

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 0907301205–0289–02]

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:** Final rule.

**SUMMARY:** NMFS announces final specifications for the 2010–2012 fishing years for the Atlantic herring (herring) fishery. The intent of this final rule is to conserve and manage the herring resource and provide for a sustainable fishery. This final rule also makes minor corrections to existing regulations.

**DATES:** Effective August 12, 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>. Copies of the Small Entity Compliance Guide are available via the Internet at <http://www.nero.nmfs.gov> and from the Regional Administrator, Northeast Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01915–2298.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

Proposed 2010–2012 specifications were published on April 20, 2010 (75 FR 20550), with public comment accepted through May 20, 2010. These final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

The 2010–2012 herring specifications are based on the provisions currently in the Herring Fishery Management Plan

(FMP), and also provide the necessary elements for a transition to the new annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The ACL and AM process was developed by the Council in Amendment 4 to the Herring FMP, which was submitted to NMFS by the Council on April 23, 2010. Amendment 4 will be implemented for the 2011 fishing year, if approved by NMFS.

**2010–2012 Final Specifications**

The following specifications are established by this action: Allowable biological catch (ABC), 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), and the total allowable catch (TAC) from each management area.

**TABLE 1.—SPECIFICATIONS AND AREA TACS FOR THE 2010–2012 ATLANTIC HERRING FISHERY**

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*

**TABLE 1.—SPECIFICATIONS AND AREA TACS FOR THE 2010–2012 ATLANTIC HERRING FISHERY—Continued**

Atlantic Herring Specifications (mt) for 2010–2012	
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.

**Comments and Responses**

There were seven comments received from Congresswoman Chellie Pingree; the Herring Alliance; four industry entities (Northern Pelagic Group, LLC; Cape Seafoods Inc.; Lunds Fisheries Inc.; the Small Pelagic Group); and one individual.

*Comment 1:* Congresswoman Pingree noted the negative impacts on Maine communities, but supported the proposed specifications because they are consistent with the best available scientific advice, and are better than alternative proposals that would have reduced the quota even more.

*Response:* There are no changes from the proposed specifications.

*Comment 2:* The Herring Alliance noted their view that caution is warranted in management because of the ecosystem role of herring as a forage species, past declines in the New England herring stock, and concern that in other regions, stocks with spawning subcomponents have had some of those subcomponents extirpated. The group ultimately commented in support of the proposed action, but noted that though the proposed specifications are consistent with the scientific and statistical committee’s (SSC) advice, the SSC also suggested that the Council should consider a conservative catch limit of 90,000 mt, given the substantial uncertainty in the stock assessment. The commenters said this emphasized their opinion that the final specifications should be set no higher than those that were proposed. In addition, they pointed out that the proposed management area TACs pose a relatively high risk for the inshore stock component.

*Response:* This action established the specifications at the level that was proposed. The SSC’s final advice to the Council was that, in the face of several sources of uncertainty, it would be

inappropriate to allow catches to increase above recent catch until a new benchmark assessment can be completed. The sources of uncertainty cited were the retrospective pattern in the assessment (that overestimates stock biomass) and the uncertain mixing ratios of stock subcomponents. Despite this uncertainty in the recent stock assessment, the analysis does suggest that recent catch levels have maintained a relatively abundant stock size and low fishing mortality. The SSC noted that there could be a range of values that represent recent catch: 90,000 mt (2008); 106,000 mt (2006–08 average); or 108,000 mt (2004–08 average). While the commenter is correct in stating that the SSC suggested that the Council should consider a conservative catch limit (e.g., 90,000 mt), the SSC also noted that the choice of the time period used to derive ABC depended upon the Council's tolerance for risk. NMFS concludes that these final specifications, which set the ABC at 106,000 mt for all three years, are consistent with the SSC's technical advice.

