

revisions to the New Mexico State regulations for the City of Albuquerque-Bernalillo County as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the EPA Region 6 office.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. See, 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 12, 2015.

**Ron Curry,**

*Regional Administrator, Region 6.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 150304214-5660-01]

RIN 0648-BE94

#### Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 4

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

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** NMFS proposes management measures recommended by the New England Fishery Management Council in Framework Adjustment 4 to the Atlantic Herring Fishery Management Plan to further enhance catch monitoring and address discarding in the herring fishery. NMFS proposes measures that would clarify the slippage definition (*i.e.*, discarding catch before it has been sampled by an observer), require limited access herring vessels to report slippage via the daily vessel monitoring system catch report, and require slippage consequence measures. NMFS also proposes management measures recommended by the Council in Framework 4 that would require volumetric estimates of total catch and

fish holds to be empty of fish before vessels depart on a herring trip and seeks public comment on specific issues with these measures identified by NMFS. Lastly, NMFS proposes minor corrections to existing regulations.

**DATES:** Public comments must be received by September 28, 2015.

**ADDRESSES:** The New England Fishery Management Council developed an environmental assessment (EA) for this action that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the framework, the EA, and the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at [www.greateratlantic.fisheries.noaa.gov](http://www.greateratlantic.fisheries.noaa.gov).

You may submit comments on this document, identified by NOAA-NMFS-2015-0067, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)/#!docketDetail;D=NOAA-NMFS-2015-0067, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- Mail: John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Herring Framework Adjustment 4 Proposed Rule."

- Fax: (978) 281-9135, Attn: Carrie Nordeen.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed

rule may be submitted to NMFS, Greater Atlantic Regional Fisheries Office, and by email to *OIRA\_Submission@omb.eop.gov* or fax to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:**

Carrie Nordeen, Fishery Policy Analyst, phone 978-281-9272, fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Council adopted Framework Adjustment 4 to the Atlantic Herring Fishery Management Plan at its April 22, 2014, meeting. The Council submitted Framework 4 to NMFS for review on July 18, 2014, and resubmitted to NMFS on February 27, 2015, and April 30, 2015.

This proposed rule includes management measures recommended by the Council in Framework 4 intended to further enhance catch monitoring and address discarding in the herring fishery. If implemented, Framework 4 would clarify the slippage definition, require limited access herring vessels to report slippage events on the daily vessel monitoring system (VMS) catch report, and establish slippage consequences. Slippage consequence measures would require vessels with All Areas (Category A) or Areas 2/3 (Category B) Limited Access Herring Permits to move 15 nautical miles (27.78 km) following an allowable slippage event, slippage due to safety, mechanical failure, or excess catch of spiny dogfish, and to terminate a fishing trip and return to port following a non-allowable slippage event, slippage for any other reason.

This proposed rule includes two additional management measures also recommended by the Council in Framework 4. These measures include requiring volumetric catch estimates to be collected aboard vessels with limited access herring permits and requiring vessels with Category A or B herring permits to have fish holds empty of fish when departing on a herring trip. NMFS specifically seeks public comment on the consistency of these measures with the Magnuson-Stevens Fisheries Conservation and Management Act (MSA) and other applicable law.

Additionally, this proposed rule contains minor corrections to existing regulations. NMFS proposes these adjustments under the authority of section 305(d) to the MSA, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that adjustments to a fishery management plan (FMP) are carried out in accordance with the FMP and the MSA. These adjustments, which are

identified and described below, are necessary to clarify current regulations or the intent of the Herring FMP, and would not change the intent of any regulations.

**Proposed Measures**

The proposed regulations are based on the measures in Framework 4. The Council developed Framework 4 to build on catch monitoring improvements implemented in Amendment 5 to the Herring FMP (79 FR 8786, February 13, 2014) and to address dealer reporting requirements and slippage caps that NMFS disapproved as part of Amendment 5.

NMFS supports improvements to fishery dependent data collections and shares the Council's concern for reducing unnecessary discarding. During the development of Framework 4, NMFS expressed concern with the lack of rationale supporting two of the measures in Framework 4, specifically the measures requiring volumetric estimates of total catch and empty fish holds at the beginning of a trip. The Council did not provide evidence of specific problems with catch monitoring or discarding that these measures would address, nor did it demonstrate how these measures would rectify any such problems. Therefore, NMFS urged the Council to ensure Framework 4 provided adequate justification to support these measures. At this time, NMFS does not consider Framework 4 to contain sufficient justification for these measures and NMFS remains concerned that the utility of these measures does not outweigh the compliance, administration, and enforcement costs.

This proposed rule describes concerns about these measures' consistency with the MSA and other applicable law. Following public comment, NMFS will determine if these two measures can be approved or if they must be disapproved. NMFS seeks public comment on all proposed measures in Framework 4, and, in particular, NMFS seeks public comment on the proposed requirements for volumetric estimates of total catch and empty fish holds at the beginning of a trip and whether these measures should be approved or disapproved.

*Volumetric Catch Estimates*

Framework 4 would require vessels with limited access herring permits to have their fish holds certified and Northeast Fisheries Science Center (NEFOP) observers to collect volumetric estimates of total catch by measuring the volume of fish in the hold prior to offloading. Observers would convert the

volumetric estimate to a weight and submit the estimated weight to the Greater Atlantic Regional Fisheries Office (GARFO) for a cross-check of vessel trip reports (VTRs) and dealer reports.

Vessels with limited access herring permits that store herring catch in fish holds would be required to certify the capacity of their fish holds and mark their holds at regular intervals to facilitate collection of volumetric catch estimates. The fish hold capacity measurement would need to be certified by one of the following entities: (1) A Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS); (2) an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS); (3) employees or agents of a classification society approved by the U.S. Coast Guard pursuant to 46 U.S.C. 3316(c); (4) the Maine State Sealer of Weights and Measures; (5) a professionally-licensed and/or registered Marine Engineer; or (6) a Naval Architect with a professional engineer license. This proposed list of entities is consistent with the list of entities approved to certify fish hold capacities in the Atlantic Mackerel, Squid, and Butterfish FMP. As part of the limited access herring permit renewal process in 2016, vessel owners would be required to submit a certified fish hold capacity measurement to NMFS with a signed certification by the individual or entity that completed the measurement specifying how they met the definition of a qualified individual or entity.

