP becomes effective.

#### **Classification**

The Regional Administrator determined that the FMP is necessary for the conservation and management of the Atlantic herring fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This action has been determined to be significant for the purposes of E.O. 12866.

The Council prepared an FEIS for the FMP; a notice of availability was published on September 24, 1999 (64 FR 51753). A copy of the FEIS may be obtained from the Council (see ADDRESSES).

In compliance with the Regulatory Flexibility Act, the Council has prepared an IRFA that describes the economic impacts of the proposed measures on a substantial number of small entities. Reasons why the action is considered, as well as the objectives and legal basis of the rule, are described in the preamble to this rule and are not repeated here. The impacts on small entities attributable to the preferred management measures for approved measures and alternative management measures to the approved measures are discussed below. The IRFA and Supplement to the IRFA also contain information on the impacts on small entities of the measures disapproved by NMFS.

#### **Small Entities Affected by an Open Access Fishery**

The identification of the number of small entities affected by this rule is complicated in two ways. First, vessels fishing for herring are not currently required to possess Federal herring permits. Second, while many vessels currently landing herring possess other Federal permits or letters of authorization, there are some vessels that fish for herring only in state waters that do not possess such permits or authorizations. Only those vessels that have another Federal permit are required to submit vessel trip reports and can be readily identified in the permit, vessel trip report, and dealer weighout databases.

Because some vessels may target herring for a small number of trips each year, vessels were identified as participating in a "directed" fishery for herring if they landed at least one trip of one metric ton (2,205 lb) or more of herring during 1997. There were only 61 vessels, which landed 97,300 mt, amounting to 99 percent of all herring

landings in the Northeast, while 140 vessels landing herring during 1997 accounted for less than 71 mt. Expressed in terms of revenues, the 61 vessels derived about \$10.7 million from herring fishing while the remaining vessels' total herring revenues did not exceed \$8,000.

Therefore, for IRFA purposes, the set of affected vessels is limited to these 61 vessels in the directed herring fishery.

Of the 61 vessels, 17 of them derived, on average, less than \$1,000 in herring revenues in 1997. The remaining 44 vessels were divided into two groups. The first group of 25 vessels derived, on average, \$5,534 from herring revenues in 1997. The remaining group of 19 vessels earned, on average, \$524,000 from herring revenues in 1997. The 44 vessels constitute 22 percent of the 201 vessels that landed some herring in 1997 and 72 percent of the 61 vessels in the directed herring fishery. The regulations would mostly affect the group of 19 vessels that, on average, earned \$524,000 from herring revenues in 1997. These vessels alone represent 31 percent of all business entities in the directed herring fishery. Whether the affected set of vessels is defined to include only 61 vessels or all of the 201 vessels that landed herring in 1997, the regulations would affect a substantial number, i.e., more than 20 percent, of the small entities in the fishery.

The Council also considered adopting a limited entry or controlled access system alternative. The Council considered a comprehensive system that could be adopted for either the entire management unit or for specific management areas. This alternative included the possibility of using limited entry in the GOM where there is a desire to restrict harvests, but not in the offshore areas where there is a desire to increase fishing effort. The Council did not choose this approach, because it felt that it would limit the ability of some smaller vessels in rebuilding fisheries to shift into the herring fishery.

The Council did not perform a detailed analysis of the impact of a limited entry or controlled access system on small businesses because this alternative was not pursued. The impacts of a controlled access or limited entry system on small businesses in the herring fishery depends on the qualification criteria used to limit the number of participants. It also depends on whether the limited entry system applied to all management areas or only particular management areas. The Council decided not to pursue the controlled access alternative because it conflicted with FMP goals and the full details of the proposal were not defined.

The Council did provide the public an opportunity to comment on a wide variety of possible qualification criteria, and illustrated how those criteria would limit participants in the fishery. These criteria and their impacts illustrate the number of small businesses that would be affected by a limited entry program. At one extreme, the fishery would have been limited to 15 vessels that fished in Management Area 1 in 1996 or 1997 and possessed a letter of authorization to use small mesh nets in the GOM. If this qualification criteria were adopted for all management areas, 46 vessels that participated in the directed herring fishery in 1997 would be eliminated from the fishery. If only applied to Management Area 1A, it would eliminate 3–5 vessels that fished in this area but did not obtain a letter of authorization. It would also prevent vessels in other fisheries from participating in the herring fishery. At the other extreme, a proposed criteria would have issued a limited entry permit to any vessel that possessed a squid, mackerel, or butterfish permit. This would have qualified over 2,800 vessels for the fishery. The impacts of a large number of participants in the fishery on small businesses would be little different than the impacts from the open access alternative proposed by the Council.

#### **Impacts of the Management Areas and Sub-areas**

The management areas adopted by the FMP are based on knowledge of the various spawning components. This allows the development of management measures that specifically target a particular spawning component. The management areas further provide the basis for TAC distribution and have been established to avoid the over-exploitation of individual spawning components that are included within the stock complex. The designation of management areas is not expected to have any direct economic impacts. The establishment of the areas would not impose any additional requirements on vessel operators, would not directly limit participation in the fishery, and would not restrict catches. The areas are, however, used to guide the distribution of the TACs, which would have economic impacts on vessels that are discussed in the following section.

#### **Impacts of TAC Distribution**

Under the existing management scheme, there are no limits on the domestic harvest of herring. While overall revenues could increase under the FMP, there would be changes in which management areas supply those

revenues. Historically, most domestic herring landings have come from the inshore GOM, defined now as Management Area 1A. The proposed management measures are not intended to reduce herring landings overall, but rather to reduce herring landings from Management Area 1A only. However, other TAC options considered by the Council also reduce the expected landings from Management Area 1A from current levels. The proposed TAC exceeds overall landings, and the proposed TAC by management area for Areas 1B, 2, and 3 exceed current landings from each of those management areas. Since specification of TACs in Areas 1B, 2 and 3 that are greater than current landing levels would not constrain fishing activity, reduce revenues, or impact small businesses, the Council focused on analyzing the economic impacts of the TAC in Management Area 1A.

The range of options considered by the Council provided different levels of protection to individual spawning components. When considering the TAC distribution options, the Council did not just consider different TAC levels for the various management areas.

Each option also identified a different process for distributing the TACs. While some of the options have less economic impact on Management Area 1A revenues than the proposed action (based on catches in 1997 and 1998), the rejected options included methods of distributing the TAC that were determined not to meet the conservation goals and objectives of the FMP.

