

to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not impose any new requirements on fishing entities in the southeastern shrimp fishery. Shrimp trawlers in the Gulf and South Atlantic EEZ are already required to have a BRD installed in their shrimp nets and fishermen can continue to use their existing BRD. This proposed rule would simply allow fishermen, at their discretion, to use an alternative BRD in their shrimp nets, and provide greater flexibility in the construction and installation requirements for the Composite Panel BRD. Any decision to use this gear would be expected to occur only if it is expected to result in improved performance by the fishing vessel. As a result, any effects would be expected to be positive and no adverse economic impacts on any of the 2,144 vessels (which is the total number of unique vessels with a permit to harvest shrimp in the EEZ of the Gulf and South Atlantic) would be expected to accrue. Providing greater flexibility in the construction and installation requirements for the Composite Panel BRD is also expected to lower costs and result in no additional adverse economic impacts.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 15, 2010.

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 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.41, paragraphs (g)(3)(ii)(A) and (B) are revised to read as follows:

§ 622.41 Species specific limitations.

- (g) \* \* \*
(3) \* \* \*
(ii) \* \* \*

(A) Extended funnel—Gulf EEZ only; through [date 2 years after date of publication of the final rule in the Federal Register].

(B) Composite Panel—Gulf EEZ and South Atlantic EEZ; through [date 2

years after date of publication of the final rule in the Federal Register].

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3. In Appendix D to part 622, section G, the first sentence of paragraph 2(a), and paragraph 2(b) are revised to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

\* \* \* \* \*

G. \* \* \*

2. \* \* \*

(a) \* \* \* The webbing extension must be constructed from a single rectangular piece of 1 1/2-inch to 1 3/4-inch (3.8-cm to 4.5-cm) stretch mesh with dimensions of 24 1/2 meshes by 150 to 160 meshes. \* \* \*

(b) Funnel. The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2-ply in design, each with an inner layer of 1 1/2-inch to 1 5/8-inch (3.8-cm to 4.1-cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1 1/2 meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18-inch (45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

\* \* \* \* \*

[FR Doc. 2010-9064 Filed 4-19-10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907301205-91207-01]

RIN 0648-AY14

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Specifications

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes 2010-2012 specifications for the Atlantic herring (herring) fishery. These proposed specifications and management measures promote the utilization and conservation of the herring resource and provide for a sustainable fishery. This proposed rule would also make minor corrections to existing regulations.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on May 20, 2010.

ADDRESSES: Copies of supporting documents used by the New England Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465-0492. The EA/RIR/IRFA is also accessible via the Internet at http://www.nero.nmfs.gov.

You may submit comments, identified by 0648-AY14, by any one of the following methods:

-Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal http://www.regulations.gov;

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

-Mail to NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on 2010-2012 Herring Specifications."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to http://www.regulations.gov without change. All Personal Identifying Information (e.g., name, address)

voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, (978) 281-9272, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

Regulations implementing the FMP for herring appear at 50 CFR part 648, subpart K. The regulations at § 648.200 specify that herring specifications, including optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPT), joint venture processing (JVP), internal water processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), reserve, and the amount for research set-aside (RSA) (up to 3 percent of the total allowable catch (TAC) from any management area) for up to 3 years be recommended by the Council, and reviewed and proposed in the **Federal Register** by NMFS. Specifications also establish the TACs and other management measures for the herring management areas.

The proposed 2010–2012 herring specifications are based on the provisions currently in the Herring FMP, and also provide the necessary elements for a transition to the new ACL and AM requirements of the MSA. The ACL and AM process is being developed by the Council in Amendment 4 to the Herring FMP. Amendment 4 will be submitted to NMFS by the Council in Spring 2010, and implemented for the 2011 fishing year, if approved by NMFS.