Regulations in the State of Maine already require that herring vessels have their fish holds measured and "sealed" by the State Sealer of Weights and Measures. Additionally, regulations at 50 CFR 648.4(a)(5)(iii)(H)(1) specifying vessel upgrade restrictions require that Tier 1 and Tier 2 limited access Atlantic mackerel vessels certify the capacity of their fish holds and submit this information to NMFS. Therefore, many vessels that participate in the herring fishery may already have the information necessary to determine the capacity of their fish holds.

Vessels with limited access herring permits would be required to obtain and retain on board a NMFS-approved measuring stick that would be available to the observer to measure the amount of fish in the fish hold. At the completion of a fishing trip, but prior to offloading, the observer would lower the NMFS-approved measuring stick into the fish hold(s) to measure the amount of fish and then estimate the total

volume of fish on board. Once the observer estimates the total volume of fish in the fish hold, the observer would calculate the total weight of fish on board based on NMFS-approved volume to weight conversions. Framework 4 proposes the following conversions: (1) 1 cubic foot (0.28 cubic m) = 56.2 pounds (25.49 kg); (2) 1.244 cubic feet (0.035 cubic m) = 1 bushel herring (0.035 cubic m) = 70 pounds (31.75 kg); (3) 1 hogshead (0.62 cubic m) = 17.5 bushels (0.62 cubic m) = 1,225 pounds (555.65 kg). Additionally, Framework 4 proposes that 5 percent of the total weight would be deducted to account for water in the fish hold. Once the final estimate of total weight of fish is determined by the observer, that estimate would be recorded along with other sampling data collected on that fishing trip. After the observer's data are checked and finalized by NEFOP, the observer's estimate of total catch would be made available to GARFO for the purpose of cross-checking VTRs and dealer data.

Currently, observers do not estimate total catch in the herring fishery. Estimating the volume of fish in fish holds is an accepted practice elsewhere in the world, particularly Europe, to estimate the weight of total catch. However, requiring observers in the herring fishery to collect volumetric estimates of total catch would necessitate significant development of this measure prior to implementation, including developing a sampling protocol, approving volume to weight conversions and deductions to account for water in the fish hold, training observers, and evaluating how to use the data. Additionally, observers in the herring fishery are not currently required to stay with the vessel after landing and contracts for observers do not include sampling responsibilities when the vessel is in port. Requiring observers to sample vessels in port would require modifications to the description of observer duties and contracts with observer service providers.

The requirement for observers to estimate the amount of catch in the fish hold is intended to enhance catch monitoring in the herring fishery by providing an independent estimate of total catch. This measure was developed to address stakeholder concerns with NMFS's reliance on industry-reported catch data to monitor the herring fishery. Specifically, some stakeholders, including environmental organizations, the groundfish industry, and recreational fishing groups, believe that herring catch is not accurately reported by the industry and that large

discrepancies exist between vessel and dealer reports. The herring industry, in general, does not believe that herring catch is being misreported but, in an effort to address stakeholder concerns, supports the requirement for observers to collect an estimate of total catch.

Vessels and dealers report catch by species. VTRs, in combination with observer data, are used by NMFS in herring stock assessments and to track catch against catch caps in the herring fishery, while dealer data are used to track catch against herring annual catch limits. The proposed measure would provide an estimate of total catch, but not catch by species. Therefore, the volumetric estimate could not be used to replace either VTRs or dealer data and it could not be used for catch monitoring or stock assessments. While the data generated under this proposed measure would not replace industry-reported data used for quota monitoring and stock assessments, it is intended to help measure the utility of industry-reported catch data, identify, catch reporting issues, and alleviate concerns that vessel operators and dealers collude to misreport catch.

Framework 4 does not provide evidence of misreporting by the herring industry, but it does highlight past differences between the amount of herring reported by vessels and dealers. Prior to 2008, discrepancies between VTRs and dealer data ranged from 4 percent to 54 percent. The vessel hail estimate (reported on the VTR) is different than amount of fish purchased (reported by dealers) so differences between these data sets are expected. However, discrepancies between VTR and dealer data greater than 10 percent are considered substantial.

In recent years, discrepancies between VTRs and dealer data have been minimal. VTRs were higher than dealer reports in 2009 (2 percent), 2010 (1.3 percent), 2011 (1.2 percent), and 2013 (0.1 percent) and less than dealer reports in 2012 (0.1 percent). As described in NMFS's April 17, 2014, letter to the Council, GARFO has improved the process for cross-checking and resolving differences between VTR and dealer data. Staff use advanced programming to match VTR and dealer data for each trip and identify records that do not match. They then investigate each unmatched record to determine the cause of the discrepancy and make the correction to the appropriate data set. This investigation process includes interviews with dealers, vessel operators, and owners to obtain supporting documentation for the correction and to ensure industry concurs with the data corrections. Given

that discrepancies between VTR and dealer data are investigated and resolved, NMFS does not consider as necessary the proposed measure for observers to collect a volumetric estimate of total catch to help identify or resolve discrepancies between VTR and dealer data.

Framework 4 discusses the concern that catch is not being accurately reported, but cautions whether the proposed measure would be more accurate than methods currently used by vessel operators or dealers to estimate catch. The volumetric conversions proposed in Framework 4 are based on herring harvested in other parts of the world. Using a volumetric conversion assumes consistency in the size, weight, and density of the catch, but there can be substantial variability in the catch composition of the herring fishery, depending on the area and season. The proposed 5 percent deduction from total weight to account for water in the tanks is based on best known practices among the industry, but the Council did not rigorously evaluate the amount of the deduction. For these reasons, Framework 4 explains that converting a volume of total fish to pounds based on a herring-based conversion could produce less accurate catch estimates than current vessel or dealer estimates. Because of the potential variability and uncertainties associated with volumetric estimates and volumetric conversions, catch estimates derived under this proposed measure would not be used to replace any current estimates of herring catch. Therefore, the impact of this proposed measure on the herring resource is likely to be negligible.