*Option 1* proposed assigning a TAC to each of Management Areas 1A, 1B, 2A and 2B/3. (The proposed Area 2A - the northern part of Area 2 - is not adopted by this FMP.) The seasonal (winter) TAC assigned to Area 2A would have explicitly considered the mixing of GOM and GB/Nova Scotia fish in this area. By limiting the catch in this area, some control would have been exercised over the amount of GOM herring caught during the winter months. If the catch in this area during this time period was unlimited, it is possible that the GOM spawning component could be rapidly depleted without notice. Similarly, the TAC in Area 1A protects the GOM herring in this area during the remainder of the year. TACs for the other areas insure that the overall catch does not exceed the OY. This option was rejected because of uncertainty over the migration of GOM herring into the proposed Management Area 2. While the migration patterns can be estimated based on the location of herring in this area during the winter months when the GB stock had collapsed, the exact

location of herring in this area is unknown.

*Option 2* proposed assigning a TAC to each of Management Areas 1A and 3. A TAC was also to be assigned to Management Areas 1B and 2 combined (the TAC could be taken from these two areas regardless of catch location). TACs are assigned based on knowledge of stock structure and migration of herring. By limiting the catch in Management Area 1A, protection is provided to the GOM spawning component. Using a TAC to limit catches in Management Area 3 provides some protection to GB/Nantucket Shoals spawning component fish. The combined TAC in Management Areas 1B and 2 would simplify the administration of the TAC system. This option was rejected because the combined TAC for Management Areas 1B and 2 increases the risk of overfishing those herring in Management Area 1B in the summer months. Herring in this area are believed to come from both the GOM and GB/Nantucket Shoals spawning components. Large catches (in theory, at least, of up to the total TAC for these two areas) would unacceptably risk damaging these spawning components. While catches of this magnitude may be unlikely given recent landings in Area 1B, the strong market demand during the summer months when herring are in this area could result in an unacceptably high catch. By combining the TAC for this area with the TAC for Area 2, there is little protection provided to herring in Management Area 1B.

*Option 3* proposed assigning TACs to all four areas for each of three seasons. It makes explicit use of knowledge of stock structure and relative stock sizes to control catch in each area and time period so that individual spawning components are not damaged. In theory, this option provided the greatest protection to individual spawning components of herring. This option was rejected however because, in practice, it relied on a level of detail on stock structure that is lacking. The complexity of the scheme also made it less likely that it could be accurately monitored and implemented, reducing its effectiveness.

*Option 4* proposed assigning TACs to the three major management areas based on an estimate of the amount of fish that is present in these areas on an annual basis. It does not have as close a relationship to current knowledge on stock structure. It does provide some measure of protection to the individual spawning components, primarily through the use of conservative TACs. Because this method places less emphasis on seasonal migrations of



herring, any amount of herring assigned to Management Area 1B reduces the amount of herring available for Management Area 1A. TACs must be set at conservative levels to prevent overfishing of specific spawning components. This option was rejected because of its reliance on historic fishing patterns that may change.

*Option 5* proposed assigning one overall TAC to the entire coastal stock complex based on the ABC and OY. This option was rejected because it ignores any information on stock structure, and assumed that the entire coastal stock complex is one homogenous stock. For this reason, it provides no protection whatsoever to individual spawning components. In theory, the entire OY could be taken from the GOM in the summer months. Harvests at this level far exceed historical catches from this area and could not be supported. This approach could decimate herring stocks if all fishing effort is concentrated in one management area.

The proposed TAC alternative would result in a greater decline in landings from 1996–97 levels in the in-shore GOM than the non-selected alternatives. (The potential changes in revenue under the various TAC options in Management Area 1A may be seen in Table E.58 of the FMP.) These rejected alternatives would increase the risk of overfishing the inshore herring resource. In general, the rejected options did not provide sufficient protection to specific spawning components of herring - specifically, the GOM spawning component of herring. (*Note:* The proposed options were developed prior to issuance of the report of the 27th SAW, which evaluated GOM herring as fully exploited.) The 27th SAW noted that current levels of F in the GOM may not be sustainable. The Council considered this report in selecting and determining its TAC distribution method and initial TACs.

Sixty-one vessels participated in the directed herring fishery in 1997. The negative impacts of the reduction in Area 1A TAC would not be uniform for all vessels or all sectors on the 61 vessels. It would most heavily impact those vessels that fished only in this area. Because almost 70 percent of the landings and 67 percent of the revenues from the entire herring fishery came from Area 1A in 1997, vessels that fish for herring exclusively or primarily within Area 1A are expected to experience the greatest negative impacts of the TACs established under the FMP. Of the 61 vessels in the entire directed fishery in 1997, 39 fished at least a portion of the year in Area 1A. Of these,

9 had annual herring revenues of less than \$1,000 per vessel, 13 had annual herring revenues of between \$1,000–\$29,000 per vessel; and 17 had annual herring revenues of more than \$30,000 per vessel. Based on the 1997 fishery (the most recent year landings data were available at the time the analysis was prepared), the imposition of the Area 1A TAC established under the FMP could reduce herring landings from this area by as much as 36.5 percent. Therefore, assuming proportional impacts of the TACs across all vessels fishing in Area 1A, 9 vessels could experience reductions in revenue of up to \$365 per vessel, 13 could experience reductions of up to \$10,843 per vessel, and 17 could experience reductions of more than \$11,000 per vessel. Since about 67 percent of revenues from the entire herring fishery in 1997 came from Area 1A, the TAC could result in a decline in total revenues to the fishery of as much as 25 percent.

Actual impacts of the TAC are expected to be less than described above. The FMP establishes a TAC for the entire herring fishery at a level that would allow total landings to double over 1997 levels. Given that there is at least some flexibility for a portion of the 39 vessels that fished in Area 1A in 1997 to fish outside Area 1A for some or all of the fishing year, those vessels could harvest herring in other management areas and thereby replace some or all of the revenues lost to them due to Area 1A harvest restrictions. The extent of this revenue replacement depends on the willingness and ability of vessel owners to change ports or to travel farther to locate herring in other management areas, their ability to market their catch, and any ex-vessel price changes that might result. Furthermore, of the 39 vessels that fished in Area 1A in 1997, only 3 or 4 (purse seiners) fished exclusively within Area 1A. Although it is not possible to quantify the extent to which the other 35 or 36 vessels fished outside Area 1A, their dependence on Area 1A, and the precise impacts of Area 1A TAC restrictions on their revenues are likely less than those described above.

In addition, the Council's analysis was based on the best available landings-related information for 1997. While the proposed TAC would reduce landings from the 1997 high levels, 1998 landings information available for Area 1A indicate that only 43,000 mt were landed. This amount is 2,000 mt less than the proposed 45,000 mt TAC for this area. However, because of wide variations in Atlantic herring landings over the past 20 years, it cannot be determined that the decrease in the

1998 landings reflects a trend in the fishery. It is possible that other exogenous factors could have factored in the reduced 1998 landings.