In the specifications documents submitted by the Council, it noted the need to consider its concerns about the risk of depleting spawning components of the stock and the need to consider the role of herring in the ecosystem as a forage species. The specifications documents include a risk assessment that was prepared to evaluate the impacts of the various TAC allocation alternatives on the individual spawning components of the herring stock complex. While the Atlantic herring stock is assessed as one stock, it is comprised of an inshore Gulf of Maine stock component, and an offshore Nantucket Shoals/Georges Bank stock component. These two stock components are segregated during spawning season, but mix at other times of the year; thus each component is vulnerable to fishing mortality independent of the other component. The best scientific information available indicates that the inshore stock component comprises approximately 18 percent of the total stock. The inshore stock component is present in Areas 1A, 1B and 2 at various times of the year; it does not range into Area 3. Most herring is harvested in the inshore herring management areas; thus, while the inshore stock component is a relatively small portion of the stock, it is also the subject to more fishing effort than the offshore component because of its proximity to shore. As a result, the need to minimize the risk of overfishing the inshore stock component is a major

factor in determining the area TAC allocations.

The Council's plan development team (PDT) conducted a risk assessment to examine the removal rates from the inshore and offshore stock components of the various TAC alternatives considered by the Council, in order to evaluate the risk of overfishing to the inshore stock of various TAC allocation alternatives. The analysis generates a relative exploitation rate, which is then compared to the target exploitation rate for the entire stock complex. Risk is defined in the analysis as it relates to the potential for fishing a stock component at a level that may be higher than the target exploitation rate. The PDT determined, given the current fishing mortality at maximum sustainable yield ( $F_{msy}$ ) for the herring stock ( $F=0.27$ , or an exploitation rate of 0.24), that an exploitation rate on the inshore stock component that ranged from 0.24 to 0.28 could be viewed as risk neutral, assuming that productivity of this subcomponent is higher than most other herring stocks in the NW Atlantic.

This action is estimated to result in an exploitation rate on the inshore stock component of 0.42 in 2010, 0.45 in 2011, and 0.50 in 2012. While these rates present a higher risk to the inshore stock component than some of the other TAC allocation alternatives, the lower risk alternatives reduced the inshore area TAC allocations to levels that would have had greater negative impacts on the herring fishery than this action. This action, while not risk neutral for the inshore stock component, is predicted to result in exploitation rates on the inshore stock component similar to those that occurred from 2000–2007, when exploitation fluctuated around 0.47. Maintaining this exploitation rate is consistent with the SSC advice to maintain catch at recent levels.

*Comment 3:* All four industry groups opposed the Council's recommended specifications for 2010–2012. They gave a number of reasons for their views, which are similar in many ways. Therefore, these comments are summarized together, without attributing each point to a group.

The industry groups argued that the specifications are unnecessarily restrictive given the conclusion of the 2009 Transboundary Resource Assessment Committee stock assessment that the fishery is not overfished or subject to overfishing. They also contended that the TRAC stock assessment is flawed, and that the SSC should have rejected it and instead recommended that the 2009

specifications be maintained until a new benchmark stock assessment can be conducted. They cited concern about the high level of precaution the SSC used in recommending a buffer between the maximum sustainable yield (MSY) fishing level and the ABC. They argue that the SSC's initial recommendation to reduce the MSY fishing level by 40 percent to account for scientific uncertainty was a matter of guesswork, and therefore entirely arbitrary.

They contended that the ABC recommendation, and the resultant TACs, represent multiple layers of precaution, and represent an overly conservative reaction to the uncertainty in the stock assessment. They noted that there are three layers of scientific uncertainty that affect TAC levels: (1) the severe retrospective pattern in the updated stock assessment; (2) the SSC recommendation for a 40% reduction in ABC to account for scientific uncertainty; and (3) the additional 41% reductions in the Gulf of Maine that they contend result from the PDT's risk assessment. They requested a peer review to determine if what they characterize as cumulative, multiple reductions in catch levels, are necessary and scientifically valid.