The Gulf of Maine-Georges Bank herring stock complex is a transboundary stock and is found in both U.S. and Canadian waters. As such, the stock complex is assessed jointly by the U.S. and Canada. The 2009 Transboundary Resource Assessment Committee (TRAC) update assessment estimated the 2008 herring biomass at 651,700 mt (biomass supporting maximum sustainable yield ( $B_{MSY}$ ) = 670,600 mt) and 2008 fishing mortality

rate (F) at 0.14 ( $F_{MSY}$  (0.27)). Because the herring stock complex is above  $\frac{1}{2} B_{MSY}$  and fishing mortality is below  $F_{MSY}$ , the stock is not overfished and overfishing is not occurring. The TRAC noted concern with the assessment's retrospective pattern, which results in an overestimation of biomass.

The Council's Scientific and Statistical Committee (SSC) considered recommendations for the 2010–2012 specifications twice. At its September 16, 2009, meeting, the SSC endorsed the 2009 TRAC herring assessment as a basis for setting MSY fishing level and acceptable biological catch (ABC), but recommended that ABC be reduced to address the scientific uncertainty associated with the assessment. At that meeting, the SSC recommended an MSY fishing level of 145,000 mt in 2010, 134,000 mt in 2011, and 127,000 mt in 2012, and made an initial ABC recommendation of 90,000 mt for all 3 years.

The SSC also considered an ABC control rule for herring. Given the magnitude of uncertainty in the assessment, the SSC determined that a herring ABC control rule cannot be derived at this time. Additionally, the SSC recommended that a new herring benchmark stock assessment is needed to address issues related to the 2009 assessment's retrospective pattern and the ABC control rule.

The current herring overfishing definition is contingent on the relationship of current biomass to  $B_{MSY}$  and requires a rebuilding program when biomass falls below  $B_{MSY}$ . This definition must be revised in the future because, currently, the herring stock could not rebuild to  $B_{MSY}$  using long-term projections at  $F_{MSY}$ . A new benchmark stock assessment is needed to address the inconsistency between long-term projections and reference points. Because the TRAC's estimate of 2008 herring biomass is substantially greater than the biomass expected from long-term projections at  $F_{MSY}$ , the SSC was able to use the overfishing definition (fishing mortality is  $F_{MSY}$  when stock size is greater than  $B_{MSY}$  and allows for rebuilding in 5 years when biomass is less than  $B_{MSY}$ ) to recommend maximum catch levels (i.e., 145,000 - 127,000 mt) based on projections at  $F_{MSY}$ .

At its September 2009 meeting, the SSC recommended an ABC of 90,000 mt for two reasons: 1) The average retrospective inconsistency in the

estimate of exploitable biomass looking back 7 years (2001–2007) is approximately 40 percent, so the ABC recommendation reflected a buffer between the MSY fishing level and ABC of 40 percent; and 2) The stock assessment suggests that recent catches have maintained a relatively abundant stock size (estimates of stock biomass from 1998–2008 have been greater than  $B_{MSY}$ ) and low fishing mortality (estimates of fishing mortality from 1998–2008 have been less than  $F_{MSY}$ ). Total catch by the U.S. and Canada in 2008 was 90,000 mt.

The Council was uneasy with the SSC's initial catch recommendations. For the 2007–2009 herring specifications, the ABC (comparable to SSC-recommended MSY fishing level) was 194,000 mt and the OY (comparable to SSC-recommended ABC) was 145,000 mt. At its September 22–24, 2009, meeting, the Council requested the SSC to consider whether application of recent years' (2005–2007) retrospective inconsistency (about 17 percent) is a sufficient buffer between MSY fishing level and ABC to account for scientific uncertainty. The SSC considered the Council's request during a conference call on November 12, 2009, and concluded that there is no scientific basis for a 17 percent buffer between MSY and ABC, and that a 17 percent buffer is insufficient to account for scientific uncertainty. After further discussion, however, the SSC also concluded that, while the herring stock is not overfished and not subject to overfishing, it would not be appropriate to allow catches to increase above recent levels because of the scientific uncertainty associated with the assessment's estimates of biomass. Accordingly, the SSC revised its original advice, and recommended that ABC not exceed recent catch. Total catches in the U.S. and Canada averaged 106,000 mt during 2006–2008 and 108,000 mt during 2004–2008.