### Impacts of Permitting and Reporting Requirements

Vessels, dealers, and processors would be required to obtain permits and comply with reporting requirements. Some participants in the fishery already have a federal permit and comply with reporting requirements for another fishery. The compliance costs are primarily due to the time required to complete and submit the necessary forms. The annual costs to comply with these requirements are estimated at \$7.80 for vessel permits, \$25.32 for operator permits, \$27.00 for vessel trip reports, and \$52.00 (maximum) for interactive voice reports. Total annual compliance costs per vessel are thus \$112 per vessel for these measures. The total annual cost for dealers is estimated to be \$1.58 for permits and \$78.70 for weekly landing reports, for an annual total of about \$80 per dealer. The annual compliance costs for processors is also estimated to be \$1.58 for permits and \$7.83 for an annual report, or a total of \$9.41 per processor. These costs are considered insignificant.

The Council's rationale for requiring permits, as opposed to taking no action in this regard, is to identify participants in the fishery. Currently, no comprehensive reporting requirements for vessels fishing for herring exist. When permitted, participants in the fishery would be identified and landings and purchases of herring would be reported. With the level of detailed reporting required, catches would be better monitored, enabling managers to more accurately calculate estimates of F and resource status.

### Impacts of VMS Requirements

Vessels that intend to harvest > 500 mt of herring, or that harvested > 500 mt of herring in the previous year, would be required to operate a VMS unit. The annual cost per vessel to purchase, install, and operate a VMS unit is estimated to be \$2,700. Additional costs would be incurred due to burden-hour estimates of the requirements associated with VMS, estimated at an additional \$111 per vessel per year. At the > 500 mt threshold, this would be approximately 4 percent of annual revenues from herring. When compared to the average herring revenues of the 19 vessels that landed most of the herring in 1997 and who would be required to have a VMS based on 1997 landings, this cost is equal to approximately 0.5



percent of the average revenues for this group.

The Council considered requiring all vessels in the herring fishery to have a VMS. This alternative was rejected, as there seemed to be little justification to require a VMS on those vessels that land only a small amount of herring. The costs of installing and operating a VMS would exceed herring revenues for many of the vessels that landed only a small amount of herring, particularly those that did not participate in the directed fishery. The Council also considered not requiring a VMS on any herring fishing vessels. This alternative would have eased the burden on the small businesses in the herring fishery because they would not have had to pay for the installation and maintenance of the equipment. This option was rejected by the Council because it determined that it was crucial to require a VMS for administration and enforcement of the FMP. The FMP uses area-specific TACs to control F in the fishery. In order for there to be confidence in reported catch locations, there is a need for an independent method to verify fishing vessel location. The U.S. Coast Guard surveillance flights and aircraft could provide this verification, but are limited in number and could not cover the entire fishing area due to limited assets. A VMS system, on the other hand, would provide the ability to monitor vessel location whenever the vessel is underway. The VMS system would generate a record of each trip that could be compared to reported catch locations to make sure that catches were reported in the correct management areas. VMS would also make it easy for patrolling cutters and aircraft to locate herring fishing vessels and verify their activity. In addition, VMS would provide an additional capability to verify that vessels were not fishing in a management area when the area is closed because the TAC was exceeded. The Council determined that the benefits of a VMS requirement would exceed the costs imposed on small businesses.

With a no action alternative, the entire area closure would require surveillance. The > 500 mt threshold requirement to use a VMS unit insures that the majority of herring landings would be monitored, while minimizing costs to the industry by only requiring a VMS unit for a small number of specific vessels.

The compliance costs for the FMP would not result in an increase in the total costs of production by more than 5 percent.

### Impacts of Vessel Size Limits

The FMP establishes a size limit on domestic harvesting vessels in the herring fishery. The Council recommended a size limit < 165 feet LOA, and no more than 750 GRT. Such vessels also must have no more than 3,000 shaft horsepower. The Commission first adopted such restrictions in a Commission emergency action in 1997 (reacting to the interest of large factory trawler owners to exploit the herring resource) and the Council voted at that time to support the Commission's action. Congress further addressed the issue in the NMFS appropriations bill for fiscal year 1998, and again in 1999, restricting NMFS from using any of its funds to issue permits or other authorization letters to vessels exceeding like size restrictions. The size limit restrictions, established by the Commission and later in several congressional bills, are larger than any of the vessels that landed herring in 1996 or 1997. No vessels larger than the restrictions have participated in the herring fishery in the past. (For vessels identified as having caught herring in 1997, the maximum LOA was 126 ft., the maximum horsepower was 2,100, and the maximum GRTs was 246.) The size limits will maintain the existing industry structure. This restriction would not have a negative impact on the small businesses in the herring fishery.

Because the herring resource is underutilized, there would be some room for growth in harvesting and processing capacity. The Council feels that a number of large vessels would rapidly reach the proposed limits on the TAC. The resultant rapid attainment of the TAC would reduce the supply of fresh herring to the bait and cannery markets. There is also the possibility that large catcher/processors would monopolize the resource.

The Council is also limiting processing by large, domestic vessels to an amount specified on an annual basis. These two restrictions comprise the preferred alternative of the Council and are intended to provide some control over the development of excess fishing capacity in the region, and to take into account the concerns of fishing communities and historic herring fishery participants.

One of the objectives of the FMP is to provide controlled opportunities for fishers in other fisheries in New England and the mid-Atlantic regions. Many fishers are facing additional restrictions in the groundfish, scallop, monkfish, dogfish, and whiting fisheries due to poor resource conditions. The ability to enter the herring fishery

would provide an opportunity for them to shift their effort onto a robust resource until rebuilding plans in these fisheries can be accomplished. The number of vessels that can enter this fishery is dependent on each vessel's share of the resource. The limits on vessel size would encourage more small vessels to enter the fishery and harvest a share of the available TAC, ameliorating the impacts of restrictions in other fisheries.

For the first year of the FMP, the recommended specification for large at-sea domestic processors is 0 mt. This is a precautionary approach that would give the Council time to evaluate the impacts of the management program before introducing large domestic processors into the fishery. The proposed specification would minimize impacts on the small businesses in the fishery. Existing small businesses would compete within the existing industry structure, with established markets clearly identified. One possible negative impact of the proposed specification on small businesses is that it would limit the market available to existing markets, depriving small vessels of an additional venue (the large vessel) to sell their catch. This measure explicitly considers the concerns of those communities and small entities in the northeast region that are dependent on the herring fishing industry and the possible impacts that may result from the uncontrolled entry of large domestic processors. The "no action" alternative would allow large domestic vessels to enter the fishery unfettered. The most likely role would be as processing vessels. While the impacts of allowing such large domestic processors into the fishery are not clearly understood, they could result in displacement of shoreside processors that depend on herring and may limit the development of additional shoreside processing capacity.

One possible benefit of the "no action" alternative, however, is if large domestic processing vessels enter the fishery and hire local catcher vessels to supply them herring. The increased revenues from this activity could benefit small entities and communities suffering from reduced revenues caused by resource shortfalls and increasing regulation of the fishing industry. Some are concerned, however, that the companies that own these vessels may bring their own catcher vessels into the region. As a result, the benefits would then accrue to the regions that are less dependent on the fishing industry.