They questioned the scientific validity of the PDT's risk assessment, which resulted in the area TAC allocations. They requested that the PDT's risk assessment analysis be peer-reviewed. In addition, they noted that the additional layer of precaution used in establishing area TACs, which is based on what they characterize as a two-stock component theory, is contrary to the TRAC's historical approach to assessing the Atlantic herring resource as a single stock component.

They noted that the proposed reduction in the Area 1A TAC will be particularly damaging to herring vessels and coastal communities in Maine and Massachusetts, and to the New England lobster fishery which depends on herring for bait. They contended that neither the proposed rule nor the economic analysis in the EA adequately consider the economic consequences of the proposed Area 1A TAC. They noted that, in their view, the recent closure of the last sardine factory in the U.S. was a direct result of the proposed TAC reduction.

They argued that the proposed reduction in the Area 2 TAC threatens the success of the Atlantic mackerel fishery during the winter months due to the catch of herring in the mackerel fishery; they contended that the proposed rule did not examine the economic impacts of the TAC on the Atlantic mackerel fishery.

They objected to the fact that this action sets the specifications for three years, though it is not entirely clear what they are suggesting should occur to address this concern. They noted that NMFS should collect additional data to assess the resource as it prepares for the next benchmark stock assessment in 2012.

They noted that the statement in the proposed rule that suggests that the fishery may land the same amount of herring as it has in recent years is outrageous, though they do not fully explain their reasoning. NMFS assumes that they do not agree that the TAC reductions in the Gulf of Maine could be compensated for by fishing in Area 3.

*Response:* For the most part, these comments reflect differing opinions about the stock assessment for herring and the validity of the SSC's advice. The commenters offered no alternative scientific analyses to support their opinions, nor did they cite any specific legal requirements that would be violated if the proposed specifications were implemented. As more specifically discussed below, NMFS has determined that the precautionary approach reflected in the specifications is consistent with the best scientific information available, and other applicable Magnuson-Stevens Act requirements.

While the TRAC concluded that recent catches have maintained a relatively abundant stock size and low fishing mortality, and that the stock is not overfished or subject to overfishing, it also noted concerns about the stock assessment results, primarily a retrospective pattern that results in an overestimation of stock biomass. While the SSC reviewed the TRAC results and initially recommended a 40 percent buffer between the MSY fishing level and ABC, that initial advice was not arbitrary, as characterized by the commenter. The initially proposed 40 percent buffer corresponded to the average retrospective inconsistency in the estimate of exploitable biomass presented in the TRAC assessment; the SSC believed that the magnitude of this inconsistency was sufficient to account for all sources of uncertainty in the assessment. In addition, that initial advice was revisited at the request of the Council, and these specifications are being set consistent with the SSC's revised advice that ABC should not exceed recent catch. The Council responded to the advice by recommending an ABC of 106,000 mt, which corresponds to average total US and Canadian catch from 2006–2008. The SSC also noted that exploitable biomass is projected to decline during

2010–2012 due to the recruitment of poorer than average year-classes. The ABC of 106,000 mt provides a 27 percent buffer from the  $F_{msy}$  based catch level of 145,000 mt in 2010, in order to ensure that  $F_{msy}$  is not exceeded for the stock complex, given the uncertainties in the assessment.

To consider the risk of depleting individual spawning components, the PDT conducted a risk assessment (see Response #2) to evaluate the risk of overfishing the inshore stock component. Such analyses are frequently conducted by Council PDTs, and are not formally peer-reviewed. PDTs are comprised of technical experts identified by the Council specifically to offer technical advice that will assist in making sound fishery management decisions. NMFS disagrees with the contention that such advice must be formally peer-reviewed before it is considered in management. The risk assessment prepared by the PDT provides a useful tool for considering the risk of overfishing the stock components by estimating exploitation rates.

