

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Parts 600 and 648**

[Docket No. 000105004-0260-02; I.D. 063099A]

RIN 0648-AI78

**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:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement approved measures contained in the Atlantic Herring Fishery Management Plan (FMP). These regulations implement the following measures: A target total allowable catch (TAC) level for each of three management areas, one of which is divided into inshore and offshore sub-areas; a procedure for the development and revision of annual specifications; initial specifications for the 2000 fishing year; incidental harvest limits upon closure of a management area; a vessel monitoring system (VMS) requirement for certain vessels; vessel size limits; a framework adjustment process; permitting and reporting requirements; restrictions on transfers at sea; and other measures for administration and enforcement. The intended effect of this final rule 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. This final rule also withdraws approval of the Preliminary Management Plan (PMP) for the Atlantic Herring Fishery of the Northwestern Atlantic and removes existing regulations related to Atlantic herring upon the effective date of the final rule. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

**DATES:** This final rule is effective December 11, 2000, except for the amendments to the following sections:

1. Sections 15 CFR 902.1, 50 CFR 600.525, 648.4, 648.5, 648.6, 648.7, 648.9, 648.11, 648.12, 648.13, 648.14(a)(103), (bb)(1)-(6), (bb)(8) and (9), (bb)(11)-(14), (bb)(17) and (18), 648.203, 648.204, and 648.205(b)-(c), which will be effective January 10, 2001; and
2. Sections 50 CFR 648.14(bb)(15) and (16) and 648.205(a), which will be effective March 12, 2001.

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

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to Patricia Kurkul.

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

**SUPPLEMENTARY INFORMATION:** This final rule implements approved measures contained in the FMP, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on October 27, 1999. All of the measures but four were approved. The disapproved measures and the reasons for their disapproval are described in the preamble to the proposed rule to implement the approved measures (65 FR 11956, March 7, 2000) and are not repeated here.

Details concerning the justification for and development of the FMP and the implementing regulations were also provided in the notice of availability (NOA) of the Atlantic Herring FMP (64 FR 40542, July 27, 1999) and in the preamble to the proposed rule (65 FR 11956, March 7, 2000) and are not repeated here.

**Approved Measures****Annual Specifications**

The FMP enacts a procedure for establishing Optimum Yield (OY) that is based on the allowable biological catch (ABC). The ABC will be determined by multiplying the estimate of current stock size by the target fishing mortality rate (F). OY cannot exceed ABC, adjusted by the Canadian Georges Bank (GB) and New Brunswick (NB) fixed gear catches, which cannot exceed 20,000 mt for the Canadian NB fixed gear harvest and 10,000 mt for the Canadian GB harvest. The FMP limits the amount of Canadian catch that will be considered when setting OY. OY also will not exceed the 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 will 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  $B_{MSY}$  (the biomass level that produces MSY), rather than basing it on actual estimates of current stock size, which exceed  $B_{MSY}$ . This precautionary approach will 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 FMP establishes four additional specifications: Total amount allocated to processing by foreign ships (JVPt), either in state waters (IWP) or in the exclusive economic zone (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 (SFA) (Pub. L. 104-297, section 105(e)); and total allowable level of foreign fishing (TALFF), if any, from that portion of OY that will not be harvested by domestic vessels. The Council and the Atlantic States Marine Fisheries Commission (Commission) will consult annually to determine the allocation of JVPt to IWP and JVP.

**Initial Specifications**

The FMP establishes initial specifications for the 2000 fishing year. (The FMP as submitted recommended 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), the initial specifications for the 2000 fishing year are established at the levels specified in the FMP for the 1999 fishing year.

The approved specifications include an ABC of 300,000 mt and an OY of 224,000 mt. Because the domestic annual harvest (DAH) is equal to the OY, TALFF is 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. Since no herring is allocated to USAP for the 2000 fishing year, at-sea processing by domestic vessels exceeding the proposed size limits cannot take place. Table 1 contains the initial specifications for the 2000 Atlantic herring fishery which are effective January 1, 2000, through December 31, 2000.

TABLE 1.—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 FMP establishes three management areas based on the existing areas established by the Commission's FMP and the former PMP. However, Management Area 1 is divided into inshore (Area 1A) and offshore (Area 1B) areas. The Council uses the management areas as the basis for recommending the distribution of the TAC to different spawning components and for the distribution of JVP allocations and may use the management areas as the basis for implementation of other management measures in the future.

#### Total Allowable Catch

The FMP established a target TAC for the 1999 fishing year that remains in effect for the 2000 fishing year, unless revised through the specification process. Because the 1999 fishing year has passed, the FMP establishes the target TAC for the 2000 fishing year at the level specified in the FMP for the 1999 fishing year. The TAC will be re-specified for each fishing year beyond 2000. The TAC for a given year is distributed to the management areas based on existing knowledge of fishing patterns, herring stock structure, and herring migration. For the 2000 fishing year, the percentage allocations for the various areas are: Area 1A - 20 percent; Area 1B - 11 percent; Area 2 - 22 percent; Area 3 - 22 percent; Area 2 TAC Reserve - 24 percent. (Note: Does not total 100 percent due to rounding. See Table 2 for resultant management area target TACs.) Each year, the Council's Herring Plan Development Team will examine available data and recommend a TAC and its distribution to the Council. The Council will then consult with the Commission before it recommends a TAC to NMFS. NMFS will 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, will be applied against the TAC.

The directed fishery for herring will 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 will 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 may 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 remainder for a given area TAC may be increased the following year through a framework adjustment. After an area is closed to directed fishing, vessels are allowed to

possess, transfer, or land  $\leq 2,000$  lb (907.2 kg) of herring in or from the closed area. Vessels that harvest 2,000 lb (907.2 kg) of herring in an open area are allowed to transit the closed area, provided all gear is stowed.

The industry will 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 area TACs for the 2000 fishing year.

TABLE 2.—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 are no specific restrictions on transfers of herring at sea, unless a management area is closed to directed fishing for Atlantic herring (i.e., harvesting more than 2,000 lb (907.2 kg) of Atlantic herring per trip) and/or other restrictions in the regulations apply. When a management area is closed to directed fishing for Atlantic herring, transfers are 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 may 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 authorized pursuant to the SFA, section 105(e), may not transfer herring to Canadian herring carriers that transship U.S.-caught herring after the amount of herring transshipped equals the amount of the BT specification. Canadian herring carriers may not receive U.S.-caught herring after the amount transshipped equals the amount of the BT specification.

#### Vessel Size Limits

Domestic vessels  $\geq 165$  ft (50.3 m) in length overall (LOA), or  $> 750$  gross registered tons (GRT)/(680.4 mt), or  $> 3,000$  horsepower are not permitted to catch, take, or harvest herring in or from the EEZ. Domestic vessels  $> 165$  ft (50.3 m) LOA or  $> 750$  GRT (680.4 mt) are

allowed, however, to process or receive herring in the EEZ, but are limited to the allocated amount specified pursuant to the specification process for USAP, which is zero for the 2000 fishing year.

#### **Roe Fishery**

The harvest of Atlantic herring for roe is allowed, provided the carcasses are not discarded. The Council will monitor the development of a roe fishery and may, in the future, recommend a limit on the amount of herring that may be harvested for roe. Any restrictions or limitations on the amount of herring harvested for roe must be implemented through the amendment process or the framework adjustment process in accordance with 50 CFR 648.206.

#### **Foreign Fishing Vessel Restrictions**

Foreign fishing vessel permitting and reporting requirements are established by 50 CFR part 600, subpart F, which include regulations on harvesting by foreign fishing vessels and joint ventures and internal waters processing and support. The Council may recommend joint ventures and TALFF in all management areas, subject to an annual review. The Council may 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 must come from that management area.

#### **Vessel Monitoring Systems**

The FMP requires 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 helps facilitate the monitoring of area-specific TACs and assists with the enforcement of closures of management areas to directed fishing for Atlantic herring, as well as facilitating 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 no later than March 12, 2001 and/or prior to the beginning of the subsequent fishing year in order to land > 500 mt in that fishing year, unless otherwise specified by the Regional Administrator. Because in this application VMS is intended primarily to monitor areas fished as opposed to days-at-sea effort, a VMS unit must be operating any time an Atlantic herring vessel is underway, but does not have to be operating when a vessel is moored

or maneuvering in a harbor. This minimizes communication costs to vessel operators and removes the necessity to provide power to a moored vessel with a VMS unit.

#### **Permitting Requirements**

All commercial vessels meeting certain eligibility criteria fishing for, possessing, or landing herring in or from the EEZ are required to obtain a Federal Atlantic herring permit. Domestic vessels  $\geq 165$  ft (50.3 m) LOA, or > than 750 GRT (680.4 mt), or > 3,000 horsepower are not eligible to be issued a permit to harvest or take herring. However, domestic vessels > 165 ft (50.3 m) LOA or > 750 GRT (680.4 mt), regardless of horsepower, are 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 are no restrictions or qualification criteria necessary for a domestic vessel to receive a permit. A vessel with a Federal Atlantic herring fishing permit must be marked in accordance with 50 CFR 648.8.