### Impacts of Joint Venture Specifications and Restrictions

The FMP specifies zero TALFF, which would preclude directed foreign fishing and result in benefits from the fishery accruing to domestic fishers. The expansion of the herring fishery would require domestic fishers to develop markets and invest in the vessels and processing capability to enter those markets.

However, the FMP provides for foreign participation in the fishery in the EEZ through joint venture processing (just as the states provide for such participation through internal waters processing). In the EEZ, these vessels are permitted into the fishery only when it suits the needs of the U.S., and such vessels are limited to processing fish in excess of the capacity needed for domestic processors. The total allocations (DAP, JVPT, BT and the Reserve) in any one management area or subarea would not exceed the TAC set for that area or subarea during the fishing year. A figure of 40,000 mt is recommended for JVPT after reviewing recent foreign processing performance. While this level is lower than the 80,000 mt allocated by the Commission for the 1998/1999 IWP season, it is over three times higher than the highest actual combined JVP and IWP performance in the last 10 years and allows for substantial temporary participation by foreign vessels in the U.S. fishery. This would allow foreign vessels to purchase herring from U.S. harvesting vessels, providing an additional market for them. Not only would this benefit the small entities currently in the fishery, it could provide additional opportunities for some vessels to target herring rather than species that may be overfished. It would also allow those fishers that participate in mackerel joint ventures to sell herring when it is caught along with mackerel.

In the event of a closure to a directed herring fishery in any one area or subarea, BT, JVP and IWP (the Council and the Commission agree on the recommended allocation of JVPT to JVP and IWP) operations would cease to receive any herring caught from a closed area or subarea. A key element in the review of JV activities is the impact on domestic processing activity - specifically, on the east coast, shoreside processors (since there have not been any large domestic at-sea processors in east coast fisheries).

In recent years there has been little interest by foreign vessels to participate in herring joint ventures and the actual performance of herring JVs has been insignificant, occurring only in

connection with mackerel JVs. (Confidentiality restrictions prevent listing actual JV herring catches in 1997.) The demand for herring JVs is directly linked to world herring prices, most notably herring prices from the North Sea herring fishery.

### Impacts of Initial and Annual Specifications

The domestic Atlantic herring fishery has not been subject to limits on catch by a Federal FMP since 1982. Because of the lack of current permitting and reporting systems, there is some uncertainty in the current levels of fishing effort and the actual harvest of Atlantic herring. There is also uncertainty in the ability of U.S. fishers to develop new markets for the increased catch levels that are possible, and for U.S. processors to process increased catches of herring that may occur under this FMP.

These uncertainties make it difficult to predict exactly how the fishery would develop. The Council has adopted a precautionary approach to many elements of the management program in order to account for these uncertainties.

DAP is based on existing processing capacity with the addition of nearly 80,000 mt to account for the introduction of new capacity, possible misreporting in the bait fishery, and increases in processing by existing processors.

The amount allocated to BT is about 10 percent larger than the highest amount reported transferred to Canadian canneries in any of the last 10 years. These transfers are part of a traditional cross-border trade in raw herring that helps U.S. sardine canneries obtain herring during periods of low resource abundance in U.S. waters.

The zero amount specified for USAP would prevent large domestic processing vessels from entering the fishery in 1999. Concern has been expressed that this results in unfair treatment to such vessels, which could not participate in at-sea processing while large foreign vessels could (through JVs). The Council's initial recommendation to specify USAP at zero was because of a desire to maintain the status quo in the industry until the effectiveness of the FMP could be evaluated. By contrast to JVs, large domestic processing vessels would have a great deal of flexibility once allowed into the fishery. They could compete in the same markets as other processors without restraints. Once allowed into a fishery, there is a perception that they would have earned permanent "rights" to participate. The possible impacts of

large at-sea processors in the Atlantic herring fishery are not clearly understood, arguing for a cautious approach to their introduction into the fishery. While the specification for USAP may be set at a level other than zero mt in the future, the Council's recommendation to allocate zero mt initially is within the Council's discretion.

### Impacts of Transfers at Sea

Allowing a vessel to transfer herring at sea during a closure complicates the enforcement of the 2,000-lb (907.2-kg) trip/possession limit. A complete prohibition on all transfers, however, would unnecessarily restrict the lobster and tuna fisheries. Vessels in these fisheries frequently obtain fresh bait through transfers (sales) at-sea. Allowing these transfers thus benefits the small businesses that sell the herring and those small businesses who purchase it for bait (i.e., lobster and tuna fishers). Enabling these small entities to obtain fresh bait at sea minimizes their costs since they wouldn't have to travel into port for it. It also benefits them by assuring that the bait is of higher quality in that it is more likely to be fresh.

This measure would place some controls on transfers at-sea to prevent wide scale violations of the trip limit.

### Disapproved Measures

On October 27, 1999, NMFS disapproved the proposed spawning area closures and the proposed scheme to restrict fishing to specific days based on the proportion of the TAC caught in a management area (mandatory days out provision). The reason for the disapproval of these measures is described elsewhere in this preamble. These measures are contained in the IRFA and supplement to the IRFA and, therefore, are also discussed in this classification section.

### Impacts of Spawning Closures

At the time the Council prepared the IRFA, the Council determined that the proposed spawning closures were expected to have an impact on herring landings and revenues, subject to the ability of fishers to locate herring in other areas or at other times. The total impacts of these closures were estimated to be a reduction of 10,332 mt in herring landings and \$1.1 million in revenues. The actual decline in landings and reduction in revenues due to the spawning closures was likely to be less, however. The displacement of effort to other areas, opening of a large area south of 42°30'N. latitude to fishing by the proposed action, and the interaction of the spawning closures with the

Management Area 1A TAC would have reduced the negative impacts on landings and revenues. Further, spawning closures were not established in Management Areas 2 and 3 because the Council wanted to promote interest in developing the offshore fishery.

The Council considered other spawning area closure alternatives. It originally considered four areas that, through complementary Commission action, may have extended to the shore. These proposed restrictions would not have allowed any directed fishing subject to the limitation on catch of spawning fish and would have created an offshore boundary, providing a limited opportunity for fishers to move into offshore areas. Small herring vessels in Maine ports would have been disadvantaged by this. Such vessels would have been at risk of losing their market, and may not have been able to regain it when the closed areas reopened. The expected result of the original Council proposal would have been the potential loss of all herring landed during the Commission's existing closures, which would have been mitigated by the opportunity of fishers to fish seaward of the closure boundaries. Also, fishers may have been able to harvest the herring after the closure - a delay in the catch, rather than a complete loss.