NMFS disagrees that the PDT's risk assessment, which estimates mortality rates on both the inshore and offshore stock components under the proposed management area TAC options, is contrary to the TRAC's approach to assessing the Atlantic herring resources as a single stock complex. The commenters offer no scientific analyses that refute the risk assessment method of estimating the exploitation risk to each individual stock component in establishing management area TACs. Though the herring stock is assessed as a single unit, there is ample evidence that there are inshore and offshore stock components that can be affected by fishing mortality independent of each other. The most compelling evidence supporting the existence of separate inshore and offshore components was the collapse of the offshore component in the early 1970s after years of heavy exploitation by foreign fishing fleets. During the decade that the offshore stock component was in a depressed state, the smaller inshore stock component supported the coastal fishery.

As noted in the Response to Comment 12, the concern that is addressed in this action is the fact that in recent years, most of the harvest has come from the inshore stock component, which is vulnerable to overfishing because of its proximity to shore and because it has substantially less biomass than the offshore component. These management areas are of particular economic importance to the industry, and the

collapse of the inshore stock component would eliminate the opportunity to participate in the nearshore fishery for herring. This action is intended to prevent such a situation from occurring.

The analysis of the economic impacts of the TAC allocations shows clearly that the reductions in the Area 1A TAC are likely to adversely impact fishery participants from ports in Maine and New Hampshire, and to a lesser extent ports in Massachusetts and Rhode Island. These impacts were carefully considered in selecting TAC allocations intended to balance the biological concerns against the economic concerns. NMFS notes that preventing overfishing of the inshore stock component is critical for the long-term health of the inshore fishery.

The discussion of economic impacts in the proposed rule summarizes the impacts on the regulated participants in the herring fishery; the Regulatory Flexibility Act only requires a discussion of impacts on regulated entities in the IRFA. While not addressed in the proposed rule, the Council's analysis of economic impacts does address the possible negative impacts that may be felt by participants in the lobster and mackerel fisheries. The analysis notes that herring is an important bait for the lobster fishery. The reductions in the TAC in Area 1A are likely to result in increased bait prices, especially considering the expected demand for bait related to recent high levels of lobster landings. The analysis also discusses the impacts of this action on the mackerel fishery, and notes that the reduction in the Area 2 TAC may require mackerel vessels to take steps to avoid catching herring, which could potentially increase their operating costs. The analysis acknowledges the possibility that mackerel fishing may cease because mackerel fishermen will not want to risk catching herring in excess of allowed levels. NMFS cannot comment on the cause of the recent sardine plant closure.

The commenters expressed concern that this action establishes specifications for three years. NMFS notes that the fishery management plan specifies that the Council will conduct an annual review of the status of the fishery, and may adjust the specifications at any time through the specifications process, if the review indicates an adjustment is warranted.

NMFS recognizes that, while this action does not reduce the total potential harvest of herring below the 2008 harvest level, it does reduce specific area allocations to levels lower than recent harvest. While the impact of

these reductions may be mitigated if the industry can increase harvest above recent levels in Area 3, NMFS recognizes the fact that fishing in this offshore area increases operating costs. Therefore, it may not be possible for the herring industry to mitigate the negative economic impacts of the inshore TAC reductions.

*Comment 4:* One individual commented that all herring quotas should be cut in half.

*Response:* The proposed ABC and area TACs were reduced from the 2009 levels, for reasons noted in Responses 2 and 3.

### Classification

The Assistant Administrator for Fisheries has determined that the need to implement these measures in an expedited manner in order to help achieve conservation objectives for Atlantic herring constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness. If there is a delay in implementing the TACs in this action, the herring fleet will continue to fish in federal waters under the TACs that are currently in effect. The 2009 allocations are higher than the measures specified in this action for 2010 and also higher than those that have been implemented for the 2010 fishing year by the states under the Atlantic States Marine Fisheries Commission (ASMFC) FMP. The allocations in this action were developed to reflect an updated estimate of the annual catch that can be harvested in light of the scientific uncertainty about the results of the TRAC's stock assessment. Herring is a highly mobile, pelagic species, and herring populations have shown variable aggregation patterns in recent years. Analysis of this year's fishing activity indicates that the herring fleet has been successfully targeting aggregations in an area of Georges Bank (in management Area 3) where herring do not typically migrate until October. Due to the seasonal and annual variability in its distribution, the herring fleet is quick to target herring aggregations as they become available in each management area; the fleet is capable of landing over 2,000 mt in a single week. If the effective date for this action is delayed, increased fishing activity in response to fish availability could lead to an unanticipated pulse of landings. Given that the specifications reduce the total available TAC by 37 percent from the 2009 level, and reduce individual management area TACs by as much as 56 percent from the 2009 levels, it is necessary to waive the 30-day delay in effective date and

implement the provisions in this rule immediately to ensure that the 2010 individual area TACs are not exceeded before the implementation of this action.