Framework 4 suggests that portside samplers, in addition to observers, could provide independent catch verification in the herring fishery. Currently, the portside sampling program that samples the herring fishery is a voluntary program administered by the states of Massachusetts and Maine. It is not possible to implement a mandatory Federal data collection through a voluntary state sampling program. It may be possible to collect catch data in a future Federal portside sampling program, such as the portside sampling alternative for the midwater trawl fleet being considered in the Council's Industry-Funded Monitoring Omnibus Amendment, provided that the data collected would improve monitoring in the herring fishery.

During the development of Framework 4, NMFS expressed concern regarding the utility of the proposed measure and the reliability of a volumetric estimate of total catch. When

the Council adopted Framework 4 at its April 2014 meeting, NMFS commented that it was unclear how GARFO would use the volumetric estimate of total catch and whether a volumetric estimate collected by an observer would be any more accurate than either the vessel or dealer reported data. Framework 4 describes that the proposed measure is intended to enhance catch monitoring, but it does not describe the specifics of how the volumetric catch estimate will be used to cross-check vessel and dealer data. In recent years, discrepancies between VTR and dealer reports have averaged approximately 1 percent; therefore, using the volumetric estimate to resolve those discrepancies does not seem necessary. Additionally, because of assumptions inherent in the calculation to convert volume to weight, Framework 4 cautions that the proposed measure could result in the catch estimate less accurate than either the vessel or dealer data.

In summary, NMFS seeks public comment on whether and how the proposed measure has practical utility that outweighs its additional compliance and administrative costs. Specifically, NMFS seeks comment on whether and how the benefit of the information provided from this measure compares to the additional burden on vessel owner/operators to certify their fish holds and make available a measuring stick for observers, consistent with the requirements of MSA National Standards 5 and 7 and the Paperwork Reduction Act (PRA). NMFS seeks comment on the quality of the information produced and whether and how it is relevant to and sufficient for the purposes of monitoring the fishery, facilitating inseason management, or judging the performance of the management regime, consistent with the requirements of MSA National Standard 2. NMFS also seeks comment on whether and how this measure allows the fishery to operate at the lowest possible administrative and enforcement costs relative to any additional monitoring benefit provided by this measure, consistent with the requirements of MSA National Standard 5. Lastly, NMFS seeks comment on the accuracy of the burden estimate, ways to enhance the quality or utility of the information collected, and ways to minimize the burden of the information collection. After evaluating public comment, NMFS will determine if the proposed volumetric catch estimate requirement can be approved or if it must be disapproved.

#### *Empty Fish Holds*

Framework 4 would require fish holds of vessels with Category A or B limited access herring permits to be empty of fish before leaving the dock on any trip declared into the herring fishery. A waiver may be issued by an authorized law enforcement officer when fish have been reported as caught and cannot be sold due to the condition of fish.

The Council proposed this measure to enhance catch monitoring and discourage wasteful fishing practices in the herring fishery. The practice of discarding unmarketable fish on a subsequent trip is not known to be prevalent in the herring fishery, but some stakeholders are concerned that fish not purchased by a dealer, and discarded on a subsequent trip, may not be reported on the VTR. The Council intended this measure to discourage the discarding of unreported fish, provide a mechanism to document when harvested fish become unmarketable, and prevent vessel operators from mixing fish from multiple trips in the hold, potentially biasing catch data.

Initially, this measure consisted of only the requirement that vessel fish holds be empty of fish at the beginning of a herring trip. But recognizing that there may be unforeseen events that make it difficult to sell fish (*e.g.*, refrigeration failure, poor condition, lack of market), the Council proposed the waiver provision to mitigate the potential costs associated with disposing of unmarketable catch on land. The Council intended the waiver to provide a mechanism to verify that fish had been reported and document the nature and extent to which vessels are departing on trips with fish in their holds. Additionally, some vessels in the herring fishery land their catch in multiple ports, and the Council intended that the waiver provision would allow that practice to continue.

NMFS is concerned with the lack of justification for this measure and how the compliance and enforcement costs associated with this measure seem to outweigh the benefits. NMFS would still need to significantly develop this measure prior to implementation, including developing a protocol for checking if fish holds are empty of fish, developing guidance for when/how waivers would be issued, specifying what a vessel must do if it cannot obtain a waiver, and developing a process to use/track waivers. At the April 2014 Council meeting, NMFS commented that it was unclear how this requirement would improve catch data and urged the Council to ensure that Framework 4

provided clear rationale for this measure.

While prohibiting the disposal of unmarketable catch at sea, unless a waiver is issued, may discourage wasteful fishing practices, there is insufficient support in the record to determine whether this practice is frequently occurring in the herring fishery. The costs associated with a herring trip, such as fuel, crew wages, and insurance, are substantial, so it is unlikely that vessel owners/operators are harvesting fish with the intention to discard rather than sell the fish. Additionally, Framework 4 acknowledges that disposing of unmarketable catch at sea on a subsequent fishing trip is not known to occur regularly in the herring fishery.

Framework 4 explains that it is unclear whether unmarketable catch discarded at sea on a subsequent trip is reported. Part of the justification for the waiver provision is to provide a way to verify that fish have been reported and document the extent to which vessels are departing on trips with fish in their holds. However, the Council's proposed waiver provides no way of verifying the amount of fish reported relative to the amount of fish left in the hold. Therefore, NMFS does not consider this measure to contain a viable mechanism to verify whether harvested fish that are left in the hold were reported by the vessel.

Because the proposed measure lacks a mechanism to verify or correct the amount of fish reported on the VTR, the proposed measure is unlikely to improve catch monitoring in the herring fishery. In contrast, the compliance and enforcement costs associated with the proposed measure may be high. For example, vessel operators needing to dispose of fish at sea may lose time and money waiting for an authorized law enforcement officer to travel to their vessel, inspect it, and issue a waiver. Additionally, it would likely be time consuming for authorized officers to issue waivers and would divert resources from other law enforcement duties.

This proposed measure is also intended to enhance catch monitoring in the herring fishery by preventing vessel operators from mixing fish from multiple trips in the hold and biasing catch data. NEFOP observers sample the catch while it is on the deck, before it is placed in the fish hold, so there is no chance that observers would be sampling fish from multiple trips that were mixed in the hold. The herring fishery is also sampled portside by the Massachusetts' Department of Marine Fisheries (MA DMF) and Maine's

Department of Marine Resources. Mixing of catch from multiple fishing trips, although unlikely, may have the potential to bias landings data used to inform herring stock assessments, state management spawning closures, and the river herring avoidance program operated by the University of Massachusetts' School of Marine Fisheries and MA DMF.

The Atlantic States Marine Fisheries Commission is also considering a requirement that vessel fish holds be empty of fish before vessels depart on a herring fishing trip in Amendment 3 to its Interstate FMP for Atlantic Herring. Establishing a similar provision in this action may promote coordination between Federal and state management of the herring fishery, but for the reasons described above, it is unlikely to improve catch monitoring in the herring fishery.

In summary, NMFS seeks public comment on whether and how the proposed measure has practical utility that outweighs its additional compliance and enforcement costs. Specifically, NMFS seeks comment on whether and how requiring empty fish holds improves catch monitoring and how any benefit of catch monitoring provided by requiring empty fish holds compares to the additional burden on vessel owner/operators to obtain a waiver from an authorized officer, consistent with the requirements of MSA National Standard 7 and the PRA. NMFS also seeks comment on whether and how the measure minimizes costs, avoids unnecessary duplication, and provides fishermen with the greatest possible freedom of action in conducting business or imposes an unnecessary enforcement burden relative to the requirements of MSA National Standard 7. Further, NMFS seeks comment on the proposed measure's efficient use of fishery resources, specifically whether and how this measure allows the fishery to operate at the lowest possible enforcement costs relative to the requirements of MSA National Standard 5. Lastly, NMFS seeks comment on the accuracy of the burden estimate, ways to enhance the quality or utility of the information collected, and ways to minimize the burden of the information collection. After evaluating public comment, NMFS will determine if the proposed empty fish hold requirement can be approved or if it must be disapproved.

#### *Clarification of Existing Slippage Measures*

Framework 4 proposes clarifications to slippage measures implemented in

Amendment 5 (79 FR 8786, February 13, 2014). Currently, slippage requirements exist for vessels with limited access herring permits and midwater trawl vessels fishing in Groundfish Closed Areas.

Slippage is currently defined at 50 CFR 648.2 as catch that is discarded prior to it being brought aboard a vessel issued a herring permit and/or prior to making it available for sampling and inspection by a NMFS-approved observer. Slippage includes releasing catch from a codend or seine prior to the completion of pumping the catch aboard and the release of catch from a codend or seine while the codend or seine is in the water. Fish that cannot be pumped and remain in the codend or seine at the end of pumping operations are characterized as operational discards, not slippage. Discards that occur after the catch is brought on board and sorted are also not considered slippage.

Measures at § 648.11(m)(4) prohibit slippage aboard any vessel issued a limited access herring permit and carrying a NMFS-approved observer, except when safety or mechanical failure necessitate slipping catch or when excess catch of spiny dogfish prevents fish from being pumped aboard the vessel. Vessel may also make test tows without pumping catch on board for sampling, provided the gear is re-set without releasing its contents and all catch from test tows would be available to the observer to sample when the next tow is brought on board. If catch is slipped for any the reasons described previously, the vessel operator must complete and sign a Released Catch Affidavit detailing where, when, and why catch was slipped and the estimated weight of each species either retained or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

When midwater trawl vessels are fishing in the Groundfish Closed Areas, measures at § 648.202(b) require those vessels to carry an observer and prohibit slippage, except when slippage is due to safety, mechanical failure, or excess catch of spiny dogfish, and operational discards. Operational discards are the relatively small amounts of fish that remain in the codend or seine after catch is pumped aboard the vessel. The Groundfish Closed Areas include Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, and the Western Gulf of Maine Closure Area. Midwater trawl vessels fishing in the Groundfish Closed Areas may make test tows, but if catch is slipped or operationally discarded, the vessel must immediately exit the

Groundfish Closed Areas for the remainder of that trip and complete a Released Catch Affidavit within 48 hr of the end of the trip.

When sampling catch at-sea, observers document all catch not brought on board and categorize the catch based on disposition code. Those codes are later evaluated to determine if they were discard, slippage, or operational discard events. Consistent with the recommendations of the Herring Plan Development Team, the Council believes that clarifying the treatment of catch not brought on board should enhance the effectiveness and enforceability of existing and proposed management measures to address slippage.

Framework 4 proposes to maintain the existing requirements that prohibit operational discards aboard midwater trawl vessels fishing in the Groundfish Closed Areas but allow operational discards to occur on board herring vessels fishing outside the Groundfish Closed Areas. Current observer protocols include documenting operational discards and existing regulations require vessel operators to assist the observer with this process. Because it can be time and labor intensive to bring these small amounts of fish on board the vessel, the compliance costs associated with prohibiting operational discards outside the Groundfish Closed Areas would likely outweigh any benefits to the catch monitoring program and the herring resource. Especially considering that hauls containing operational discards are considered to be "observed" hauls as the amount and composition of operational discards can be estimated by observers. For these reasons, the Council decided to maintain the existing requirements that prohibit operational discards aboard midwater trawl vessels fishing in the Groundfish Closed Areas but allow operational discards to occur on herring vessels fishing outside the Groundfish Closed Areas.

Framework 4 proposes clarifying slippage, such that a slippage event due to safety, mechanical failure, or excess catch of spiny dogfish would be categorized as an "allowable" slippage event and slippage for any other reason would be categorized as a "non-allowable" slippage event. These proposed categorizations are intended to help clarify the type of slippage event and would then be used to determine whether a vessel would be subject to any slippage consequences proposed in Framework 4.