The preferred alternative differed from the above option significantly. All closure areas would have applied only to Federal waters. The closure area off Massachusetts and New Hampshire had been significantly reduced in size. The impact of this change would have significantly reduced the negative economic impacts of the spawning closures. By reducing the area covered by the closures, the impact of the closures on landings was expected to have been reduced. The action also proposed to open an area that had previously been limited to an incidental catch limit. While the amount of catch in this area cannot be predicted due to a lack of information on harvest rates and effort in this area, this should have resulted in higher catches of herring further reducing the economic impact of the closures. This would have significantly reduced the negative economic impacts of the spawning closures. In a qualitative sense, the proposed alternative should have also reduced impacts on smaller vessels, as it would have provided options to fish seaward of the boundary, in state waters, or in areas of Federal waters that remained opened, and would have reduced the necessity for any vessel to fish seaward of the closure boundaries.

The Council also considered a number of variations for determining the starting dates of the closures. These variations were predicated on the biological condition of spawning herring. While the economic impacts would not likely have differed significantly from the preferred alternative, this approach would have introduced uncertainty into the timing of the closures. The fixed date selected by the Council in the preferred alternative would have allowed vessels and dealers to plan fishing operations around known closure dates and was initially preferred by many in the industry. It also would have avoided the administrative costs necessary to operate a sampling program that would have been a required part of determining the closure dates.

Finally, the Council also considered the option of not establishing any spawning restrictions in Management Areas 1A or 1B. In the short term, landings and revenues would increase if this option were selected. Over a longer period, the practice of fishing on spawning aggregations in this intensely fished area would be expected to have a negative impact on the biological condition of the resource. Failure to provide protection during the spawning periods could result in the elimination of individual spawning components, even while remaining within overall mortality goals set by the TAC. This would result in either lower TACs to reduce effort on spawning fish, or, in the extreme, could damage the resource sufficiently so that fishing would have to be prohibited in the area. Either result would reduce revenues from this area. As vessels moved into other areas to find herring, operating costs would be expected to increase with the additional transit time offshore.

#### **Impacts of Mandatory Days out of the Fishery**

The Council determined that fishing effort would have been reduced as the TAC was approached by requiring vessels to take mandatory days out of the fishery. The number of days taken out of the fishery would have been determined by how close the catch was to approaching the TAC. This measure would have been expected to reduce catch rates as the TAC is approached. This would have helped prevent the TAC from being exceeded before the fishing year was over.

This measure also would have redistributed fishing effort to other areas. As the number of days out of the fishery increased, some vessels may have chosen to relocate to areas that remain open. The Council selected this

measure over other alternatives because it would have minimized impacts on the industry while extending the season. It would have allowed fishing activity to continue unfettered in management areas where landings were at a lower level and were not approaching the TAC. This would have encouraged a shift in effort from areas with restrictions into other open areas, particularly when three or four days were closed to the directed fishery. Shifting effort would not have been without cost however. As fishing days were restricted, vessels would have incurred higher operating costs if they chose to fish in other areas further from their home port.

The major reason for this measure was to provide a supply of herring to the market for a longer period of time than if there were no controls put into place until the overall TAC was reached and the fishery was closed. For this reason, the Council rejected the no controls approach.

The Council also considered trip limits as an alternative, but rejected the idea because of concerns over discards, enforcement difficulties, and difficulty in creating an equitable system.

The Council also considered apportioning the TAC over a shorter time period - rather than an annual basis. *See Option 3 under 'Impacts of TAC Distribution', above.* It rejected this alternative because it would have resulted in unacceptable administrative costs to monitor the TAC.

#### **Conclusion**

The proposed regulations would allow increased landings of herring, the extent of which may depend more on market conditions than on the regulations. The FMP could, however, change fishing patterns, particularly in the GOM. The restrictive TAC in the inshore GOM could force fishing effort into other areas where harvest rates may not be as high, possibly increasing operating costs.

A copy of the IRFA and the Supplement to the IRFA are available from the Council (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection-of-information displays a currently valid OMB control number.

This proposed rule references foreign fishing vessel activity reports, which is a collection-of-information requirement subject to the PRA that was previously approved by OMB under control

number 0648-0075. These reports are estimated at 6 minutes/response.

This proposed rule also contains 12 new collection-of-information requirements subject to the PRA, which have been submitted to OMB for approval. The public reporting burden for each collection of information per response is indicated in parentheses in the following list of new requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of 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 regarding these reporting burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The new requirements are:

Open access Atlantic herring permits (30 minutes/response).

Operator permits (60 minutes/response).

Dealer permits (5 minutes/response(trip)).

Processor permits (5 minutes/response).

Vessel trip reports (5 minutes/response).

Interactive voice response system reports (4 minutes/response).

Dealer logbooks reports (2 minutes/response).

Annual processor reports (30 minutes/response).

Vessel monitoring system verification requirement (2 minutes/response).

Vessel monitoring system reports (5 seconds/response).

Vessel monitoring system installation (60 minutes/response).

Herring carrier exemption from VMS requirements authorization letter (2 minutes/response).

#### List of Subjects in 50 CFR Parts 600 and 648

Fisheries, Fishing, Foreign Vessels, Reporting and recordkeeping requirements.

Dated: February 23, 2000.

**Andrew A. Rosenberg,**  
*Deputy Assistant Administrator for Fisheries,*  
*National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR parts 600 and 648 are proposed to be amended as follows:

#### PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

#### § 600.525 [Removed]

2. Remove § 600.525.

#### 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 § 648.1, the first sentence of paragraph (a) is revised to read as follows:

#### § 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the spiny dogfish fishery (Spiny Dogfish FMP); and the Atlantic herring fishery (Atlantic Herring FMP). \* \* \*

3. In § 648.2, the definitions for “Council” and “Vessel Monitoring System” are revised and the definitions for “Atlantic herring”, “Atlantic herring carrier”, “Atlantic herring dealer”, “Atlantic herring processor”, “Border transfer”, “Horsepower”, “IVR System”, “JVpt”, “Processing”, and “U.S. at-sea-processing” are added alphabetically to read as follows:

#### § 648.2 Definitions.

\* \* \* \* \*

*Atlantic herring* means *Clupea harengus*.

*Atlantic herring carrier* means a vessel with an Atlantic herring permit 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.

*Atlantic herring dealer* means:

(1) A person owning or operating a shore-based pump that uses such pump to offload any Atlantic herring from a vessel with a Federal Atlantic herring permit; or

(2) A person who purchases any herring directly from a vessel with a Federal Atlantic herring permit that is offloaded from the vessel other than with a shore-based pump for purposes other than for the purchaser's own use as bait; or

(3) A person owning or operating a processing vessel that receives any Atlantic herring from a vessel with a Federal Atlantic herring permit whether at sea or in port.

*Atlantic herring processor* means a person who receives unprocessed Atlantic herring from a fishing vessel with a Federal Atlantic herring permit or an Atlantic herring dealer for the purposes of processing; or the owner or operator of a vessel that processes Atlantic herring; or an Atlantic herring dealer who purchases Atlantic herring for resale as bait.