This action is authorized by 50 CFR part 648 and has been determined to be not significant for the purposes of Executive Order 12866.

A Final Regulatory Flexibility Analysis (FRFA) was prepared, which consists of and incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, the analyses contained in the Council document and the accompanying EA, and the discussion and summary of the analyses contained in the preamble to this action. A copy of the analyses is available from the Council (see ADDRESSES).

### Statement of Objective and Need

This final rule announces final 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 the proposed rule and are not repeated here.

### A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS received seven comments on the proposed specifications. Three of the comments were specific to the IRFA. Comment 3 outlines concerns by three industry groups that the analysis in the proposed rule understated the economic impacts of the specified area TACs on the herring, mackerel, and lobster fisheries. NMFS' assessment of the issues raised by these comments is contained in the response to these comments and is not repeated here. The comments did not result in any changes to the area TACs, which were reduced to meet biological objectives specified in the FMP.

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

Based on 2009 permit data, the number of fishing vessels eligible to fish 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.

### Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objective of the Applicable Statutes, including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency which Affect the Impact on Small Entities was Rejected

This action will not reduce the stock-wide TAC below the level of landings in 2008 (83,580 mt), the last year for which data was complete at the time the impacts analyses were conducted. On a stock-wide level, no loss of revenue is projected because the herring fishery would have an opportunity to harvest the same amount of herring as in recent years. The impacts of the reductions to the area TAC allocations may vary, however.

This action reduces the Area 1A TAC by 41 percent, from 45,000 mt to 26,546 mt. In 2008, landings from Area 1A were 40,390 mt. The reduction from 2008 landings levels of 13,844 mt would result in a loss of revenue of \$3.6 million, at the average 2008 price of \$260/mt. This may be offset by the provision that would 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 estimated. The value of this additional allocation is \$780,000, which could reduce the revenue loss to \$2.8 million.

The TACs in Areas 2 and 3 established by this action are higher than historical landings from those areas (2008 landings from Area 2 were 22,495 mt; from Area 3, 13,144 mt). It is possible that the impacts associated with the Area 1A TAC reduction will be offset by increases in the harvest from other management areas. 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. Sea time is likely to increase and the length of each trip will increase, resulting in higher trips costs, particularly for fuel. The degree to which fishing costs will change is difficult to predict, so an overall estimate of increased costs can not be made. However, observer data shows that each additional day at sea for a midwater trawl vessel increases the trip cost by an average of \$2,800.

Alternatives to this action included options for setting the ABC, OY, and management area TACs. The first of 2 non-preferred alternatives for ABC and OY was based on the SSC's initial advice to the Council that ABC equal 90,000 mt for the 2010–2012 fishing years (Alternative 2). Because the herring resource is not overfished, and the MSA-mandated ACL provisions do not need to be established until 2011, the Herring Committee developed a second non-preferred alternative for ABC that would set ABC at the FMSY-based catch level (145,000 mt) for 2010 and at 90,000 mt for 2011 and 2012 (Alternative 1). In all alternatives, OY is a reduction of ABC by 14,800 mt to account for potential catch in the New Brunswick weir fishery. For the 2 non-preferred ABC alternatives, the resulting OY was 130,200 mt in 2010 and 75,200 mt in 2011 and 2012 under Alternative 1, and 75,200 mt in all 3 years under Alternative 2.