At its November 17–19, 2009, meeting, the Council recommended 2010–2012 specifications for the herring fishery. During 2010–2012, the Council will annually review these specifications and recommend adjustments if necessary. For 2010–2012, NMFS proposes to implement the herring specifications recommended by the Council, as detailed in the following table.

**Proposed Specifications****PROPOSED ATLANTIC HERRING SPECIFICATIONS (MT) FOR 2010–2012**

MSY Fishing Level	2010–145,000 2011–134,000 2012–127,000
Allowable Biological Catch	106,000
Optimum Yield	91,200
Domestic Annual Harvest	91,200
Border Transfer	4,000
Domestic Annual Processing	87,200
Joint Venture Processing Total	0
Joint Venture Processing	0
Internal Waters Processing	0
U.S. At-Sea Processing	0
Total Allowable Foreign Fishing	0
Reserve	0
Area 1A Total Allowable Catch (TAC)	26,546*
Area 1B TAC	4,362
Area 2 TAC	22,146
Area 3 TAC	38,146
Fixed Gear Set-Aside	295
Research Set-Aside	0

\*If New Brunswick weir fishery landings through October 15 are less than 9,000 mt, then 3,000 mt will be added to the Area 1A TAC in November.

Consistent with the SSC's advice, the Council recommended decreasing the MSY fishing level from 194,000 mt in 2009 to 145,000 mt in 2010, 134,000 mt in 2011, and 127,000 mt in 2012 and decreasing the herring ABC from 145,000 mt in 2009 to 106,000 mt (based on average U.S. and Canadian catch from 2006–2008) for all 3 years. The Council believes that the buffer between MSY and ABC is reflective of scientific uncertainty; therefore, reductions for additional sources of scientific uncertainty (e.g., biomass projections, recruitment, forage/natural mortality) were not recommended. Herring regulations (§ 648.200(b)(1)) specify that OY is less than or equal to ABC minus

expected catch in the New Brunswick weir fishery. The Council recommended that the deduction for New Brunswick weir catch be 14,800 mt (based on average catch 1999–2008, minus the highest and lowest values). Because state-only catch and herring discards are included in the OY, the Council did not recommend any additional sources of management uncertainty in the buffer between ABC and OY. NMFS concurs with the Council's recommendations and proposes the following specifications: MSY level fishing at 145,000 mt for 2010, 134,000 mt for 2011, and 127,000 mt for 2012; and 2010–2012 ABC and OY at 106,000 mt and 91,200 mt, respectively.

BT is a processing allocation available to foreign transport vessels and dealers. The MSA provides for the issuance of permits to Canadian vessels transporting herring harvested in the U.S. to Canada for sardine processing. The Council recommended the specification for BT be 4,000 mt. The amount specified for BT has equaled 4,000 mt since 2000. As there continues to be Canadian interest in transporting herring for sardine processing, the specification for BT remains unchanged. For these reasons, NMFS proposes BT be maintained at 4,000 mt for 2010–2012.

Historically, JVPT (including JVP and IWP) was allocated to encourage foreign processing operations with U.S. vessels and TALFF was allocated to ensure fish were available to foreign processing vessels when U.S. vessels could not supply it. The U.S. herring fishery has experienced growth in both harvesting and processing capacity, and since 2005 the Council has allocated neither JVPT or TALFF because of the U.S. fishery's potential to fully utilize DAH and DAP. Amendment 1 to the Herring FMP established a limited access program in 2008 because the Council found that sufficient harvesting capacity exists in the U.S. fishery to harvest more than the available yield. In the absence of any JVPT activity, TALFF allocations to support those operations are no longer necessary. Because the U.S. herring industry is capable of harvesting and processing the entire 2010–2012 proposed OY, and to maximize U.S. economic benefits, the Council recommended, and NMFS is proposing, that JVPT, JVP, IWP, and TALFF be maintained at zero for 2010–2012.

The Herring FMP specifies that DAH will be set less than or equal to OY and be comprised of DAP, JVPT, and BT. Consistent with the proposed specifications for OY, the Council recommended that DAH be 91,200 mt for 2010–2012. DAH should reflect the actual and potential harvesting capacity

of the U.S. herring fleet. During 1995–2008, the U.S. herring fishery harvested an average of 103,580 mt herring per year and recently (2004–2008) harvested an average of 91,801 mt of herring per year. While the U.S. herring fishery has not fully utilized the DAH in previous years, the proposed specifications for 2010–2010 set DAH at or below historical catch levels. DAP is the amount of U.S. harvest that is processed domestically, as well as herring that is sold fresh (i.e., bait). DAP is calculated by subtracting BT from DAH. Using this formula, the Council recommended that DAP be 87,200 mt. NMFS concurs that the U.S. herring fishery has the capacity to harvest and process the DAH and DAP recommended by the Council, so it proposes that DAH be set at 91,200 mt and DAP be set at 87,200 mt for 2010–2012.

A portion of DAP may be specified for the at-sea processing of herring in Federal waters. When determining the USAP specification, the Council considers availability of shore-side processing, status of the resource, and opportunities for vessels to participate in the herring fishery. A USAP specification of 20,000 mt for herring management Areas 2 and 3 was in place during 2007–2009. This specification was a cap for USAP activities and not a specific allocation for at-sea processing. During 2007–2009, the catch in management Areas 2 and 3 was lower than the area TACs. The USAP specification was intended to provide additional opportunities for U.S. harvesters better suited to offloading catch at sea than bringing it back to port. Because no at-sea processing vessel participated in the herring fishery during 2007–2009, none of the 20,000 mt USAP specification was utilized. There is currently no known industry interest in operating an at-sea processing vessel in the herring fishery, so the Council recommended, and NMFS is proposing, that USAP be set at zero for 2010–2012.

The Council recommended a reserve specification of zero for 2010–2012. Historically, the reserve was used to buffer against such things as uncertainty in stock size estimates, uncertainty in Canadian catch, excess U.S. capacity entering the herring fishery, and fluctuations in import/export demand. With the implementation of limited access, and the use of buffers between MSY fishing level, ABC, and OY to account for sources of scientific and management uncertainty, the Council concluded that specifying a reserve is not necessary. NMFS concurs with the Council, and proposes that the reserve be set at zero for 2010–2012.

The herring stock complex is assessed as a unit stock, but is comprised of inshore (Gulf of Maine) and offshore (Georges Bank) stock components. These stock components segregate during spawning and mix during feeding and migration. A previous TRAC assessment (2006) estimated that approximately 18 percent of the unit stock's biomass is the inshore stock component and the remaining 82 percent is the offshore stock component. Herring management areas were developed in recognition of these different stock components and provide a method to manage the fishing mortality of each stock component somewhat independently. Because the inshore stock component has substantially less biomass than the offshore stock component, it is likely more vulnerable to overfishing. The inshore stock component is found in 3 of the 4 management areas (i.e., Area 1A, 1B, and 2). These same management areas are of particular economic importance to the industry because of herring availability and proximity of the fishing grounds to shore.

The Council's Herring Plan Development Team (PDT) analyzed the risk of overfishing the stock components by estimating exploitation rates associated with a range of management area TACs. The exploitation rate that corresponds to FMSY for the herring stock is approximately 0.24. Area TAC alternatives with exploitation rates on the inshore stock component similar to the FMSY exploitation rate for the stock had drastic TAC reductions (up to 90 percent) in the inshore areas. PDT analysis indicates that over the past decade (1999–2008) exploitation rates on the inshore stock component have been consistently higher than 0.24. As differences in productivity between the stock components are not known, PDT analysis suggests that the exploitation rate of 0.24 for the stock components should be used as a target, rather than a threshold.

When recommending management area TACs, the Council made TAC recommendations that weighed controlling the exploitation rate on the inshore stock component against providing harvest opportunities in inshore areas. NMFS accepts the Council's recommendations, and is proposing that for 2010–2012 the Area 1A TAC be reduced from 45,000 mt to 26,546 mt, the Area 1B be reduced from 10,000 mt to 4,362 mt, that the Area 2 TAC be reduced from 30,000 mt to 22,146 mt, and the Area 3 TAC be reduced from 60,000 mt to 38,146 mt. The exploitation rates on the inshore stock component associated with the

proposed TACs are estimated to be 0.42, 0.46, and 0.50 for 2010, 2011, and 2012, respectively.

Because Canadian catch in the New Brunswick weir fishery is highly variable, the Council recommended a management measure reallocating a portion of the buffer between ABC and OY (the buffer to account for Canadian catch) to Area 1A, provided New Brunswick weir landings are lower than anticipated (14,800 mt). Specifically, the Council recommended that if New Brunswick weir fishery landings are less than 9,000 mt through October 15, then 3,000 mt will be added to the Area 1A TAC in November. NMFS's Northeast Fishery Statistic Office will review New Brunswick weir data biweekly. Consistent with the Council's recommendation, this action proposes that if NMFS determines that the New Brunswick weir fishery landed less than 9,000 mt through October 15, NMFS will allocate an additional 3,000 mt to the Area 1A TAC in November (for a total Area 1A TAC of 29,546 mt). If the reallocation is warranted, NMFS will notify the Council and the adjustment will be published in the **Federal Register**. This measure has the potential to mitigate some of the economic effects associated with the proposed 41 percent reduction in Area 1A TAC.

The Herring FMP provides for up to 3 percent of management area TACs to be set-aside to fund research. Due to the magnitude of the proposed reductions in management area TACs from those in 2009, the Council did not recommend RSA for any management area. NMFS concurs with the Council's recommendation and is proposing that RSA be set at zero for 2010–2012.

Herring regulations (§ 648.201(g)) specify that up to 500 mt of the Area 1A TAC shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44° 36.2 N. Lat. and 67° 16.8 W. Long. This set-aside shall be available for harvest by the fixed gear within the specified area until November 1 of each year; any unused portion of the allocation will be restored to the Area 1A TAC after November 1. During 2007–2009, the fixed gear set-aside was specified at 500 mt. Because the proposed Area 1A TAC for 2010–2012 is substantially reduced from the Area 1A TAC in 2009, the Council recommended that the fixed gear set-aside be similarly reduced. Therefore, the Council recommended, and NMFS is proposing, that the fixed gear set-aside be set at 295 mt for 2010–2012.

#### Corrections

This proposed rule also contains minor corrections to existing

regulations. These corrections would not revise the substance of any regulations; they would only clarify the intent of existing regulations by correcting minor errors. In § 648.14(r)(1)(vi)(A), the reference to the Gulf of Maine/Georges Bank Exemption Area would be removed and the reference to limited access herring vessels would be modified. In § 648.14(r)(1)(vii)(B), the reference to a limited access herring vessel would also be revised.

#### Classification

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 (E.O. 12866).

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows.

#### Statement of Objective and Need

This action proposes 2010–2012 specifications for the herring fishery. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

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

Based on 2009 permit data, the number of potential fishing vessels in each permit category in the herring fishery are as follows: 41 for Category A (limited access, All Areas), 4 for Category B (limited access, Areas 2 and 3), 54 for Category C (limited access, incidental), and 2,272 for Category D (open access). There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance

requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

*Minimizing Significant Economic Impacts on Small Entities*

Proposed Actions

Because the proposed action will not reduce the OY below 2008 landings levels in any of the years covered by this action, the proposed action may not negatively impact the ability of the fleet to land the same amount of herring as it has in recent years. For the proposed action, with an effective OY of 86,640 mt (fishery closure threshold is 95 percent of 91,200 mt), no loss of revenue is expected since this level is greater than 2008 landings (80,800 mt). However, historical catch data indicate there may be impacts associated with proposed area TAC allocations.

The proposed action reduces the Area 1A TAC by 41 percent from status quo (45,000 mt in 2009). Area 1A has historically been the most important area to the fishery and the TAC has been fully utilized for the past 4 fishing years. The proposed action includes TACs for Areas 2 and 3 that are higher than historical landings in those areas, which could provide additional revenue for the herring fishery if the Area 1A TAC is fully harvested. However, conditions associated with harvesting herring from Areas 2 and 3 may not be ideal. If the Area 1A TAC is attained during the summer, fish may only be available in Areas 1B and 3, since Area 2 is primarily a winter fishing ground. Area 3 is a large offshore area, and it is never certain that fish will aggregate in such a way that they are available to fishing operations. Smaller vessels may not be able to fish safely offshore. For larger vessels that can safely fish in Area 3, increasing the amount of offshore fishing will increase operating costs. Since search time is likely to increase and the length of the trip will increase as fishing grounds are further from shore, fuel costs and other trip expenses will increase. The degree to which fishing costs will change is difficult to predict, so an overall estimate of increased cost can not be made. However, observer data show that each additional day at sea for midwater trawl vessels increases trips costs an average of \$2,800.

Though the proposed action reduces TACs in all management areas, resulting in short-term reductions in revenue, the proposed action also reduces the relative exploitation rate on the inshore

stock component in comparison to status quo. By reducing fishing mortality in Areas 1A, 1B and 2, the proposed action reduces the risk of overfishing the inshore stock component. In the long-term, maintaining the inshore stock component will provide for sustained participation in the herring fishery.

The proposed action also includes a measure to allocate an additional 3,000 mt of herring to Area 1A in November, if the catch in the New Brunswick weir fishery is lower than anticipated. As described in the preamble, the Council recommended deducting 14,800 mt from the ABC to account for catch in the New Brunswick weir fishery. If, by considering landings through October 15 of each year, NMFS determines that less than 9,000 mt has been taken in the New Brunswick weir fishery, NMFS will allocate an additional 3,000 mt to Area 1A in November. This measure provides additional opportunities for fishing in Area 1A if catch in the weir fishery is substantially less than anticipated (14,800 mt), while still minimizing the likelihood of exceeding ABC.

**Alternatives to the Proposed Action**

Alternatives to the proposed action include options for setting the ABC, OY, and management area TACs. However, the specification of management area TACs has the greatest potential to economically impact fishery participants, especially the specification of the TAC in Area 1A, therefore this section focuses on the Area 1A TAC alternatives.

Only two alternatives contain Area 1A TACs that are higher than status quo (i.e., 45,000 mt). Alternative 1/option 1 has an Area 1A TAC that is 31,000 mt higher than status quo and alternative 1/option 2A has an Area 1A TAC that is 400 mt higher than status quo. At a \$260 per mt (average price in 2008), these alternatives would result in fleet-wide revenue increases of approximately \$8 million (alternative 1/option 1) or \$104,000 (alternative 1/option 2). Because these alternatives would not have reduced the relative exploitation rate on the inshore stock component in comparison to status quo, they were not selected as the proposed action. All other alternatives have Area 1A TACs that are lower than status quo (10–90 percent less). The economic impacts of reducing the Area 1A TAC and displacing effort into other management areas are discussed in the previous section.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 14, 2010.

**Eric C. Schwaab,**

*Assistant Administrator for Fisheries, 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 § 648.14, paragraphs (r)(1)(vi)(A) and (r)(1)(viii)(B) are revised to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(r) \* \* \*

(1) \* \* \*

(vi) \* \* \*

(A) For the purposes of observer deployment, fail to notify NMFS at least 72 hr prior to departing on a trip aboard a vessel with an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing with either midwater trawl or purse seine gear on a declared herring trip.

\* \* \* \* \*

(viii) \* \* \*

(B) Fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS, if a vessel with an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing with either midwater trawl or purse seine gear, at least 6 hr prior to landing herring at the end of a declared herring trip.

\* \* \* \* \*

3. In § 648.201, paragraph (h) is added to read as follows:

**§ 648.201 Closures and TAC controls.**

\* \* \* \* \*

(h) If NMFS determines that the New Brunswick weir fishery landed less than 9,000 mt through October 15, NMFS will allocate an additional 3,000 mt to the Area 1A TAC in November. NMFS will notify the Council of this adjustment and publish the adjustment in the **Federal Register**.

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