\* \* \* \* \*

*Border transfer* (BT) means the amount of herring specified pursuant to § 648.200 that may be transferred to a Canadian transport vessel that is permitted under the provisions of Pub. L. 104-297, section 105(e).

\* \* \* \* \*

*Council* means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, and the NE multispecies fisheries, and the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; the summer flounder, scup, and black sea bass fisheries; and the Atlantic bluefish fishery.

\* \* \* \* \*

*Horsepower*, with respect to the Atlantic herring fishery, means the total maximum continuous shaft horsepower of all a vessel's main propulsion machinery.

\* \* \* \* \*

*IVR System* means the Interactive Voice Response reporting system established by the Regional Administrator for the purpose of monitoring harvest levels for certain species.

\* \* \* \* \*

*JVpt*, with respect to the Atlantic herring fishery, means the specification of the total amount of herring available

for joint venture processing by foreign vessels in the EEZ and state waters.

\* \* \* \* \*

Processing, or to process, in the Atlantic herring fishery, means the preparation, other than icing, bleeding, heading or gutting, of Atlantic herring to render it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage, including but not limited to cooking, canning, roe extraction, smoking, salting, drying, freezing, or rendering into meal or oil.

\* \* \* \* \*

U.S. at-sea processing (USAP), with respect to the Atlantic herring fishery, means the specification, pursuant to § 648.200, of the amount of herring that can be received from, or processed by, U.S. vessels issued an Atlantic herring processing permit as described in § 648.4(a)(10)(ii).

\* \* \* \* \*

Vessel Monitoring System (VMS) means a vessel monitoring system or VMS unit as set forth in § 648.9 and approved by NMFS for use on Atlantic sea scallop, NE multispecies, monkfish, and Atlantic herring vessels, as required by this part.

\* \* \* \* \*

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

§ 648.4 Vessel and individual commercial permits.

(a) \* \* \*

(10) Atlantic herring vessels. (i) Atlantic herring permit. (A) 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, catch, possess, land, or process Atlantic herring in or from the EEZ. This requirement does not apply to the following:

(1) A vessel that possesses herring solely for its own use as bait providing the vessel does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board; or

(2) 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.

(B) Eligibility. A vessel of the United States is eligible for and may be issued an Atlantic herring permit to fish for, catch, take, harvest, and possess Atlantic herring in or from the EEZ unless the vessel is ≥ 165 feet (50.3 m) in length overall (LOA), or > 750 GRT (680.4 mt), or the vessel engine is > 3,000 horsepower.

(ii) Atlantic herring processing permit. A vessel of the United States that is >

165 feet (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 vessel may not receive or process Atlantic herring unless the vessel has been issued and has on board an Atlantic herring processing permit.

(iii) Atlantic herring carrier vessels - letter of authorization. An Atlantic herring carrier vessel permitted under paragraph (a)(10)(i)(A) of this section must have been issued and have on board the vessel a letter of authorization to transport Atlantic herring caught by another permitted fishing vessel. The letter of authorization exempts such vessel from the VMS and IVR reporting requirements as specified in subpart K, except as otherwise required by this part. An Atlantic herring carrier vessel may request and obtain a letter of authorization from the Regional Administrator.

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

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(vi) An application for an Atlantic herring permit must also contain the following information:

(A) If the vessel operator caught > 500 mt of Atlantic herring in the previous fishing year, a statement so stating;

(B) If the vessel operator intends to catch > 500 mt of Atlantic herring in the current fishing year, a statement so stating;

(C) If the vessel operator either caught > 500 mt of Atlantic herring in the previous fishing year, or intends to catch > 500 mt of Atlantic herring in the current fishing year, a copy of a vendor installation receipt from a NMFS-approved VMS vendor, as described in § 648.9.

\* \* \* \* \*

5. In § 648.5, the first sentence of paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) General. Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic mackerel, squid, butterfish, scup, or black sea bass, harvested in or from the EEZ, or issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. \* \* \*

\* \* \* \* \*

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

§ 648.6 Dealer/processor permits.

(a) General. All NE multispecies, monkfish, Atlantic herring, Atlantic sea scallop, spiny dogfish, summer flounder, surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, and black sea bass dealers, surf clam and ocean quahog processors, and Atlantic herring processors or purchasers as described in § 648.2, must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species fishery regulations.

\* \* \* \* \*

7. In § 648.7, the heading of paragraph (b)(1)(i) is removed and the first sentence is revised, and the first sentence of paragraphs (a)(1)(i), (a)(2)(i), (a)(3)(i), and paragraph (f)(3) are revised and new paragraphs (a)(3)(iii) and are added, to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) \* \* \*

(1) \* \* \*

(i) All dealers issued a dealer permit under this part, with the exception of those utilizing the surf clam or ocean quahog dealer permit, must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. \* \* \*

\* \* \* \* \*

(2) \* \* \*

(i) Federally permitted dealers, other than Atlantic herring dealers, purchasing quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section must submit, within the time period specified in paragraph (f) of this section, the following information, and any other

information required by the Regional Administrator, to the Regional Administrator or to an official designee, via the IVR system established by the Regional Administrator: Dealer permit number; dealer code; pounds purchased, by species, other than Atlantic herring; reporting week in which species were purchased; and state of landing for each species purchased. \* \* \*

\* \* \* \* \*

(3) \* \* \*

(i) All dealers issued a dealer permit under this part, with the exception of those processing only surf clams or ocean quahogs, must complete the "Employment Data" section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. \* \* \*

\* \* \* \* \*

(iii) Atlantic herring processors including processing vessels must complete and submit all sections of the Annual Processed Products Report.

(b) \* \* \*

(1) \* \* \*

(i) The owner or operator of any vessel issued a permit under this part must maintain on board the vessel and submit an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. \* \* \*

\* \* \* \* \*

(iii) The owner or operator of a vessel described here must report catches (retained and discarded) of herring each week to an IVR system. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, reporting week in which species are caught, pounds retained, pounds discarded, management area fished, and pounds of herring caught in each management area for the previous week. Weekly IVR system 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 permit for Atlantic herring that is required by § 648.205 to have a VMS unit on board must submit an IVR report each week (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 a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board, or any vessel that catches herring in or from the EEZ, but catches  $\geq 2,000$  lb (907.2 kg) of Atlantic herring on any trip in a week must submit an IVR report for that week as required by the Regional Administrator.

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

\* \* \* \* \*

(f) \* \* \*

(3) *At-sea purchasers, receivers, or processors.* All persons, except persons on Atlantic herring carrier vessels, purchasing, receiving, or processing any Atlantic herring, summer flounder, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraphs (a)(1) or (a)(2) of this section, as applicable, and provide those reports to the Regional Administrator or designee on the same frequency basis.