As described in the response to Comment #2, the SSC revised its advice, and the Council recommended an ABC of 106,000 mt for the 2010–2012 fishing years; the corresponding OY for all years is 91,200 mt. Unless there is scientific information to the contrary, the Council is required to set the ABC consistent with the SSC's recommendation. Alternative 1 was not selected because the ABC recommended for 2010 exceeds the SSC's recommendation. Under Alternative 2, the ABC recommended is 16,000 mt less than the selected ABC. This alternative was not selected because the selected ABC has higher potential to economically impact fishery participants than the preferred alternative.

There were 8 management area TAC allocation schemes presented in the EA that, when applied to the ABC and OY values under Alternatives 1 and 2, resulted in 32 sets of potential management area TAC allocations. The

8 management area TAC allocations schemes included the following: 1) allocation based on distribution of herring catch in the four management areas from 1999–2008; 2) allocation based on distribution of TACs in the 2001 fishing year with an Area 2 reserve; 3) allocation based on distribution of TACs in the 2001 fishing year without an Area 2 reserve; 4) allocation based on distribution of TACs in the 2009 fishing year; 5) allocation that maximizes catch in Area 1A, and allows 1A landings in July, August, and September; 6) allocation that maximizes catch in Area 1A, and allows 1A landings in May, June and July; 7) allocation that maximizes catch in Area 2; 8) allocation that reduces the quota in a relatively balanced manner across areas.

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. Of the 32 management area TAC allocations considered, only two alternatives specified Area 1A TACs that are higher than status quo (i.e., 45,000 mt). Alternative 1/Option 1 had an Area 1A TAC that was 31,000 mt higher than status quo and Alternative 1/Option 2A had an Area 1A TAC that was 400 mt higher than status quo. At a \$260 per mt (average price in 2008), these alternatives would have resulted in fleet-wide revenue increases of approximately \$8 million (Alternative 1/Option 1) or \$104,000 (Alternative 1/Option 2). These alternatives were not selected because they would not have reduced the relative exploitation rate on the inshore stock component. The other alternatives have Area 1A TACs that are lower than status quo (10–90 percent less). As discussed in the response to Comment 12, the selected alternative reduces the relative exploitation rate on the inshore stock component compared to the status quo, while maintaining harvest opportunities in inshore areas. Similar to alternatives with Area 1A TACs higher than status quo, alternatives that feature smaller reductions to the Area 1A TAC (10–20 percent less), which would have less economic impact on the industry than the selected alternative, were not chosen because they did not sufficiently reduce the relative exploitation rate on the inshore stock component. Alternatives with substantially lower Area 1A TACs (80–90 percent less) were not selected because they had too great a potential to negatively impact the herring industry through loss of revenue and fishing

opportunities. The economic impacts of reducing the Area 1A TAC and displacing effort into other management areas are discussed earlier in the preamble.

Similarly, for all other management areas (Area 1B, Area 2 and Area 3), the selected alternative was determined to best balance the exploitation rate on the inshore stock component against providing adequate harvest opportunities. The TAC alternatives for Area 1B ranged from 2,538 mt to 8,854 mt; all 32 alternatives were below the status quo (10,000 mt). The TAC alternatives for Area 2 ranged from 3,817 mt to 67,700 mt; 6 of the 32 alternatives were above the status quo (30,000 mt). Finally the TAC alternatives for Area 3 ranged from 15,100 mt to 85,949 mt; 3 of the 32 alternatives were above the status quo (60,000 mt). The alternatives considered for Areas 1B, Area 2 and Area 3 where the TACs were lower than the status quo were not selected because they had too great a potential to negatively impact the herring industry through loss of revenue and fishing opportunities. The alternatives considered for these management areas where the TACs were higher than the status quo were not selected because they would not have reduced the relative exploitation rate on the inshore stock component.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to make to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the herring fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may be found at the following web site: <http://www.nero.noaa.gov>.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 6, 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 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**.

[FR Doc. 2010-19870 Filed 8-11-10; 8:45 am]

**BILLING CODE 3510-22-S**