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

Operators of vessels issued an Atlantic herring fishing or processing permit are required to obtain an operator permit. There is no qualification or test for this permit. Dealers of Atlantic herring are required to obtain a dealer permit and to comply with reporting requirements.

This FMP requires 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 may 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 will need both permits.

#### **Reporting Requirements**

The FMP extends the existing Vessel Trip Report (VTR) system to vessels with Atlantic herring permits. This requires 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 is 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 cannot 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, the delay in obtaining statistics makes it difficult to project landings accurately in a timely way. In order to improve the timely collection of harvest information, this rule requires that an owner/operator of a vessel required to be equipped with a VMS unit report its harvest (landings and discards, both of which are applied against the TACs), by area, on a weekly basis. These reports are called in (using a toll free number) to an IVR system. An owner/operator of a vessel with a VMS unit must call in a report for each week of the year, even if still at sea, including weeks it does not harvest herring. In addition, an owner/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 Atlantic herring catch report via the IVR system by Tuesday of the following week, even if the herring has not yet been landed. This system improves the timeliness of information on harvests of herring, which will facilitate more accurate predictions about when the TAC will be attained.

Atlantic herring dealers are 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 are not 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 are required to submit annually the Fishery Products Report, U.S. Processors, Annual Survey, (NOAA Form 88-13). This report, which collects information on the uses of herring, facilitates 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 Atlantic Herring 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. The EFH information for Atlantic herring was incorporated by reference into the FMP when that FMP was 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 framework adjustment process for Atlantic herring, measures may 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 may be adopted through a framework adjustment or FMP amendment, as appropriate. This process will begin by July of each year so that changes can be implemented by January 1 of the following fishing year. The Commission is 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

exists, NMFS may bypass the proposed rule stage and publish a final rule in the **Federal Register**. The management measures that may be implemented and adjusted through the framework process include: (1) Management area boundaries; (2) size, timing, or location of spawning area closures; (3) closed areas other than spawning closures; (4) restrictions in the amount of fishing time; (5) a days-at-sea effort control 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 EEZ 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 withdraws approval of the PMP and removes existing regulations related to Atlantic herring (50 CFR 600.525) effective January 10, 2001.

### Comments and Responses

Twelve sets of written comments on the FMP were received during the comment period date established by the NOA, which ended September 27, 1999. Those comments were considered by NMFS before it partially approved the FMP on October 27, 1999, and, while not specifically repeated here, those comments are characterized below.

NMFS also received 14 sets of written comments on the proposed rule, some of which included comments on the FMP, during the comment period specified in the proposed rule, which ended on April 21, 2000. Because the comment period for the proposed rule was distinct from, and followed, the comment period for the FMP, comments received during the proposed rule comment period were not considered in NMFS' determination to approve the FMP. However, the comments addressing the proposed rule itself were considered in approval and implementation of the final rule effecting the FMP and its management measures and are responded to here. Those comments specifically addressing the FMP submitted after September 27, 1999, are not responded to here, since the comment period on the FMP had closed prior to their submission.

*Comment 1:* A commenter expressed concern that the FMP prohibits TALFF even though the FMP acknowledges Atlantic herring is not fully harvested by the available domestic harvesting capacity. The commenter further stated that the provision on TALFF, as currently written, is not consistent with section 303(a)(4)(B) of the Magnuson-

Stevens Act and that the FMP should be revised to provide for an annual specification of TALFF even if, in any given year, it is determined that the amount should be zero.

*Response:* NMFS concurs and disapproved the prohibition on TALFF. Section 303(a)(4)(B) of the Magnuson-Stevens Act provides that any fishery management plan that is prepared by any Council, or by the Secretary, with respect to any fishery, shall assess and specify the portion of OY which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing.

*Comment 2:* A commenter reiterated EFH issues raised previously pertaining to the Northeast Omnibus EFH Amendment. The commenter also provided extensive comments on technical aspects of the Omnibus Amendment's discussion of potential impacts to EFH from oil, gas, and mineral extraction, and the recommended conservation and enhancement measures dealing with these activities.

*Response:* The Northeast Omnibus EFH Amendment included the EFH components of the Atlantic Herring FMP, which was then still under development by the Council. When NMFS announced approval of the EFH amendments to several fishery management plans (64 FR 19503, April 21, 1999) it stated that the EFH information for Atlantic herring would be incorporated by reference into the Atlantic Herring FMP when that FMP was submitted for Secretarial approval. NMFS responded to the commenter's comments submitted on the Northeast Omnibus EFH Amendment at that time.

*Comment 3:* A commenter expressed concern about the level of effort in Management Area 1A and disagreed with NMFS' concerns about the following: Discrepancies in vessel size between the Atlantic mackerel and Atlantic herring fisheries (which the commenter asked to have clarified); the lack of a real-time mechanism to monitor Canadian catch (tied to the adjustment of the TAC for Management Area 1A); and the lack of sufficient benefits from adjusting the TAC in Management Area 1A after October 1 because the fishing year ends December 31. The commenter also stated that a real-time monitoring system for the Canadian fishery does exist; that adjusting the TAC after October 1 could have substantial benefits to the eastern Maine fixed gear fishery; that date-certain spawning closures are problematic and do not protect spawning herring; that the overall

strategy for protection of spawning herring is inconsistent between Federal and state waters; and that NMFS and the Council need to address the impacts of other fisheries on spawning herring, whereby vessels from other fisheries are not constrained from fishing in the spawning closures.

*Response:* Regarding the commenter's concern about the level of effort in Management Area 1A, the management measures are intended to reduce herring landings from this area. The FMP effects TACs, assigned by management areas, to help prevent overfishing of the resource, and Management Area 1A in particular.

NMFS approved the vessel size restrictions. Regarding the commenter's request to clarify differences in domestic vessel size restrictions between the Atlantic herring and Atlantic mackerel fisheries, the FMP states that domestic vessels  $\geq 165$  ft (50.3 m) in length, or  $> 750$  GRT, or 3,000 horsepower are not permitted to catch, take, or harvest herring in or from the EEZ. Amendment 8 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan, however, provides that domestic vessels  $> 165$  ft (50.3 m) in length and 750 GRT, or  $> 3,000$  horsepower are not permitted to catch, take, or harvest mackerel in or from the EEZ.

Further, regarding vessel restrictions for processing, the FMP states that domestic vessels  $> 165$  ft (50.3 m) in length, or  $> 750$  GRT, are allowed to process or receive herring in the EEZ, but are limited to the allocated amount specified pursuant to the specification process for USAP. Amendment 8 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan, however, provides no size restrictions for processing vessels.

The differences between the mackerel and herring size specifications do not result in any practical differential impact on vessels currently subject to these specifications. Nevertheless, NMFS will continue to work with the New England and Mid-Atlantic Councils (Councils) and the Commission to resolve these minor inconsistencies in order to facilitate FMP administration.

Regarding NMFS' concern that there is no real-time mechanism to monitor Canadian catch, even if Canadian data could be obtained, there is no way to ensure that it would be provided in future years. Therefore, NMFS disapproved adjustment of the TAC for Management Area 1A if the NB, Canada, fixed gear fishery would not harvest 20,000 mt of Atlantic herring by October 1.

NMFS disapproved the spawning closures measure.

*Comment 4:* The Commission commented in support of the FMP's full implementation and acknowledged its close coordination with the Council during the development of the FMP.

*Response:* The Commission coordinated development of its Amendment 1 to its Interstate Fishery Management Plan for Atlantic Sea Herring simultaneously with the Council's development of the FMP. In its attempt to maintain consistency with the Federal FMP, the Commission adopted the Council's proposed measures, where feasible, in its own plan, which was effective in February 1999. Disapproval by NMFS of several measures of concern in the Federal FMP has resulted in inconsistencies between the Commission and Federal plans. NMFS is working with the Commission and Councils to resolve any inconsistencies as they cooperatively develop future management measures.

*Comment 5:* A commenter stated that the FMP fails to prevent overfishing, minimize bycatch, and protect EFH. With regard to EFH, the commenter said that the Omnibus EFH Amendment incorrectly concluded that mid-water trawls have minimal effects on EFH; the Omnibus Amendment and the FMP failed to minimize fishing gear impacts on EFH; and the FMP fails to protect herring egg beds throughout the range of the stock. The commenter also stated that the Environmental Impact Statement for the FMP fails to discuss adequately the direct, indirect and cumulative environmental impacts of the proposed action; and that NMFS failed to undertake an Endangered Species Act (ESA) Section 7 formal consultation to determine the proposed action's potential to jeopardize threatened or endangered species.

*Response:* The Northeast Fisheries Science Center (NEFSC) reviewed the overfishing definition for Atlantic herring for compliance with guidelines provided in 50 CFR part 600, including consideration of whether the overfishing definition has sufficient scientific merit, is likely to result in effective action to protect the stock from closely approaching or reaching an overfished status, provides a basis for the objective measurement of the status of the stock against the overfishing definition, and is operationally feasible. Based on its review, the NEFSC certified that the overfishing definition complies with 50 CFR part 600 guidelines. The NEFSC further stated that the current estimates of biological reference points for this stock complex are based on the best available scientific information but

added that the Herring Plan Development Team (PDT), Stock Assessment Review Committee (SARC)-Pelagic Working Group, and the Commission's Herring Section recognize that further work and analyses are necessary for the stock complex and its components, and revisions will probably be required. These committees will continue to work on improving estimates of Bmsy, Fmsy (the fishing mortality rate consistent with the production of MSY), and MSY for Atlantic herring and may recommend changes in the future. The NEFSC will continue to monitor abundance, recruitment, fishing mortality and other information for the Atlantic herring stock complex and fishery and will recommend adjustments, if and when necessary.

The information available on the extent of bycatch in the herring fishery is summarized in sec. E.6.4.2.6. of the FMP and is further addressed throughout the FMP. This information, while not representative of the entire fishery in all areas and seasons, indicates that the traditional purse seine and mid-water trawl herring fisheries are relatively "clean" fisheries, with limited bycatch of other species.

There is some concern over possible marine mammal interactions with the herring mid-water trawl fishery, based on experience with other mid-water trawl fisheries. For this reason, NOAA listed the herring mid-water trawl fishery as a Category II fishery (defined at § 229.2 (60 FR 45086, August 30, 1995)). This will facilitate the use of marine mammal observers to determine the extent of any interactions. Further, restrictions on the size of vessels in the herring fishery may reduce the likelihood of bycatch of marine mammals. Large pelagic trawlers in the mackerel fishery are known to have taken marine mammals. The prohibition on the catching of herring by large domestic vessels may prevent a possible recurrence of this problem.

Management of the Atlantic herring fishery relies on accurate estimates of catches, catch rates, and bycatch. The FMP contains a measure that provides NMFS (and, cooperatively, the states) with the ability to place observers on board vessels to collect this information if necessary.

With regard to EFH issues, NMFS disagrees that the omnibus amendment incorrectly concluded that mid-water trawls have minimal effects on EFH. The 1998 Auster and Langton report referenced in the Omnibus Amendment provided a literature review of all available scientific information pertaining to gear impacts on habitat.

No reference was made to mid-water trawl gear. Pursuant to 50 CFR 648.2, a mid-water trawl is defined as trawl gear designed to fish for, or that is capable of fishing for, or that is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. Based upon this definition and the lack of information documenting adverse impacts to bottom habitat from mid-water trawls, the Council correctly concluded that mid-water trawls do not significantly impact the sea floor or other EFH.

The Councils approached the evaluation of impacts from fishing gears methodically. They identified the major gears used in the region based on landings, described the major gears, identified that otter trawls and scallop dredges were the most likely to have adverse impacts on habitat, appended a summary of the literature on fishing gear impacts to habitat, and described other impacts from fishing activities such as the impacts of fishing-related marine debris and lost gear, impacts of aquaculture, and impacts of at-sea fish processing. The Councils also evaluated fisheries management measures currently in place and assessed their impact on EFH. Finally, the Councils identified a number of areas that require further research in order to provide a better basis for determining fishing gear impacts, such as the spatial distribution and extent of fishing effort for gear types; the effects of specific gear types along a gradient of effort on specific habitat types; and recovery rates of various habitat types following fishing activity. Although the commenter may disagree with the manner in which the information was presented, NMFS concludes that the Councils satisfied the requirements of the Magnuson-Stevens Act and the EFH requirements (50 CFR 600.815(a)(3)) regarding the assessment of fishing gear impacts.

The Council can use the framework adjustment process to address future identified impacts to herring EFH. Based upon management measures in place in other fishery management plans, as well as those within the Herring FMP as explained in the Northeast Omnibus Amendment, the Council has satisfied its requirement under 50 CFR 600.815(a)(3)(iii) to minimize, to the extent practicable, adverse effects on EFH.

Environmental impacts of this action are discussed in section E.7.0 of the FMP. The action is not expected to have a negative impact on the biological components of the herring fishery and is expected to have a net positive impact on the economic and social components

of the herring fishery. Spawning stock biomass is projected to continue to increase at the same time that landings of herring could double. In the long-term, the establishment of TACs and effort controls are expected to result in a sustainable herring fishery. The social impacts of the action are not expected to be large in scale, long-term, or far-reaching. Fishermen in the Gulf of Maine (GOM) may be the most affected, primarily by forcing a redistribution of fishing effort from the inshore area. Some fishermen in other fisheries will have the opportunity to enter the herring fishery, which may alleviate problems caused by increasing restrictions in those fisheries.

NMFS completed a biological opinion (BO), pursuant to section 7 of the ESA, on the FMP on September 17, 1999. The BO concluded that while competition with the herring fishery may affect the availability of sufficient prey for endangered whales, the complexity of ecosystem interactions and the logistical difficulties of conducting necessary sampling have hindered conclusive demonstration of the existence of competition. This opinion further concluded that the proposed Federal herring fishery is not likely to jeopardize the continued existence of threatened or endangered species or designated critical habitat. The BO also includes an Incidental Take Statement that provides the fishery with an exemption from the take prohibitions established in section 9 of the ESA.

*Comment 6:* A commenter expressed concern that a serious decline in the herring stock in the GOM is due to mid-water trawling and suggested closing areas in the GOM to mid-water gear.

*Response:* While NMFS acknowledges some concern for the inshore portion of the stock in the GOM, the stocks offshore are robust. There is no credible evidence that any decline in the herring stock in the inshore GOM is due to any particular type of gear. The FMP limits TACs in each of the established herring management areas. Attainment of the TAC, therefore, would close a management area to directed herring fishing by any gear type. The measures do not, however, include the establishment of closed areas to address fishing mortality or other concerns.

*Comment 7:* A commenter supported the FMP as submitted, with the following exceptions: That the spawning area closures scheme is seriously flawed and should be rejected; JVP should be disapproved; and the word "shoreside" should be added to one of the FMP objectives, to read, "To maximize domestic shoreside use and

encourage value-added product utilization."

In requesting that the Secretary reject spawning area closures, the commenter stated that the date-certain approach proposed in the FMP will eliminate fishing opportunities. The commenter added that it will also be unsuccessful in reducing spawning fish mortality if herring are not spawning during the dates that the areas are closed. The commenter further added that spawning closures should also apply to mobile, bottom-tending vessels in addition to purse seiners and mid-water trawlers. The commenter also opposed the 2,000-lb (907.2-kg) incidental catch allowance.

In requesting disapproval of JVP, the commenter argued that the FMP seriously underestimates the amount of DAP that exists to freeze, or otherwise process, herring. The commenter also raised the equity issue that a zero allocation for JVP would be consistent with the zero allocation for USAP.

The commenter requested that the word "shoreside" be added to one of the FMP objectives because the word was removed by the Council in finalizing this objective after 2 years of having been included in that objective. The commenter stated that, by eliminating this word, the Region's shoreside processors become less competitive globally than large offshore processing vessels would be, which the commenter found contrary to national standard 8.

The commenter also included suggestions for EFH, which it submitted to the Council on July 27, 1998, and other suggestions for improving management of the fishery.

*Response:* NMFS disapproved the spawning closures.

Regarding the request for disapproval of JVP, the amount expected to be used by DAP was estimated and subtracted from the DAH, along with herring transported to Canada (BT). The FMP provides that, if there is any DAH remaining, it may be made available for JVP. Such was the case. Regarding the comment that since USAP is zero, JVP should be zero, the Council addressed this issue by voting at its July 1999 meeting to increase USAP to 20,000 mt for the 2000 fishing year and to establish the same amount for JVPt. The Council's request and attendant analysis are under NMFS review.

In response to the commenter's request that the word "shoreside" should be added to one of the FMP objectives the Council, after public discussion, chose not to take the position that either shoreside processors or existing small freezer trawlers were more desirable than the other and decided to forward the FMP without the

word "shoreside" in that objective. NMFS disagrees that the objective, as approved, violates national standard 8.

The commenter's suggestions for EFH and improving management of the fishery are acknowledged and were previously responded to in association with approval of the Northeast Omnibus EFH Amendment.

*Comment 8:* A commenter stated that USAP should be at least equal to JVP; the Mid-Atlantic Council should align large vessel size in the mackerel fishery with the New England Council's herring vessel size; the days out of the fishery scheme is too burdensome to be effective; and a roe fishery should not be allowed because while searching for herring with the proper roe content, large amounts of herring are discarded. The commenter added that allowing roe fishing is shortsighted because once established, the economic pressure of such a lucrative fishery would make curtailing it politically impossible.

*Response:* As to USAP being equal to JVP, see response to comment 7.

With regard to aligning large vessel size in the mackerel fishery with the vessel size established by this FMP, as stated previously, the Atlantic Herring and Atlantic Mackerel fishery management plans are separate from each other (neither adversely affecting the other). Their differences do not hinder either plan from meeting its respective objectives and there are no practical differential impacts on vessels currently subject to the size specifications. Nevertheless, NMFS will continue to work with the Councils and the Commission to resolve these inconsistencies in order to facilitate FMP administration as they continue to develop future management measures.

NMFS disapproved the proposed days-out-of-the-fishery provision.

After exploring alternatives for allowing a roe fishery, the Council chose to allow this activity and to monitor its development. This allows the cautious development of a fishery that takes advantage of the high value of herring roe, while at the same time protecting the resource. Furthermore, the possession of herring roe is only authorized if carcasses are retained. Should the amount of herring harvested for roe become a concern, the Council may initiate a framework adjustment action to implement additional management measures to limit the harvest of herring for roe.

*Comment 9:* A commenter raised the need for an ecosystem-wide, integrated approach to population assessments.

*Response:* NMFS acknowledges that ecosystem approaches to fishery assessment and management are

desirable and is working on such approaches that may prove useful in the future. However, the current population assessment is consistent with the best available scientific information and scientific practices, is consistent with requirements of applicable law, and is adequate to manage the herring fishery effectively.

*Comment 10:* A commenter argued for a prohibition on bottom trawls during the spawning season and added that fixed-date spawning closures will not be effective.

*Response:* NMFS disapproved the spawning closures measure.

*Comment 11:* A commenter disagreed with the size restrictions on domestic vessels and the establishment of an "at-sea processing" sector, which could discriminate against large vessels. The commenter argued that the size restriction was included in the FMP with the intent of eliminating an existing freezer trawler. The commenter argued further that there is no analysis on "the effect or consequence of including or excluding vessels based on their length, tonnage, or horsepower either individually, all three, or a combination of any two of the specifications". The commenter concluded that the vessel size limits adversely affect the ability of those who would develop and supply the export markets for whole round frozen-at-sea herring.

*Response:* The Council did not intend to exclude any current participants in the herring fishery, but only to restrict the size of vessels. The Council reasoned that restricting the size of vessels entering the open access fishery would slow the increase in harvest rates. It stated that this is consistent with the 1998 SARC recommendation that the herring harvest be increased in an incremental manner until the precision of stock estimates can be improved. In actual effect, this measure allocates the herring resource to existing participants and future participants that comply with the size restrictions. For the vessels identified as having caught herring in 1997, the maximum length was 126 ft (38.4 m), the maximum horsepower was 2,100, and the maximum GRT was 246. While there are mid-water trawl vessels that exceed these criteria and may desire to participate in the fishery in the future, there were no vessels actively participating in the herring fishery during development of this FMP that exceeded the size limits specified in the FMP.

The FMP provides that vessels over the size limits for harvesting herring may participate in the fishery by

processing at sea. The annual specification process, in this case, USAP, which is set at zero initially, is intended to provide a mechanism for the Council to control, if necessary, the development of large vessel at-sea processing capability for the herring fishery. While the question of excess capacity is not solely one of vessel size, given the existence of available capacity in the Northeast Region and recent attempts to reduce overall capacity in other U.S. fisheries, the Council chose not to allow large domestic vessels in the fishery until it is certain that the capacity they represent can be accommodated.

The Council set the initial specification for USAP at zero. However, it voted at its July 1999 meeting to request an increase in USAP to 20,000 mt for the 2000 fishing year. The Council request and analysis are currently under NMFS review.

*Comment 12:* A commenter considered the FMP to be overly broad and exceeding the intent of Congress. The commenter specifically cited the breadth of EFH designation, noting that EFH appeared to be designated over the range of the species, and in estuarine and coastal waters of the states.

*Response:* These concerns were addressed in the Northeast Omnibus EFH Amendment, which is incorporated into this action, and summarized here. The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Therefore, the geographic scope of EFH must be sufficiently broad to encompass the biological requirements of the species. The information that the Councils used for EFH designation was primarily species distribution and relative abundance data, which is "level 2" information under the EFH regulations (50 CFR 600.815). Since the information available was not more specific (e.g., did not show species production by habitat type), the approach prescribed by the regulations led to fairly broad EFH designations. The EFH regulations at 50 CFR 600.10 interpret the statutory definition of EFH to include aquatic areas that are used by fish, including historically used areas, where appropriate, to support a sustainable fishery and the managed species' contribution to a healthy ecosystem, provided that restoration is technologically and economically feasible. The Councils' EFH designation is consistent with these requirements.

*Comment 13:* A commenter stated that the conservation and enhancement recommendations for non-fishing impacts to EFH that are provided in the

omnibus EFH amendments are neither based on the best available science, nor sufficiently supported. The commenter contended that the recommended measures do not take into consideration current practices, and are likely to be in conflict with measures being pursued under other regulatory programs. The commenter also stated that the Magnuson-Stevens Act did not empower the Councils to address non-fishing activities.

*Response:* NMFS disagrees. The information presented in the omnibus EFH amendments is well researched and is substantiated by the best available scientific information. The commenter did not provide examples of specific information not considered by the Councils.

Conservation and enhancement recommendations for non-fishing industries were included to satisfy the requirements of section 303(a)(7) of the Magnuson-Stevens Act to "identify other actions to encourage the conservation and enhancement of [EFH]." This information is provided to assist non-fishing industries in avoiding impacts to EFH. The recommendations are neither posed as, nor meant to be, binding in nature. It is up to the discretion of the non-fishing industries and relevant regulatory agencies whether these recommendations are implemented.

Additionally, under section 305(b) of the Magnuson-Stevens Act, NMFS is required, and the Councils are authorized, to make conservation recommendations to any Federal or state agency regarding any activity that would adversely affect EFH. Moreover, Federal agencies are required to respond to these recommendations in writing.

*Comment 14:* A commenter stated that the amendment contains no meaningful threshold of significance or likelihood of adverse effect on habitat for non-fishing impacts. The commenter suggested that the consultation and conservation recommendation provisions of the Magnuson-Stevens Act will be burdensome and unworkable. The commenter also contended that the consultation procedures will be redundant with requirements of the National Environmental Policy Act (NEPA), costly, and time-consuming.

*Response:* The Magnuson-Stevens Act requires Federal action agencies to consult with NMFS on activities that may adversely affect EFH. Adverse effects, as defined at 50 CFR 600.810(a), means any impact that reduces the quality and/or quantity of EFH. Adverse effects may include, for example, direct effects through contamination or physical disruption, indirect effects

such as loss of prey or reduction in species fecundity, and site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. Only actions that have a reasonably foreseeable adverse effect require consultation.

Consultations are not likely to be redundant or inefficient. The EFH regulations provide for streamlined consultation procedures, such as general concurrences and abbreviated consultations, that may be used when the activities at issue do not have the potential to cause substantial adverse effects on EFH. The EFH consultation requirements will be consolidated with other existing consultation and environmental review procedures wherever appropriate. This approach will ensure that EFH consultations do not duplicate other environmental reviews, yet still fulfill the statutory requirement for Federal actions to consider potential effects on EFH.

*Comment 15:* A commenter stated that the Omnibus EFH Amendment generally failed to address the potential for significant adverse impacts of this amendment on non-fishing entities, specifically citing the requirements of NEPA and the Regulatory Flexibility Act (RFA).

*Response:* The conservation and enhancement recommendations outlined in the Omnibus EFH Amendment include a review of suggested measures for municipal, state, and Federal agencies and other organizations for the conservation and enhancement of EFH. As stated earlier, these recommendations are non-binding. Any regulatory action that may reflect these recommendations will be subject to the analysis and public review required by state or Federal law, which will be the appropriate vehicle for consideration of impacts to both fishing and non-fishing entities.

In the environmental assessment (EA) included with the Omnibus EFH Amendment, the Council found, and NMFS concurs, that there will be no significant impacts on the human environment as a result of this amendment. The EFH regulations and NOAA policy require that NMFS coordinate EFH consultations with other consultation and commenting requirements under environmental review procedures currently in place. This will eliminate duplication and ensure a workable review process. The analytical requirements of the RFA apply only to regulatory actions for which a general notice of proposed rulemaking (i.e., notice-and-comment rulemaking) is required under the Administrative Procedure Act (APA) or

another statute. The requirements of the RFA did not apply to the approval of the EFH portions of the FMP, since a general notice of proposed rulemaking was not required. Nothing related to EFH of Atlantic herring was codified in regulatory text in 50 CFR part 600, because no regulatory measures related to EFH were proposed in the FMP.

*Comment 16:* A commenter charged that the EFH provisions of the FMP do not comply with Magnuson-Stevens Act national standards 2 (best available scientific information), and 7 (unnecessary duplication).

*Response:* As a part of the Council's Omnibus EFH Amendment, the Atlantic herring section was intended to address only habitat issues, including the EFH requirements of the Magnuson-Stevens Act.

The Omnibus EFH Amendment was developed with significant input from scientists of the NEFSC and is based upon the best scientific information available. In the strategic plan portion of the amendment, the Councils clearly stated their commitment to updating the amendment as new information becomes available. NMFS finds the amendment consistent with national standard 2.

The commenter did not elaborate upon the assertion that the amendment violates national standard 7, so NMFS assumes, for the purpose of responding to this comment, that the commenter believes that the EFH consultation process is duplicative of other federally required consultation processes. NMFS has determined that the EFH amendment is consistent with the Magnuson-Stevens Act, including national standard 7. Inter-agency consultations on Federal activities that may adversely affect EFH are required by the Magnuson-Stevens Act; they are not optional. Section 305(b)(2) of the Magnuson-Stevens Act states: "Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act."

Existing Federal statutes such as the Fish and Wildlife Coordination Act, the Endangered Species Act (ESA), and NEPA already require consultation or coordination between NMFS and other Federal agencies. As explained earlier, EFH consultations will be conducted to the greatest extent possible under existing review processes and within existing process time frames. NMFS is committed to a consultation process that will be effective, efficient, and to the extent possible non-duplicative. The

EFH regulations at 50 CFR 600.920 suggest that NMFS be consulted as early as possible in project planning so that appropriate conservation measures can minimize the potential for adverse effects to EFH. The amendment contains conservation recommendations that are appropriate for many Federal actions, and they can also serve as guidelines that should be considered during project planning.

*Comment 17:* A commenter expressed concern regarding the application of a framework adjustment process to EFH. The commenter was concerned that the framework process would allow changes to these measures to be published as a final rule without first publishing them as a proposed rule. The commenter stated that non-fishing interests lack representation at Council meetings and, therefore, will not have an opportunity to comment on actions regarding EFH. The commenter asserted that the framework adjustment process will foster inconsistencies in treatment among the different NMFS Regions and the Fishery Management Councils, thereby complicating the EFH consultation process. The commenter requested that the inclusion of these measures be delayed until revision of NMFS EFH interim final regulations and guidelines.

*Response:* The framework adjustment process requires the Councils, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Councils must provide the public with advance notice of the meetings through publication of the meeting agenda in the **Federal Register**, the proposals and the analysis, and provide an opportunity to comment on the proposals prior to, and at, the second Council meeting. Upon review of the analysis and public comment, the Council may recommend to NMFS that the measures be published as a final rule, if certain conditions are met. NMFS may either publish the measures as a final rule, or as a proposed rule if NMFS or the Council determines that additional public comment is needed. NMFS believes that there is enough flexibility in the framework system to ensure that the affected parties will be able to participate. NMFS also believes that there is little likelihood of significant inconsistencies occurring between regions, since all measures are reviewed by NMFS Headquarters.

The list of measures that can be implemented by framework included in the FMP is inclusive to give the Councils maximum flexibility to respond quickly to fishery information

as it becomes available and to adjust the regulations accordingly. As such, modifications to EFH and Habitat Areas of Particular Concern (HAPC) can be implemented in an expedited manner if circumstances warrant, based upon Council and NMFS approval. The framework adjustment process requires adherence to all applicable law.

*Comment 18:* A commenter recommended that the Area 1A TAC be adjusted upward, not to exceed 60,000 mt, with the condition that the combined TAC for Area 1A and 1B not exceed 70,000 mt. Other commenters asked for an upward adjustment to 55,000 mt or that Areas 1A and 1B be combined for a single quota of 70,000 mt.

*Response:* Since NMFS may only approve or disapprove an FMP measure, it was constrained to accept the 45,000 mt TAC for Area 1A. However, the Council voted at its May 3-4, 2000, meeting to request an inseason transfer of 15,000 mt of TAC from Area 1B (offshore) to Area 1A (inshore). The Council's request would increase the Area 1A quota to 60,000 mt and reduce the quota in Area 1B to 10,000 mt. The Council's request is currently under review.

*Comment 19:* A commenter stated that language should be clarified to allow landing of herring caught in any open area in an area that has been closed to directed fishing due to attainment of that area's TAC.

*Response:* The Council did not intend to disallow landing of herring caught in open areas in areas closed to directed fishing. Regulatory language has been clarified to allow landing of any amount of herring in areas where possession is restricted to 2,000 lb (907.2 kg) of Atlantic herring due to attainment of 95 percent of that area's TAC, provided such herring was caught lawfully in an open area and all gear is stowed and is not available for immediate use.

*Comment 20:* A commenter stated that the regulations prohibit transferring fish in or from closed areas, but that IWPs and USAPs in state waters are allowed to do so.

*Response:* The FMP allows vessels to transfer up to 2,000 lb (907.2 kg) of herring per day to other U.S. vessels in or from closed areas in Federal waters.

*Comment 21:* A commenter stated that the requirement that lobster and tuna fishermen who occasionally purchase bait at sea obtain permits is unnecessarily burdensome.

*Response:* Section 648.4(a)(10)(i)(A)(1) exempts 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, from the requirement to obtain an Atlantic herring permit. Also exempted under § 648.4(a)(10)(i)(2) is a skiff or other similar craft used exclusively to deploy the net in a purse seine operation during the fishing trip of a vessel that is duly permitted under part 648.

*Comment 22:* A commenter stated that defining a shore-based pump operator as a herring dealer will add confusion to dealer reporting requirements and will decrease report quality.

*Response:* NMFS agrees and has removed shore-based pump operators from the herring dealer definition.

*Comment 23:* A commenter stated that the definition for the VMS currently limits fishers to one approved system and that the regulation should provide a choice of VMS systems. Another commenter, who proposed its own VMS system as a low cost alternative to the existing NMFS-approved system, suggested that the unnecessarily high cost of the one approved VMS is inconsistent with national standard 8.

*Response:* To ensure efficient and expeditious implementation of the VMS requirement in the herring fishery, the Regional Administrator has determined that such requirements, at this time, should be consistent with existing VMS requirements in other fisheries, such as the Atlantic scallop fishery. The definition does not limit the fishery to one approved system. The opportunity exists for any vendor to apply to the Regional Administrator for approval of the vendor's VMS system. NMFS will annually approve VMS systems that meet the minimum performance criteria specified in § 648.9(b). Any changes to the performance criteria will be published annually in the **Federal Register** and a list of approved VMS systems will be published in the **Federal Register** upon addition or deletion of a VMS from the list.

*Comment 24:* A commenter stated that the final rule should consider incorporating the Council's recommended 2000 specifications previously approved by the Council (decreases JVPt by 20,000 mt and increases USAP by 20,000 mt).

*Response:* The Council has submitted its recommended 2000 specifications with an accompanying analysis to NMFS. Its submission package is undergoing NMFS review and is being processed separately as an inseason adjustment.

*Comment 25:* A commenter stated that it is unfair to U.S. fishermen selling herring to Canadian carriers to be limited by the FMP. The commenter suggested that the Boat Transfer (BT) of

4,000 mt be removed from the FMP to enhance free trade. The commenter further stated that the fixed gear (weir/stop seine) sector of the U.S. herring fishery should be exempted from the Area 1 TAC, as the Canadian fixed gear fishery is in New Brunswick, at least until the sector's annual harvest becomes a significant portion of the region's herring fishery.

*Response:* Because the removal of herring for purposes of transferring to Canadian carriers is part of the DAH, it must be included in OY calculations and restricted accordingly. The specification of BT allows the continuation of the historic trade in herring between the U.S. and Canada, while addressing the concerns of other U.S. processors by preventing this trade from being an unlimited transfer that reduces their access to the resource. While the commenter's suggestions are directed to future management measures rather than to these regulations, upon implementation of this rule the Council will have the ability to revise the specifications and TAC distribution method. It would be appropriate for the commenter to raise his concerns in the Council forum.

*Comment 26:* A commenter stated that the regulations should clarify the intent of the FMP, which is that a vessel may only land 2,000 lb (907.2 kg) of herring taken in an area closed because the TAC has been reached in a given calendar day. Other commenters stated that the regulations correctly note this limit, but do not include the FMP language, which reflects the Council's intent that a vessel on a 5-day trip (for instance) would not be allowed to land 10,000 lb (4,536 kg) of herring.

*Response:* The regulations have been clarified.

*Comment 27:* A commenter stated that NMFS authorized the broad use of framework adjustments to allow for expedited rulemaking, without demonstrating a need for such a provision. The commenter stated that this violates the APA because regulations could be implemented without adequate opportunity for public comment. The commenter also stated that the framework process violates the Magnuson-Stevens Act because it fails to conform with the statutorily required FMP process for proposing regulatory changes.

*Response:* The FMP allows the Council to 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 FMP, or to address gear conflicts. After a management action has been initiated, the Council develops and

analyzes appropriate actions over the span of at least two Council meetings. Prior to the second Council meeting, a framework document is prepared that discusses and shows the impacts of the alternatives, which is made available to the public prior to the second or final framework meeting. The public is invited to participate and comment, in person or writing, at all pertinent Council and Committee meetings during the development of the framework action. If the Council recommends to NMFS that the action be issued as a final rule, the Council must first consider and provide support and analysis for several factors, one of which is whether there has been adequate notice and opportunity for participation by the public and members of the affected industry.

NMFS believes that there is enough flexibility in the framework system to ensure that the affected parties are able to participate. For further discussion of the framework adjustment process, see response 17.

*Comment 28:* A commenter stated that the final rule needs to clearly express NMFS' commitment to protecting EFH of Atlantic herring to the greatest extent practicable and that HAPC need to be identified. At a minimum, at least one of the identified herring schools in each inshore and offshore area should be managed as a no-take school. The commenter also stated that this final rule should explicitly state that the Council, through its EFH Committee, consider impacts of fishing gear and practices (as well as non-fishing impacts) to this school-as-habitat approach to EFH and HAPC for herring.

*Response:* As stated in the Northeast Omnibus EFH Amendment incorporated into the FMP and this action, the Council determined, and NMFS concurred, that the most appropriate way to identify EFH for herring was by using scientific studies to quantify herring abundance and distribution, and applying this information as a proxy for estimating habitat utilization. The identification of HAPC is recommended by the EFH regulations, but not required. Further, the approach proposed by the commenter appears to be more of an attempt to manage the herring fishery than a provision for conservation of herring EFH.

*Comment 29:* A commenter stated that the final rule should require the applicable fishery managers to factor in the dietary needs of humpback whales and other marine mammals that are feeding on the Atlantic herring resource. The commenter said that the whale watching industry has been significantly impacted by the departure of whales

from nearshore Federal waters due to the commercial removals of entire herring schools from areas such as Schoodic Ledge.

*Response:* The FMP states that the annual specification of OY will include consideration of economic, social, and ecological factors, which is consistent with the Magnuson-Stevens Act and national standard guidelines. For fishing year 2000, the OY has been set at 224,000 mt with a total herring biomass estimated at 2.9 million mt. It is projected that there will be a 39 percent increase in overall stock size. The 2000 specifications have been set at a conservative level well below ABC to allow for controlled industry growth. This conservative specification level also acknowledges the need to provide for an adequate forage base for marine mammals. However, the degree to which whales are dependent on the herring resource is unknown. Trophic interactions between the herring fishery and humpback and fin whales, as well as other marine mammals, were considered during the ESA consultation on the FMP. Given the complexity of ecosystem interactions, there is no demonstrated link between herring abundance and marine mammal survival and recovery. The ESA consultation recognizes that in the past the herring fishery has apparently affected the distribution of whales that eat herring. However, it also notes that the conversion of the herring fishery into a regulated fishery will benefit protected species management by the overall monitoring of effort patterns in the fishery and the designation of area-based TACs based on the health of the resource in those areas. In addition, one effect of the FMP is to limit harvest from Area 1 in the Gulf of Maine where the resource is considered fully utilized and move more of the fishery further offshore to Areas 2 and 3, where the resource is not considered fully utilized. The combination of area-based TACs and the movement of the herring fishery further offshore would benefit the whale watching industry in the nearshore Federal waters by preventing localized depletions of herring that may affect the distribution of whales in that area.

*Comment 30:* A commenter stated that the NEFMC/Commission meetings were held in locations that were relatively inaccessible to the fixed gear fishermen in the herring fishery. The commenter said that this resulted in unfair representation at Council meetings of some sectors of the industry.

*Response:* Both the Council and Commission attempt to accommodate as much as possible all sectors of the fisheries within their areas of authority.

Council meetings are held throughout New England during the course of the year. In deciding upon meeting sites, the Council and Commission must balance budgetary, staff, travel, facilities and other issues. Industry representatives and members of the public have the opportunity to submit written comments for the Council to consider during its deliberations. However, at least one representative of the fixed gear sector of this fishery is a member of the Council.

Regarding the 2001 meeting schedule, the commenter may appropriately raise his concern directly with the Council and Commission.

*Comment 31:* A commenter stated the need to clarify vessel sizes in the regulations. Another commenter would extend this clarification to capacity, horsepower, and to discrepancies between Herring and Mackerel fishery management plans. A third commenter asked for clarification that a vessel's total (not a single engine) horsepower of its main propulsion machinery cannot exceed 3,000 horsepower.

*Response:* Clarifications have been made, where possible, through modification of the regulatory text in this final rule (See Changes from the Proposed Rule).

*Comment 32:* A commenter suggested that the Atlantic herring dealer definition include harvesters who sell herring to individuals for personal use.

*Response:* The definition of a dealer is not intended to identify persons who sell herring to end users, but rather to identify the person who first receives herring from a harvesting vessel. Including harvesters who sell herring to individuals for personal use in the Atlantic herring dealer definition, therefore, was not the intent of the Council, nor would it be consistent with the definition of a dealer in § 648.2.

*Comment 33:* A commenter stated that the definition of USAP is not clear as to whether the specification refers to the quantity of whole round herring received by vessels for processing, or the quantity of finished, processed product.

*Response:* The definition of USAP has been modified in this final rule to clarify that it is the quantity of whole round herring that can be received for processing by U.S. vessels issued an Atlantic herring processing permit.

*Comment 34:* A commenter stated that the SARC recommended that it would not be prudent to consider MSY above 200,000 mt until the sizes of recent year classes were better estimated.

*Response:* The Council's Herring PDT and the Commission's Technical Committee considered the SARC's

recommendation. Their response and a complete discussion of this issue may be found in the Overfishing Definition Section, Volume I, section 2.6 of the FMP.

*Comment 35:* A commenter mentioned that, because of NMFS' rejected management measures in the proposed rule that would have protected species of concern, it must undertake an additional Section 7 formal consultation to determine if the regulations implementing the partially approved FMP jeopardize any of these listed species.

*Response:* On July 13, 1999, a BO on the proposed FMP concluded that the operation of the Federal Atlantic herring fishery under the FMP could adversely affect but would not likely jeopardize the continued existence of endangered and threatened species under NMFS' jurisdiction and also would not likely destroy or adversely modify right whale critical habitat.

Subsequent to completion of the BO, NMFS disapproved certain management measures in the proposed FMP. These included: (1) 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 TALFF. Modification of the FMP does not automatically trigger reinitiating a formal Section 7 consultation. Re-initiation is only required if the consulting agency has retained involvement or control over the action, and the agency action has been modified in a manner that causes an effect to the listed species or critical habitat not considered in the BO. The FMP, as amended, will not cause an effect to listed species or critical habitat that has not been previously considered in the BO.

As stated in the BO, the primary benefit of regulating the Atlantic herring fishery will be the overall monitoring of effort patterns in the fishery and designation of area-based TACs established based on the health of the resource in those areas. An annual scientific review of the resource will allow for adjustments to the fishery as a result of fluctuations in stock size. The BO considered the adjustment of TAC in Management Area 1A, mandatory days out of the fishery and prohibition on specifying a TALFF as supporting administrative measures to the area-based TAC effort control measure. Since the method for controlling effort in the herring fishery has not been changed, disapproval of the measure for adjustment of the Area 1A TAC is not expected to result in effects to protected species or critical habitat not previously considered in the BO. Similarly,

although the measure that would have required mandatory days out of the fishery has been disapproved, the trigger that closes the fishery in any one management area is still in place and is the same as what was considered in the BO. Finally, while NMFS disapproved the prohibition on establishing a TALFF, it has set the TALFF for the herring fishery at zero. Even if specified above zero, a TALFF would be specified from that portion of the OY that would not be taken in the domestic harvest. Therefore, disapproval of a prohibition on setting a TALFF is not expected to result in an effect to protected species that was not considered in the BO.

The Council included Area 1 spawning closures as an additional measure to help ensure the health of the herring resource. The Council also included a provision to add area closures by framework action. That provision of the FMP remains in place. The BO considered the effect that spawning closures would have on listed species, and concluded that spawning closures could provide some benefit to listed species. This conclusion was moderated, however, with information in the BO that the efficacy of spawning closures could be affected by the 2,000-lb (907.2-kg)/day incidental catch allowance and/or be offset by the potential for effort shifts causing amplification of any adverse effects of the fishery during the time right before and after spawning closures and in areas outside the boundaries of these closures. In addition to these considerations, the BO also examined the trophic relationships between listed species and herring in the current fishery where there are no spawning closures. Given the limited information available on these trophic relationships, the BO could only conclude that while competition with the herring fishery may affect the availability of sufficient prey for endangered whales, the complexity of ecosystem interactions and the logistical difficulties of conducting necessary sampling have hindered conclusive demonstration of the existence of competition. Since the BO did consider the effects to listed species and critical habitat in the presence and absence of spawning closures, re-initiation of the Section 7 consultation is not required. A new Section 7 consultation would not provide any additional or new information that could change the final determination of the BO.

#### Changes from the Proposed Rule

In § 648.2, the definition of "Atlantic herring dealer" is changed to reflect that shore-based pump operators do not

automatically qualify as Atlantic herring dealers. In the proposed rule, shore-based pump operators were designated as dealers because of the difficulty in identifying all the persons who receive herring from the pump operator. These persons have since been identified and will provide fisheries managers with better and more complete data.

In § 648.2, the definition of "Atlantic herring processor" is clarified by stipulating that an Atlantic herring dealer who purchases Atlantic herring for resale as bait must do so from a fishing vessel with a Federal Atlantic herring permit to be considered an Atlantic herring processor.

In § 648.2, the definition of "Council" is modified by adding "spiny dogfish fishery" to the list of fisheries under the auspices of the Mid-Atlantic Fishery Management Council. This brings the definition up to date to reflect approval of the Spiny Dogfish Fishery Management Plan.

In § 648.2, the definition of "horsepower" is removed because, as proposed, it would have been administratively inconsistent with its use as applied to other fisheries of the Northeastern United States.

In § 648.2, the definition of "processing" is corrected by removing the words "icing, bleeding, heading or gutting" of Atlantic herring as an exception to the means of preparation of herring to render it suitable for use as bait.

In § 648.2, the definition of "U.S. at-sea processing (USAP)" is clarified to show that USAP means the specification of the total amount of herring available for processing by U.S. vessels issued an Atlantic herring processing permit.

In § 648.4, paragraph (a)(10)(i)(B) is clarified to show that the total horsepower of a vessel's main propulsion machinery cannot exceed 3,000 horsepower. Prior to this clarification, the regulation could have been interpreted to apply horsepower restrictions to a single engine, which would have allowed a multi-engine vessel to exceed the limit established in the FMP.

In § 648.4, paragraph (c)(2)(vi)(C) is revised to indicate that the VMS vendor receipt required for certain vessels must be submitted initially not later than March 12, 2001.

In § 648.6, the first sentence of paragraph (a) is corrected by substituting the word "dealers" for "purchasers." The section further retains language pertaining to small-mesh multispecies used as bait, which was added to § 648.6 after submission of the proposed rule for Atlantic herring. Atlantic herring is also added

as an exemption from the requirement to possess a valid permit or letter of authorization when purchasing herring at sea if it is to be used for one's own use as bait and certain specific fishing gear is not on board.

In § 648.7, the first sentence of paragraphs (a)(3)(i) and (b)(1)(i) were proposed for revision and the heading of paragraph (b)(1)(i) was proposed for removal. However, these revisions were implemented in the final rule implementing Amendment 1 to the FMP for Atlantic Bluefish Fishery and, therefore, are not repeated in this final rule.

In § 648.7, paragraph (b)(1)(iii)(A) is clarified.

In § 648.11, paragraph (a) is corrected by substituting the word "require" for the word "request" as pertains to the Regional Administrator's authority to place sea samplers/observers aboard federally permitted fishing vessels.

In § 648.13, paragraph (e) is redesignated as paragraph (f) and is further corrected by modifying paragraph (f)(1) to reflect that persons receiving bait at sea for their own personal use are exempt from the requirement to possess a valid Atlantic herring permit or a letter of authorization from the Regional Administrator, providing certain specific fishing gear is not on board the vessel.

In § 648.14, paragraph (a)(103) is corrected to reflect that purchasers of herring at sea to be used for their own use as bait do not require an Atlantic herring dealer permit.

In § 648.200, paragraph (a) is corrected to reflect that the Atlantic Herring Plan Development Team shall meet at least annually, but no later than July, with the Commission's Atlantic Herring Plan Review Team to develop and recommend specifications for the following year to the Council. The requirement in the proposed rule to present the specifications recommendation to the Council at its July meeting is removed.

In § 648.202, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added. The new paragraph (d) corrects an inadvertent omission in the proposed rule by allowing the landing of herring in closed areas if such herring were caught in open areas. Paragraph (a) is corrected to reflect the addition of paragraph (d) and the newly re-designated paragraph (e). Paragraph (a) is also modified to clarify that once the TAC is reached, a vessel may only land 2,000 lb (907.2 kg) of herring in a given calendar day, without regard to the length of the trip.

In § 648.203, paragraph (b) is corrected to refer to the U.S. at-sea processing specification as "USAP."

In § 648.206, the title is changed from "Framework specifications" to "Framework provisions."

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control numbers for 0648-0404 for §§ 648.9 and 648.205.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA, has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

The President has directed Federal agencies to use plain language in their communications with the public including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule. Send comments to Patricia Kurkul (see **ADDRESSES**).

#### Classification

NMFS has determined that the FMP that this rule implements is necessary for the conservation and management of the Atlantic herring fishery and is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

Because current data indicate that the 2000 TAC this final rule implements for Management Area 1A is fast being reached, and an inseason adjustment that has been requested by the Council to address the situation cannot be considered until the 2000 specifications are in place, and given the immediate conservation benefit that would result from implementing the 2000 fishing specifications, it is contrary to the public interest to delay for 30 days the effective date of regulatory provisions establishing the specification process, management areas, TAC controls and prohibitions related to the TAC controls. Failure to implement the 2000 specifications without delay could have a negative impact on fishers and other entities dependent on a steady supply of herring. Therefore, the Assistant Administrator for Fisheries, NOAA, finds under 5 U.S.C. 553(d)(3) that good cause exists not to delay for 30 days the effective date of §§ 648.14(x)(10) and (bb)(7) and (bb)(10), 648.200, 648.201 and 648.202. In addition, §§ 648.1, 648.2 and 648.206 contain provisions

which have no substantive effect and therefore 5 U.S.C. 553 does not apply.

This action has been determined to be significant for the purposes of Executive Order 12866.

The Council prepared an FEIS for the FMP; a notice of availability was published on September 24, 1999 (64 FR 51753). NMFS determined, upon review of the FMP/FEIS and public comments, that approval and implementation of the FMP is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to prevent overfishing; protect harbor porpoise; provide economic and social benefits to the fishing industry in the long term; and contribute to better balance in the ecosystem in terms of the herring resource.

NMFS completed a FRFA that contains the items specified in 5 U.S.C. 604(a) as follows:

#### Final Regulatory Flexibility Analysis

##### *Need for and Objectives of the Final Rule*

This final rule is necessary to implement approved measures contained in the Atlantic Herring FMP. The intent of this final rule is to manage the Atlantic herring fishery in compliance with the regulations pursuant to the Magnuson-Stevens Act and the FMP and to prevent overfishing of the herring resource. This final rule also withdraws approval of the Atlantic herring PMP and removes previous regulations related to Atlantic herring (50 CFR 600.525).

##### *Public Comments*

There were 12 sets of public comments on the FMP submitted during the comment period established by the NOA. Those comments were considered by NMFS before it partially approved the FMP and are characterized and responded to by NMFS in the Comments and Responses section of this final rule. NMFS also received 14 sets of written comments on the proposed rule and those comments that specifically addressed the proposed rule were considered in approval and implementation of the final rule effecting the FMP and its management measures. Responses to comments on economic impacts of the proposed rule are contained in the Response to Comments section in the preamble and are not repeated here. Most of the comments made on the proposed rule addressed the management measures in the FMP that were previously disapproved by NMFS, rather than the proposed rule itself. No significant

changes to the rule were made as a result of comments received.

##### *Number of Small Entities*

The identification of the number of small entities affected by this final 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 RFA 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 of the small entities in the fishery.

### Cost of Compliance

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, per vessel, 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 about \$112 per vessel for these measures. The total annual cost for each dealer 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 each processor 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 relative to other costs of doing business.

Vessels that intend to harvest > 500 mt of herring per year, 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 that would be required to have a VMS, based on their 1997 landings, this cost is equal to approximately 0.5 percent of the average revenues for this group.

### Minimizing Significant Economic Impacts on Small Entities

An analysis indicated that the alternatives implemented by this final rule would minimize significant economic impacts while achieving the conservation goals and objectives of the FMP. The Council considered other alternatives but did not choose them because it determined that they would limit the ability of some smaller vessels in other fisheries to shift into the herring fishery, or would be difficult to implement or monitor accurately, or would conflict with FMP goals. For a description of the alternatives

considered but rejected, see the section of the proposed rule (65 FR 11956).

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 final 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 to require 6 minutes/response.

This final rule also contains 12 new collection-of-information requirements subject to the PRA. The collection of this information has been approved by OMB, and the OMB control numbers and the estimated time for a response are listed as follows:

Open access Atlantic herring permits, OMB control number 0648-0202 (30 minutes/response).

Operator permits, OMB control number 0648-0202 (60 minutes/response).

Dealer permits, OMB control number 0648-0202 (5 minutes/response(trip)).

Processor permits, OMB control number 0648-0202 (5 minutes/response).

Vessel trip reports, OMB control number 0648-0212 (5 minutes/response).

Interactive voice response system reports, OMB control number 0648-0212 (4 minutes/response).

Dealer logbooks reports, OMB control number 0648-0229 (2 minutes/response).

Annual processor reports, OMB control number 0648-0018 (30 minutes/response).

Vessel monitoring system verification requirement, OMB control number 0648-0404 (2 minutes/response).

Vessel monitoring system reports, OMB control number 0648-0404 (5 seconds/response).

Vessel monitoring system installation, OMB control number 0648-0404 (60 minutes/response).

Herring carrier exemption from VMS requirements authorization letter, OMB control number 0648-0404 (2 minutes/response).

The aforementioned response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden

estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

### List of Subjects

#### 15 CFR Part 902

Reporting and recordkeeping requirements.

#### 50 CFR Parts 600 and 648

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

Dated: November 29, 2000.

**William T. Hogarth,**

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

For the reasons set out in the preamble, 15 CFR chapter IX, part 902 and 50 CFR chapter VI, parts 600 and 648 are amended as follows:

### 15 CFR Chapter IX

#### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by revising the OMB control number in numerical order for § 648.9, and by adding in numerical order an entry for § 648.205 with a new OMB control number to read as follows:

#### § 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * *	* * * *
50 CFR	
* * *	* * *
648.9	* * * -0202, -0307, and -0404
* * *	* * *
648.205	-0404
* * *	* * *

## 50 CFR Chapter VI

**PART 600—MAGNUSON-STEVENSON 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”, “IVR system”, and “Vessel Monitoring System” are revised and the definitions for “Atlantic herring”, “Atlantic herring carrier”, “Atlantic herring dealer”, “Atlantic herring processor”, “Border transfer”, “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 fishing 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) Any person who purchases or receives for a commercial purpose other than solely for transport or pumping operations any herring from a vessel issued a Federal Atlantic herring permit, whether offloaded directly from the vessel or from a shore-based pump, for any purpose other than for the purchaser's own use as bait; or

(2) Any person owning or operating a processing vessel that receives any Atlantic herring from a vessel issued 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 issued a Federal Atlantic herring permit or from an Atlantic herring dealer for the purposes of processing; or the owner or operator of a fishing vessel that processes Atlantic herring; or an Atlantic herring dealer who purchases Atlantic herring from a fishing vessel with a Federal Atlantic herring permit 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; the spiny dogfish fishery; and the Atlantic bluefish fishery.

\* \* \* \* \*

*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 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 available for processing 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, the section heading is revised, and paragraphs (a)(10) and (c)(2)(vi) are added to read as follows:

**§ 648.4 Vessel 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, transport, 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  $\geq$  165 feet (50.3 m) in length overall (LOA), or  $>$  750 GRT (680.4 mt), or the vessel's total main propulsion machinery is  $>$  3,000 horsepower.

(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 caught in or from the EEZ 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, must also be provided:

(1) From January 10, 2001, through March 12, 2001, not later than March 12, 2001;

(2) After March 12, 2001, with the application.

\* \* \* \* \*

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 surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or bluefish, 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.* (1) All dealers of NE multispecies, monkfish, Atlantic herring, Atlantic sea scallop, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, and black sea bass, Atlantic surf clam and ocean quahog processors, and Atlantic herring processors or dealers 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. Persons aboard vessels receiving small-mesh multispecies and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

(2) [Reserved]

\* \* \* \* \*

7. In § 648.7, the first sentence of paragraphs (a)(1)(i), and (a)(2)(i), and paragraph (f)(3) are revised; and new paragraphs (a)(3)(iii) and (b)(1)(iii) 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 a 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) \* \* \*

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

(b) \* \* \*

(1) \* \* \*

(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 Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(A) The owner or operator of any vessel issued a permit for Atlantic herring subject to the requirements specified by § 648.4(c)(2)(vi)(C) that is required by § 648.205 to have a VMS unit on board must submit an Atlantic herring catch report via the IVR system 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 ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

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

\* \* \* \* \*

(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, butterflyfish, 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) and (f) are revised and paragraph (c)(2)(iii) is added to read as follows:

**§ 648.9 VMS requirements.**

\* \* \* \* \*

(c) \* \* \*

(1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by § 648.58(h), all required VMS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(2) \* \* \*

(iii) Any VMS-equipped vessel with an Atlantic herring permit, unless required by other fishery 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 data, 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 require 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, butterflyfish, scup, bluefish, 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 Butterflyfish 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 (f) is added to read as follows:

**§ 648.13 Transfers at sea.**

\* \* \* \* \*

(f) *Atlantic herring.* Except for a person who purchases and/or receives Atlantic herring at sea for his own personal use as bait and who does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board, any person or vessel is prohibited from transferring, 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 vessels have been issued valid Atlantic herring permits 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 directed fishing for Atlantic herring.

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

(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)(10) 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 valid dealer permit issued under § 648.6. A person who purchases and/or receives Atlantic herring at sea for his own personal use as bait, and does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board, is exempt from the requirement to possess an Atlantic herring dealer permit.

\* \* \* \* \*

(x) \* \* \*

(10) *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, possess 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 a valid 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 in or from the EEZ with a U.S. vessel that exceeds the size limits specified in § 648.203.

(12) Process Atlantic herring caught in or from the EEZ in excess of the

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

(13) Discard herring carcasses in the EEZ, or at sea if a federally-permitted vessel, after removing the roe.

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

(15) Catch, take, or harvest Atlantic herring in or from the EEZ, 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 of Atlantic herring in or from the EEZ 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:

#### **PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

Sec.

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

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 provisions.

##### **§ 648.200 Specifications.**

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least annually, but no later than July, 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)

(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 NB fixed gear and 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; and

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

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

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications. 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.* (1) The specifications and TACs established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(2) If a total allowable catch reserve (TAC reserve) is specified for an area, NMFS may make any or all of that TAC reserve available to fishers after consulting with the Council. NMFS

shall propose any release of the TAC reserve in the **Federal Register** and provide an opportunity for public comment. After considering any comments received, any release of the TAC reserve shall be announced through notification in the **Federal Register**.

#### § 648.201 Management areas.

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

(a) *Management Area 1 (Gulf of Maine):* All U.S. waters of the Gulf of Maine (GOM) north of a line extending from the eastern shore of Monomoy Island at 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). The line dividing these areas is described by the following coordinates:

#### AREA 1

N. Latitude	W. Longitude
41° 58'	70° 00' at Cape Cod shoreline
42° 38.4'	70° 00'
42° 53'	69° 40'
43° 12'	69° 00'
43° 40'	68° 00'
43° 58'	67° 22' (the U.S.-Canada Maritime Boundary)
(1)	(1)

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

(b) *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.

(c) *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.

#### § 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 (e) of this section, except as provided in paragraphs (c) and (d) of this section. These limits shall be enforced based on a calendar day, without regard to the length of the trip.

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

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

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

(a) To catch, take, or harvest Atlantic herring, a U.S. vessel issued an Atlantic herring permit must not exceed the specifications contained in § 648.4(a)(10)(i)(B). 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  $\leq 750$  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 USAP 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 at sea.

(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. The VMS unit must be certified, installed on board, and operable before the vessel may begin fishing.

(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.

(c) Except for Atlantic herring carrier vessels, the owner or operator of a vessel is prohibited from landing  $> 500$  mt of Atlantic herring caught in or from the EEZ during a fishing year, unless in compliance with § 648.205(b).

#### § 648.206 Framework provisions.

(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) 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 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
- (5) 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.

[FR Doc. 00-31220 Filed 12-8-00; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 000105004-0260-02 ;I.D. 120400A]

RIN 0648-A178

#### Fisheries of the Northeastern United States; Atlantic Herring Fisheries; 2000 Specifications; Adjustment; Closure

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

**ACTION:** Inseason adjustment of the 2000 Atlantic herring specifications; closure of Area 1A.

**SUMMARY:** NMFS adjusts the 2000 annual specifications for the Atlantic herring fishery including total joint venture processing (JVpt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), and total allowable catch (TAC) for Areas 1A and 1B. The intent is to reapportion allowable catches of herring within the fishery sectors and areas to allow for the achievement of the objectives of the Fishery Management Plan for Atlantic Herring (FMP). NMFS also announces that the directed fishery for Atlantic herring in Area 1A in the exclusive economic zone (EEZ) will be closed.

**DATES:** The closure of Area 1A is effective December 14, 2000 through 0001 hours, January 1, 2001. After 0001 hours, December 14, 2000, vessels may not fish for, possess, catch, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring per trip and per calendar day. Comments on the inseason adjustment must be received by January 10, 2001.

**ADDRESSES:** Comments on the inseason adjustment should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments

on Inseason Adjustment of 2000 Atlantic herring specifications." Comments may also be sent via facsimile (fax) to (978) 281-9371. Comments will not be accepted if submitted via e-mail or the Internet.

#### FOR FURTHER INFORMATION CONTACT:

Myles Raizin, Fishery Policy Analyst, 978-281-9288, fax at (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Inseason Adjustment

The inseason adjustment adjusts the 2000 specifications for the Atlantic herring fishery by transferring 5,000 mt specified for JVP and 15,000 mt specified for IWP to USAP, and transferring 15,000 mt of Atlantic herring from the Area 1B TAC to the Area 1A TAC. This action is consistent with the FMP.

JVP is the amount of herring purchased over the side from U.S. vessels and processed by foreign vessels in the EEZ; IWP is the amount of herring purchased over the side from U.S. vessels and processed by foreign vessels at anchor in state waters; JVpt is the sum of JVP and IWP; and USAP is the amount of herring purchased over the side from U.S. vessels and processed in the EEZ by U.S. vessels of the United States that are larger than 165 ft (50.3 m) in length overall or greater than 750 gross registered tons (680.4 mt). For fishing year 2000, JVP allocations were specified for Areas 2 and 3.

Regulations at § 648.200(e) allow NMFS, after consulting with the New England Fishery Management Council (Council), to adjust annual specifications for the Atlantic herring fishery during the fishing year by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for public comment. Any adjustments must be consistent with the FMP objectives and other FMP provisions.

##### 2000 Herring Specifications

The FMP, which was submitted for Secretarial review by the Council on March 8, 1999, and partially approved on October 27, 1999, contains specifications for the 1999 fishery. The 2000 specifications are unchanged from those designated as 1999 specifications in the FMP (see Table 1). The FMP and the 2000 fishery specifications were implemented through a final rule published in the final rule section of this edition of the **Federal Register**.