\* \* \* \* \*

8. In § 648.9, paragraphs (c)(1), (c)(2)(i) and (f) are revised to read as follows:

**§ 648.9 VMS requirements.**

\* \* \* \* \*

(c) \* \* \*

(1) Except as provided in paragraph (c)(2) of this section, all required VMS units must transmit a signal indicating the vessel's accurate position every hour, 24 hours a day, throughout the year.

(2) *Power-down exemption.* (i) Any vessel that is required to have on board a fully operational VMS unit at all times, as specified in paragraph (b)(2) of this section, is exempt from this requirement provided:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours; and

(B) A valid letter of exemption obtained pursuant to paragraph (c)(2)(ii) of this section has been issued to the vessel and is on board the vessel, and the vessel is in compliance with all conditions and requirements of said letter.

(C) Any VMS-equipped vessel with an Atlantic herring permit, unless required by other regulations to have on board a fully operational VMS unit at all times, need not transmit a signal when the vessel is in port.

\* \* \* \* \*

(f) *Access.* As a condition to obtaining a limited access scallop or multispecies permit, or an Atlantic herring permit, all vessel owners must allow NMFS, the

USCG, and their authorized officers or designees access to the vessel's DAS, if applicable, and location data obtained from its VMS unit, if required, at the time of or after its transmission to the vendor or receiver, as the case may be.

\* \* \* \* \*

9. In § 648.11, the first sentence of paragraph (a) is revised to read as follows:

**§ 648.11 At-sea sampler/observer coverage.**

(a) The Regional Administrator may request any vessel holding any of the following permits to carry a NMFS-approved sea sampler/observer: Atlantic sea scallop, Atlantic herring, NE multispecies, monkfish, Atlantic mackerel, spiny dogfish, squid, or butterfish, scup, black sea bass, or a moratorium permit for summer flounder. \* \* \*

\* \* \* \* \*

10. In § 648.12, the first sentence of the introductory text is revised to read as follows:

**§ 648.12 Experimental fishing.**

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General Provisions), B (Atlantic Mackerel, Squid, and Butterfish Fisheries), D (Atlantic Sea Scallop Fishery), E (Atlantic Surf Clam and Ocean Quahog Fisheries), F (NE Multispecies and Monkfish Fisheries), G (Summer Flounder Fishery), H (Scup Fishery), I (Black Sea Bass Fishery), J (Atlantic Bluefish Fishery), K (Atlantic Herring Fishery), or L (Spiny Dogfish Fishery) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. \* \* \*

\* \* \* \* \*

11. In § 648.13, paragraph (e) is added to read as follows:

**§ 648.13 Transfers at sea.**

\* \* \* \* \*

(e) *Atlantic herring.* Any person or vessel is prohibited from transferring, or receiving, or attempting to transfer or receive any Atlantic herring taken from the EEZ, and any vessel issued an Atlantic herring permit is prohibited from transferring, receiving, or attempting to transfer or receive, Atlantic herring unless the person or vessel complies with the following:

(1) The transferring and receiving vessel has been issued a valid Atlantic herring permit and/or other applicable authorization, such as a letter of authorization from the Regional Administrator, to transfer or receive herring.

(2) The vessel does not transfer to a U.S. vessel, and a U.S. vessel does not receive, > 2,000 lb (907.2 kg) of herring per day in or from a management area closed to directing fishing for Atlantic herring.

(3) The vessel does not transfer to an IWP or Joint Venture vessel herring in or from an area closed to directed fishing for Atlantic herring.

(4) The vessel does not transfer Atlantic herring to a Canadian transshipment vessel that is permitted in accordance with Pub. L. 104-297 after the amount of herring transshipped equals the amount of the BT specified pursuant to § 648.200.

12. In § 648.14, paragraph (a)(103) is revised, and paragraphs (x)(9) and (bb) are added to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(103) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or transfer, other than solely for transport, any Atlantic herring, multispecies, or monkfish, unless the dealer or transferee has a dealer permit issued under § 648.6.

\* \* \* \* \*

(x) \* \* \*

(9) *Atlantic herring.* All Atlantic herring retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such Atlantic herring were harvested by a vessel fishing exclusively in state waters.

\* \* \* \* \*

(bb) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, retain or land Atlantic herring, unless:

(i) The Atlantic herring are being fished for or were harvested in or from the EEZ by a vessel holding a valid Atlantic herring permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel; or

(ii) The Atlantic herring were harvested by a vessel not issued an Atlantic herring permit that was fishing exclusively in state waters; or

(iii) The Atlantic herring were harvested in or from the EEZ by a vessel engaged in recreational fishing; or

(iv) Unless otherwise specified in accordance with § 648.17.

(2) Operate, or act as an operator of, a vessel with an Atlantic herring permit, or a vessel fishing for or possessing

Atlantic herring in or from the EEZ, unless the operator has been issued, and is in possession of, a valid operator permit.

(3) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a dealer, or in the capacity of a dealer, Atlantic herring that were harvested in or from the EEZ, without having been issued, and in possession of, a valid Atlantic herring dealer permit.

(4) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a processor, or in the capacity of a processor, Atlantic herring from a fishing vessel with an Atlantic herring permit or from a dealer with an Atlantic herring dealer permit, without having been issued, and in possession of, a valid Atlantic herring processor permit.

(5) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any Atlantic herring, unless the vessel has been issued an Atlantic herring permit, or unless the Atlantic herring were harvested by a vessel without an Atlantic herring permit that fished exclusively in state waters.

(6) Purchase, possess, or receive, for a commercial purpose, or attempt to purchase or receive, for a commercial purpose, Atlantic herring caught by a vessel without an Atlantic herring permit unless the Atlantic herring were harvested by a vessel without an Atlantic herring permit that fished exclusively in state waters.

(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 an area of the EEZ subject to restrictions pursuant to § 648.202(a).

(8) 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 state waters subject to restrictions pursuant to § 648.202(a), if the vessel has been issued an Atlantic herring permit.

(9) Transfer or attempt to transfer Atlantic herring to a Canadian transshipment vessel that is permitted in accordance with Pub. L. 104-297 after the amount of herring transshipped equals the amount of the BT specified pursuant to § 648.200.

(10) Transit an area of the EEZ that is subject to a closure to directed fishing for Atlantic herring or restrictions pursuant to § 648.202(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 with a U.S. vessel that exceeds the size limits specified in § 648.203.

(12) Process Atlantic herring in excess of the specification of USAP with a U.S. vessel that exceeds the size limits specified in § 648.203(b).

(13) Discard herring carcasses at sea after removing the roe.

(14) Catch, take, or harvest Atlantic herring for roe in excess of any allowed limit that may be established pursuant to § 648.204(b).

(15) Catch, take, or harvest Atlantic herring unless equipped with an operable VMS unit if a vessel caught > 500 mt of Atlantic herring in the previous fishing year, or intends to catch > 500 mt of Atlantic herring in the current fishing year, as required by § 648.205(a).

(16) Catch, take, or harvest > 500 mt Atlantic herring during the fishing year unless equipped with an operable VMS unit as required by § 648.205(a).