Framework 4 proposes that catch not brought on board due to gear damage

would be categorized as mechanical failure and, therefore, as an allowable slippage event. Although a gear failure that results in the release of catch from a codend is often beyond the control of the captain and crew, instances of catch released due to gear damage are similar to instances of catch released due to mechanical failure. Therefore, the Council believes that catch released due to gear damage should be categorized as mechanical failure and an allowable slippage event. As an allowable slippage event, catch not brought on board due to gear damage would be subject to existing slippage requirements and a slippage consequence proposed in Framework 4.

Framework 4 proposes that catch that falls out of or off of gear and is not brought on board would not be categorized as a slippage event. In general, only small amounts of catch fall out or off of gear during fishing and/or when catch is being brought aboard the vessel, unlike the potential for catch loss due to mechanical failure. Therefore, the Council believes that fish that fall out of the gear should be categorized as discarded catch, but not slippage. For these reasons, instances of catch falling out or off of gear during fishing and/or when catch is being brought aboard the vessel would not be subject to existing slippage requirements or any proposed slippage consequences in Framework 4.

#### *Slippage Consequences*

Building on the slippage restrictions established in Amendment 5, Framework 4 proposes requiring vessels to move away from the slippage location following an allowable slippage event before resuming fishing. Specifically, vessels with Category A or B herring permits slipping catch, due to safety, mechanical failure, or excess catch of spiny dogfish, would be required to move at least 15 nautical miles (27.78 km) away from the slippage event location. The vessel would be allowed to move 15 nautical miles (27.78 km) away in any direction, but it would be prohibited from resuming fishing until it was at least 15 nautical miles (27.78 km) from the location of the allowable slippage event. Additionally, the vessel would be required to remain at least 15 nautical miles (27.78 km) from the slippage event location for the duration of that fishing trip.

Framework 4 also proposes a trip termination consequence for non-allowable slippage events. Specifically, vessels with Category A or B herring permits slipping catch, for any reason other than safety, mechanical failure, or excess catch of spiny dogfish, would be

required to immediately stop fishing and return to port. After having returned to port and terminated the fishing trip, vessels would be allowed to initiate another fishing trip, consistent with the existing pre-trip notification requirements (e.g., contact NEFOP to request an observer, VMS trip/gear declaration) for limited access vessels participating in the herring fishery.

Vessels with Category A or B limited access herring permits fishing with midwater trawl gear in the Groundfish Closed Areas would also be subject to these proposed slippage consequences. Midwater trawl vessels are currently required to exit the Groundfish Closed Areas following an allowable slippage event and remain outside the Groundfish Closed Areas for the duration of that trip. Under these proposed slippage consequences, vessels with Category A or B limited access herring permits fishing with midwater trawl gear in the Groundfish Closed Area would also be required to move at least 15 nautical miles (27.78 km) away from the slippage location following an allowable slippage event. Therefore, following an allowable slippage event, a midwater trawl vessel would need to exit the Groundfish Closed Areas and remain outside of the Groundfish Closed Areas for the remainder of the fishing trip. If the vessel has been issued a Category A or B limited access herring permit, the vessel would also be required to move at least 15 nautical miles (27.78 km) away from the slippage event and remain at least 15 nautical miles (27.78 km) away from the slippage event for the remainder of the fishing trip. Additionally, vessels with Category A or B limited access herring permits fishing with midwater trawl gear in the Groundfish Closed Areas would be required to terminate the fishing trip and return to port following a non-allowable slippage event.

The Council believes that additional consequences for both allowable and non-allowable slippage events will enhance the catch monitoring program established through Amendment 5 by further discouraging slippage in the herring fishery. The herring fishery is a relatively high-volume fishery capable of catching large quantities of fish in a single tow. Therefore, even a few slippage events have the potential to substantially affect species composition data, especially extrapolations of incidental catch. The Council recommended the requirement that vessels move at least 15 nautical miles (27.78 km) following an allowable slippage event for two reasons. First, the 15-nautical mile (27.78-km) move

requirement would apply uniformly to all vessels that slipped catch, unlike other considered alternatives (e.g., leaving a management area, leaving a statistical area) where the magnitude of the move would have depended upon the location of the allowable slippage event. Second, the Council believes the 15-nautical mile (27.78-km) move requirement would likely provide sufficient incentive (i.e., costing time and fuel) for herring vessels to minimize slippage while still maximizing opportunities for participating in the herring fishery and fully utilizing the available yield. Additionally, the Council recommended the requirement that vessels terminate their fishing trip following a non-allowable slippage event to reiterate the importance of minimizing slippage. The Mid-Atlantic Fishery Management Council recommended these same slippage consequences for allowable and non-allowable slippage events in the mackerel fishery as part of Framework 9 to the Atlantic Mackerel, Squid, and Butterfish FMP. Many vessels participate in both the herring and mackerel fisheries, and implementing consistent slippage consequences across these fisheries is expected to improve compliance and enforcement of these measures.

Slippage is a significant concern for many stakeholders because they believe it undermines the ability to collect unbiased estimates of herring catch, as well as other species, in the herring fishery. Stakeholders expressed support for proposed measures to address slippage in Framework 4, suggesting that implementing these measures would further ensure that there is accountability for all catch in the herring fishery. Framework 4 explains that when the benefits of slipping catch outweigh the costs of slipping catch, vessel operators are likely to slip catch. Additionally, Framework 4 describes the impact of the slippage consequence measures as low positive for the herring resource and low negative for the herring industry. Minimizing slippage events and better documentation of slipped catch may improve estimates of bycatch in the fishery. To the extent that the amount and species composition of slipped catch can be sampled and/or estimated, catch monitoring will be enhanced. To the extent that slippage events can continue to be reduced, bycatch can be further minimized.

#### *Reporting Slippage Events*

Framework 4 proposes requiring vessels with limited access herring permits to report slippage events, including the reason for the slippage

event, via the herring daily VMS catch report. This report, in combination with observer data, would help enhance the enforceability of existing slippage requirements, such as completing a released catch affidavit, as well as the slippage consequences proposed in Framework 4.

#### *Clarifications and Corrections*

This proposed rule also contains minor clarifications and corrections to existing regulations. NMFS proposes these adjustments under the authority of section 305(d) to the MSA, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that framework adjustments to FMPs are carried out in accordance with the FMP and the MSA. These adjustments, which are identified and described below, are necessary to clarify current regulations and would not change the intent of any regulations.

NMFS proposes to add a transiting provision for herring management areas with seasonal sub-ACLs. This provision would allow vessels to transit herring management areas during periods when zero percent of the sub-ACL for those areas was available for harvest with herring harvested from other herring management areas aboard, provided gear was stowed and not available for use. This provision was overlooked during rulemaking for Framework Adjustment 2 to the Herring FMP and is consistent with the intent of that action. NMFS proposes to remove regulations at § 648.80(d)(7) describing requirements for midwater trawl vessels fishing in Groundfish Closed Area I because they are redundant with regulations at § 648.202(b) describing requirements for midwater trawl vessels fishing in any of the Groundfish Closed Areas. NMFS proposes adding the definition of operational discards at § 648.2 and clarifying that operational discards are not permitted aboard midwater trawl vessels fishing in Groundfish Closed Areas, unless those fish have first been made available to an observer for sampling. NMFS proposes revising references to individual years in regulations for carryover at § 648.201 to more correctly describe the timing of carryover. Lastly, NMFS proposes to correct coordinates for Herring Management Area 2 at § 648.200(f)(2) to more accurately define the area.

#### **Classification**

Except for the proposed measures requiring volumetric estimates of catch and empty fish holds at the beginning of a trip and pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has

preliminarily determined that this proposed rule is consistent with the Atlantic Herring FMP; other provisions of the MSA; and other applicable law, subject to further consideration after public comment.

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

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at [www.greateratlantic.fisheries.noaa.gov](http://www.greateratlantic.fisheries.noaa.gov).

#### *Description of the Reasons Why Action by the Agency Is Being Considered*

This action proposes measures intended to further enhance catch monitoring and address discarding in the herring fishery. The preamble to this rule includes a complete description of the reasons why this action is being considered; therefore, those reasons are not repeated here.

#### *Statement of the Objectives of, and Legal Basis for, This Proposed Rule*

This action proposes measures intended to further enhance catch monitoring and address discarding in the herring fishery. The preamble to this proposed rule includes a complete description of the objectives of and legal basis for this action; therefore, that description is not repeated here.

#### *Description and Estimate of Number of Small Entities to Which This Proposed Rule Would Apply*

This action proposes measures to regulate the activity of vessels with limited access herring permits and vessels with Category A or B limited access herring permits. Therefore, the regulated entity is the business that owns at least one limited access herring permit.

In 2013, the most recent full year of fishery permit data, 93 fishing vessels were issued a limited access herring permit. Vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ownership entities are defined by those entities with common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an

affiliated entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with sub-sets of the original seven personnel or with new co-owners, those ownership arrangements are deemed to be separate entities for the purpose of this analysis.

Based on this ownership criterion, NMFS dealer data for recent years (2010–2013), and the size standards for finfish and shellfish firms, there are 68 regulated fishing firms with a limited access herring permit. Of those 68 firms, there are 61 small entities and 7 large entities. Not all of these permitted firms are active: Only 32 small entities and 5 large entities were actively fishing for herring during the last 3 years. Additionally, there are 32 regulated fishing firms that hold Category A or B herring permits. Of those 32 firms, there are 27 small entities and 5 large entities. Not all of these permitted firms are active: Only 19 small entities and 5 large entities were actively fishing for herring during the last 3 years.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Proposed Rule*

This action proposes collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the PRA. This requirement will be submitted to OMB for approval under Control Numbers 0648–0202 and 0648–0674.

This action proposes that limited access vessels report slippage events via the daily VMS herring catch report. All limited access herring vessels are currently required to submit daily VMS catch reports, therefore, reporting slippage via VMS is not expected to cause any additional time or cost burden above that which was previously approved under OMB Control Number 0648–0202.

This action proposes that vessels with limited access herring permits that store herring catch in fish holds would be required to certify the capacity of their fish holds and mark their holds at regular intervals to facilitate collection of volumetric catch estimates. The fish hold capacity measurement would need to be certified by one of the following entities: (1) A Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS); (2) an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors



(SAMS); (3) employees or agents of a classification society approved by the U.S. Coast Guard pursuant to 46 U.S.C. 3316(c); (4) the Maine State Sealer of Weights and Measures; (5) a professionally-licensed and/or registered Marine Engineer; or (6) a Naval Architect with a professional engineer license. Additionally, vessels would be required to obtain and carry on board a NMFS-approved measuring stick that would be available to observers to place into the fish hold(s) to measure the amount of fish. Each hold volume measurement done by a certified marine surveyor is estimated to cost \$300-\$400. The cost of the NMFS-approved measuring stick is unknown at this time, but expected to be minimal. Ninety-three vessels were issued a limited access herring permit in 2013. Therefore, an estimated 93 vessels would be required to submit a fish hold volume measurement at the time of permit issuance in 2016 and obtain and carry on board a NMFS-approved measuring stick.

This action also proposes that vessels with Category A or B limited access herring permits would be required to have empty holds prior to departing on a herring trip. A waiver may be issued by an authorized law enforcement officer when fish have been reported as caught and cannot be sold due to the condition of fish. Forty-three vessels were issued a Category A or B limited access herring permit in 2013. Therefore, an estimated 43 vessels would be required to obtain a waiver from an authorized officer prior to leaving the dock on a herring trip with fish in the hold. The burden to the vessel operator/owner associated with obtaining a waiver would be any loss of time and/or money waiting for an authorized officer to travel to their vessel, inspect it, and issue a waiver.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (see **ADDRESSES**), and email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-5806.

Notwithstanding any other provisions of the law, no person is required 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 PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

#### *Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule*

This action does not duplicate, overlap, or conflict with any other Federal law.

#### *Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of the Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities*

This action considered alternatives to the proposed action, but, according to the analysis in Framework 4, the non-selected alternatives would not have met the stated goal of the action, minimized any significant economic impact on small entities compared to the proposed action, or been consistent with applicable law.

To help minimize slippage, Framework 4 considered slippage consequence measures that would have required vessels to leave either a herring management or statistical area following an allowed slippage event and remain out of that area for the remainder of the trip. The economic cost of complying with these requirements and their effectiveness at deterring slippage would have arbitrarily depended upon the location of the slippage event and the magnitude of the required move. Therefore, the impact of the non-selected alternatives would not have applied uniformly to all vessels that slipped catch, unlike the impact of complying with the proposed action requiring vessels to move 15 nautical miles (27.78 km), and the non-selected alternatives may not minimize bycatch to the extent practicable. Framework 4 also considered only requiring trip termination following non-allowable slippage events, rather than the proposed action of requiring both a 15-nautical mile (27.78-km) move following allowable slippage events and trip termination following non-allowable slippage events. The proposed action was selected rather than just a trip termination requirement because the proposed action likely provides a greater incentive to not slip catch, thereby helping to minimize bycatch to the extent practicable.

To help identify errors with catch information in the herring fishery, Framework 4 considered requiring dealers to have vessel representatives corroborate dealer landings data and requiring VTRs and dealers reports to be submitted daily rather than weekly. The analysis in Framework 4 indicated that both these non-selected alternatives would have only had a negligible impact on improving the quality of catch information in the herring fishery. Additionally, the reporting burden associated with these non-selected alternatives would have likely been greater than the reporting burden associated with the proposed action requiring vessel fish holds to be empty of fish at the beginning of a herring trip.

Lastly, to improve the quality of herring catch information, Framework 4 considered requiring dealers to estimate herring landings based on standardized weight conversions for specific volumes of herring (e.g., box, storage tote, or truck). The economic cost of complying with these non-selected alternatives would have likely been similar to the costs associated with the proposed action requiring volumetric catch estimates to be collected aboard limited access herring vessels. However, the Framework 4 analysis suggests that the benefit of these non-selected alternatives would likely have been variable, depending on the accuracy of the weight conversions, and may have been more uncertain than any benefit resulting from the proposed action.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

#### **Samuel D. Rauch III,**

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

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

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

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

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

■ 2. In § 648.2, the definition for “Slippage in the Atlantic herring fishery” is removed and the definitions for “Operational discards in the Atlantic herring fishery” and “Slip, slips, or slipping catch in the Atlantic herring fishery” are added in alphabetical order to read as follows:

#### **§ 648.2 Definitions.**

\* \* \* \* \*



*Operational discards in the Atlantic herring fishery* means small amounts of fish that cannot be pumped on board and remain in the codend or seine at the end of pumping operations. Leaving small amounts of fish in the codend or seine at the end of pumping operations is operationally discarding catch.

\* \* \* \* \*

*Slip, slips, or slipping catch in the Atlantic herring fishery* means catch that is discarded by a vessel issued an Atlantic herring permit prior to it being brought on board and made available for sampling and inspection by a NMFS-approved observer. Slip or slipping catch includes releasing fish from a codend or seine prior to the completion of pumping the fish on board and the release of fish from a codend or seine while the codend or seine is in the water. Slippage or slipped catch refers to fish that are slipped. Slippage or slipped catch does not include operational discards, discards that occur after the catch is brought on board, or fish that inadvertently fall out of or off fishing gear as gear is being brought on board the vessel.

\* \* \* \* \*

■ 3. In § 648.4, paragraph (a)(10)(iv)(P) is added to read as follows:

**§ 648.4 Vessel permits.**

\* \* \* \* \*

- (a) \* \* \*
- (10) \* \* \*
- (iv) \* \* \*

(P) *Volumetric hold certification.* All vessels with limited access herring permits that store catch in fish holds must certify the capacity of the vessel fish hold. The fish hold capacity measurement must be certified by one of the following qualified individuals or entities: Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors; Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors; employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c); the Maine State Sealer of Weights and Measures; a professionally-licensed and/or registered Marine Engineer; or a Naval Architect with a professional engineer license. Vessel owners must submit a certified fish hold capacity measurement to NMFS with a signed certification by the individual or entity that completed the measurement.

\* \* \* \* \*

■ 4. In § 648.11, paragraphs (m)(3)(ii) and (m)(4) are revised and paragraph (m)(5) is added to read as follows:

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

\* \* \* \* \*

- (m) \* \* \*
- (3) \* \* \*

(ii) Reasonable assistance to enable observers to carry out their duties, including but not limited to assistance with: Obtaining and sorting samples; measuring decks, codends, and holding bins; providing an observer a NMFS-approved measuring stick when requested; estimating the volume of fish in fish hold(s) before offloading; collecting bycatch when requested by the observers; and collecting and carrying baskets of fish when requested by the observers.

\* \* \* \* \*

(4) *Measures to address slippage.* (i) No vessel issued a limited access herring permit may slip catch, as defined at § 648.2, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for inspection; or,

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(ii) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board for sampling.

(iii) If a vessel issued any limited access herring permit slips catch, the vessel operator must report the slippage event on the Atlantic herring daily VMS catch report and indicate the reason for slipping catch. Additionally, the vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and the reason for slipping catch; the estimated weight of each species brought on board or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iv) If a vessel issued an All Areas or Areas 2/3 Limited Access Herring permit slips catch for any of the reasons described in paragraph (m)(4)(i) of this section, the vessel operator must move

at least 15 nm (27.78 km) from the location of release before deploying any gear again, and must stay at least 15 nm (27.78 km) away from the slippage event location for the remainder of the fishing trip.

(v) If catch is slipped by a vessel issued an All Areas or Areas 2/3 Limited Access Herring permit for any reason not described in paragraph (m)(4)(i) of this section, the vessel operator must immediately terminate the trip and return to port. No fishing activity may occur during the return to port.

(5) Vessels must carry on board a NMFS-approved measuring stick which must be made available to the observer upon request.

\* \* \* \* \*

■ 5. In § 648.14, paragraphs (r)(1)(ii)(D), (r)(1)(vii)(F), and (r)(2)(xiii) are added and paragraphs (r)(2)(v) through (xii) are revised to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

- (r) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*

(D) For vessels issued an All Areas or Areas 2/3 Limited Access Herring Permit to begin a declared herring trip to fish for, possess, transfer, or receive herring without fish holds empty of fish as specified at § 648.204(c), unless the vessel has received a waiver to begin a trip with fish in the fish hold.

\* \* \* \* \*

- (vii) \* \* \*

(F) Transit or be in an area that has zero percent sub-ACL available for harvest specified at § 648.201(d) with herring on board, unless such herring were caught in an area or areas with an available sub-ACL specified at § 648.201(d), all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a vessel permit that authorizes the amount of herring on board for the area where the herring was harvested.

\* \* \* \* \*

- (r) \* \* \*
- (2) \* \* \*

(v) Fish with midwater trawl gear in any Northeast Multispecies Closed Area, as defined in § 648.81(a) through (e), without a NMFS-approved observer on board, if the vessel has been issued an Atlantic herring permit.

(vi) Slip or operationally discard catch, as defined at § 648.2, unless for one of the reasons specified at § 648.202(b)(2), if fishing any part of a tow inside the Northeast Multispecies Closed Areas, as defined at § 648.81(a) through (e).

(vii) Fail to immediately leave the Northeast Multispecies Closed Areas and comply with reporting requirements after slipping or operationally discarding catch, as required by § 648.202(b)(4).

(viii) Slip catch, as defined at § 648.2, unless for one of the reasons specified at § 648.11(m)(4)(i).

(ix) For vessels with All Areas or Areas 2/3 Limited Access Herring Permits, fail to move 15 nm (27.78 km), as required by § 648.11(m)(4)(iv) and § 648.202(b)(4)(iv).

(x) For vessels with All Areas or Areas 2/3 Limited Access Herring Permits, fail to immediately return to port, as required by § 648.11(m)(4)(v) and § 648.202(b)(4)(iv).

(xi) Fail to complete, sign, and submit a Released Catch Affidavit if fish are released pursuant to the requirements at § 648.11(m)(4)(iii).

(xii) Fail to report a slippage event on the Atlantic herring daily VMS catch report, as required by § 648.11(m)(4)(iii).

(xiii) Fail to carry on board, or make available to an observer upon request, a NMFS-approved measuring stick, as required by § 648.11(m)(5).

\* \* \* \* \*

#### § 648.80 [Amended]

■ 6. In § 648.80, paragraph (d)(7) is removed.

■ 7. In § 648.200, paragraph (f)(2) is revised to read as follows:

#### § 648.200 Specifications.

\* \* \* \* \*

(f) \* \* \*

(2) *Management Area 2 (South Coastal Area)*: All state and Federal waters inclusive of sounds and bays, bounded on the east by 70°00' W. long. and the outer limit of the U.S. Exclusive Economic Zone; bounded on the north and west by the southern coastline of Cape Cod, Massachusetts, and the coastlines of Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina; and bounded on the south by a line following the lateral seaward boundary between North Carolina and South Carolina from the coast to the Submerged Lands Act line, approximately 33°48'46.37" N. lat, 78°29'46.46" W. long., and then heading due east along 33°48'46.37" N. lat. to the outer limit of the US Exclusive Economic Zone.

\* \* \* \* \*

■ 8. In § 648.201, paragraphs (e) and (f) are revised and paragraph (g) is added to read as follows:

#### § 648.201 AMs and harvest controls.

\* \* \* \* \*

(e) A vessel may transit an area that has zero percent sub-ACL available for harvest specified in paragraph (d) of this section with herring on board, provided such herring were caught in an area or areas with sub-ACL available specified in paragraph (d) of this section, that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a permit that authorizes the amount of herring on board for the area where the herring was harvested.

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

(g) *Carryover*. Subject to the conditions described in this paragraph (g), unharvested catch in a herring management area in a fishing year (up to 10 percent of that area's sub-ACL) shall be carried over and added to the sub-ACL for that herring management area for the fishing year following the year when total catch is determined. For example, NMFS will determine total catch from Year 1 during Year 2, and will add carryover to the applicable sub-ACL(s) in Year 3. All such carryover shall be based on the herring management area's initial sub-ACL allocation for the fishing year, not the sub-ACL as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring landed from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 500 mt of herring is added as carryover to a 5,000 mt sub-ACL, catch in that management area would be tracked against a total sub-ACL of 5,500 mt. NMFS shall add sub-ACL carryover only if the ACL, specified consistent with § 648.200(b)(3), for the fishing year in which there is unharvested herring, is not exceeded. The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified in this paragraph (g).

■ 9. In § 648.202, paragraphs (b)(2) introductory text, (b)(4) introductory text, and (b)(4)(ii) are revised, and paragraphs (b)(4)(iii) and (iv) are added to read as follows:

#### § 648.202 Season and area restrictions.

\* \* \* \* \*

(b) \* \* \*

(2) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in the Closed Areas, may slip or operationally discard catch, as defined at § 648.2, except in the following circumstances:

\* \* \* \* \*

(4) If catch is slipped or operationally discarded by a vessel, the vessel operator must:

\* \* \* \* \*

(ii) Complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iii) Report slippage events on the Atlantic herring daily VMS catch report and indicate the reason for slipping catch if the vessel was issued a limited access herring permit.

(iv) Comply with the measures to address slippage specified in § 648.11(m)(4)(iv) and (v) if the vessel was issued an All Areas or Areas 2/3 Limited Access Herring Permit.

■ 10. In § 648.204, paragraph (c) is added to read as follows:

#### § 648.204 Possession restrictions.

\* \* \* \* \*

(c) Vessels issued an All Areas or Areas 2/3 Limited Access Herring Permit must have fish holds empty of fish before leaving the dock on any trip declared into the Atlantic herring fishery. After inspection by an authorized officer, a waiver for the requirement to have fish holds empty of fish may be issued to vessels for instances when there are fish in the hold due to a lack of marketability or refrigeration malfunction, provided those fish have been reported by the vessel.

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