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

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

13. Subpart K is added to read as follows:

**Subpart K—Management Measures for the Atlantic Herring Fishery**

Sec.

648.200 Specifications.

648.201 Management areas.

648.202 Total allowable catch (TAC) controls.

648.203 Vessel size/horsepower limits.

648.204 Herring roe restrictions.

648.205 VMS requirements.

648.206 Framework specifications.

**§ 648.200 Specifications.**

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least annually with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications 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), and reserve (if any). The PDT and PRT shall also recommend the total



allowable catch (TAC) for each management area and sub-area. Recommended specifications shall be presented to the New England Fishery Management Council (Council) at its July meeting.

(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) minus an estimate of the expected Canadian New Brunswick (NB) fixed gear and Georges Bank (GB) herring catch, which shall not exceed 20,000 mt for the NB fixed gear harvest and 10,000 mt for the Canadian GB harvest.

(2) OY shall not exceed maximum sustainable yield (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; however, OY shall not exceed MSY prior to the 2001 fishing year.

(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;

(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. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission and, on or about September 15, shall publish notification in the **Federal Register** proposing specifications and providing a 30-day public comment period. 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 this section.

(d) On or about November 1 of each year, 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 unless revised through

the specification process. NMFS shall issue notification in the **Federal Register** if the previous year's specifications will not be changed.

(e) *In-season adjustments.* 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.

(f) 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**.

**§ 648.201 Management areas.**

(a) Three management areas, which may have different management measures, are established for the Atlantic herring fishery. Management Area 1 shall be subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(1) *Management Area 1 (GOM):* All U.S. waters of the GOM north of a line extending from the eastern shore of Monomoy Island at 41° 35' N. lat. eastward to a point at 41° 35' N. lat., 69° 00' W. long., thence northeasterly to a point along the Hague Line 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). This line identifies inshore fishing grounds that have supported most of the catch to date. The line dividing these areas is described by the following coordinates:

Point N. Latitude	W. Longitude
42° 38.4'	70° 00' at Cape Cod shoreline.
42° 53'	70° 00'.
43° 12'	69° 40'.
43° 40'	69° 00'.
	68° 00'.

Point N. Latitude	W. Longitude
43° 58' ..... (the U.S.-Canada maritime Boundary) <sup>1</sup>	67° 22'

<sup>1</sup> Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(2) *Management Area 2 (South Coastal Area)*: All waters west of 69°00' W. long. and south of 41°35' 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 69°00' W. long. and southeast of the line that runs from a point at 69°00' W. long. and 41°35' N. lat., northeasterly to the Hague Line at 67°44'35" W. long. and 42°53'14" N. lat.

(b) [Reserved]

**§ 648.202 Total allowable catch (TAC) controls.**

(a) If NMFS determines that catch will reach or exceed 95 percent of the TAC in a management area before the end of the fishing year, 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 (d) of this section, except as provided in paragraph (c) of this section. These limits shall be enforced based on a calendar day.

(b) NMFS may raise the percent of the TAC that triggers imposition of the 2,000 lb (907.2 kg) limit specified in paragraph (a) of this section through the annual 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 all fishing gear is stowed and not available for immediate use as required by § 648.23(b).

(d) 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.

**§ 648.203 Vessel size/horsepower limits.**

(a) A U.S. vessel issued an Atlantic herring permit must not exceed the specifications contained in § 48.4(a)(10)(i)(B) to catch, take, or harvest Atlantic herring. If any such vessel exceeds such specifications, its permit automatically becomes invalid and the vessel may not catch, take, or harvest Atlantic herring, as applicable, in or from the EEZ.

(b) A U.S. vessel issued an Atlantic herring processor permit may receive and process herring providing such vessel is ≥ 165 feet (50.3 m) in length overall, and ≥ 750 GRT (680.4 mt). A U.S. vessel that is > 165 feet (50.3 m) in length overall, or > 750 GRT (680.4 mt), may only receive and process herring provided that the vessel is issued an "Atlantic herring processor permit" described in § 648.4(a)(10)(ii) and that the total amount of herring received or processed by such vessel does not exceed the SAP established in accordance with § 648.200.

**§ 648.204 Herring roe restrictions.**

(a) *Retention of herring roe*. Herring may be processed for roe provided that the carcasses of the herring are not discarded.

(b) *Limits on the harvest of herring for roe*. The Council may recommend to NMFS a limit on the amount of herring that may be harvested for roe to be implemented by framework adjustment in accordance with § 648.206.

**§ 648.205 VMS requirements.**

(a) Except for Atlantic herring carrier vessels, the owner or operator of any vessel issued an Atlantic herring permit that caught or landed > 500 mt of Atlantic herring in the previous fishing year, or intends to catch or land, or catches or lands > 500 mt of Atlantic herring in the current fishing year, must have an operable VMS unit installed on board that meets the requirements of § 648.9.

(b) A vessel owner or operator, except an owner or operator of an Atlantic herring carrier vessel, who intends to catch and land > 500 mt of Atlantic herring must declare such intention to the Regional Administrator prior to obtaining an Atlantic herring fishing permit for the fishing year. The VMS unit must be certified, installed on

board, and operable before the vessel may begin fishing.

(c) Except for Atlantic herring carrier vessels, the owner or operator of a vessel cannot land > 500 mt of Atlantic herring during a fishing year unless it has complied with § 648.205(b).

**§ 648.206 Framework specifications.**

(a) *Annual review*. The Herring PDT, in consultation with the Commission's PRT, shall review the status of the stock and the fishery. The PDT shall review available data pertaining to commercial and recreational catches, current estimates of fishing mortality, stock status, estimates of recruitment, virtual population analysis, 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, the impact of other fisheries on herring mortality, and any other relevant information. Based on this review, the PDT shall report to the Council's Herring Oversight Committee no later than July, any necessary adjustments to the management measures and recommendations for the Atlantic herring annual specifications. The PDT, in consultation with the PRT, shall recommend the specifications, as well as an estimated TAC, as required by § 648.200, for the following fishing year.

(b) Based on these recommendations, the Herring Oversight Committee shall further recommend to the Council any measures necessary to insure that the annual specifications shall not be exceeded. The Council shall review these recommendations and any public comment received and, after consulting with the Commission, shall recommend appropriate specifications to NMFS, as described in § 648.200. Any suggested revisions to management measures may be implemented through the framework process or through an amendment to the FMP.

(c) *Framework adjustment process*. In response to the annual 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 actions 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) *Action by NMFS.* 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), (ii), (iii) and (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.

(d) *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 a 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; and

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

(e) *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.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 022500C]

RIN 0648-AM29

#### Fisheries of the Exclusive Economic Zone Off Alaska; Rebuilding Overfished Fisheries

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

**ACTION:** Notice of availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted for Secretarial review Amendment 11 to the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs