

and therefore slow recovery of the stock, contrary to the Council's objectives.

Two alternatives, including the status quo, were considered for the action to set the recreational bag limit at zero. The first alternative, the status quo, would maintain the recreational catch target at 2.20 million lb (1 million kg) as defined in Amendment 30B and thus maintain the current recreational bag limit of 2 gag within the 4-fish aggregate grouper bag limit. Selection of this alternative would be inconsistent with current National Standard 1 guidance because this level of harvest would be above the ABC recommended by the Council's SSC of 1.17 million lb (0.53 million kg) for 2011. In addition, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would set the gag bag limit to zero on the date when 620,000 lb (0.28 million kg) of gag is projected to be landed by the recreational sector in 2011. This harvest level is consistent with the fishing mortality rate associated with the OY used by the Council in Amendment 30B to set the recreational annual catch target. Under certain assumptions regarding the disposition of discards, this alternative is expected to result in a fishing season of 83 days. Given the closure of the shallow water grouper (SWG) recreational sector annually from February 1 to March 31, fishing would be allowed for the month of January and from April 1 to May 22. However, this fishing season is dependent on achieving the same percentage reduction in dead discards as obtained from the harvest. If these levels of reduction are not met, then harvesting this amount of fish could exceed the reductions needed for the stock to recover under the rebuilding plan being developed in Amendment 32 which, in turn, could require deeper cuts in future harvests than those projected by the current assessment update.

Although by regulation, the actions in this proposed temporary rule do not need to end overfishing, they do need to reduce overfishing. This alternative could limit the types of long-term measures developed by the Council in Amendment 32 that could be applied to the 2011 fishing year since the 620,000 lb (0.28 million kg) catch target would likely be achieved before rulemaking from Amendment 32 is implemented. Therefore, the harvest for the rest of the fishing year could be zero and any long-term measures developed in Amendment 32 would not apply until 2012.

Further, recent discrepancies with the estimation of dead discards could affect how the assessment projects the status

of the stock. If these discrepancies show a more pessimistic condition of the stock when the assessment is rerun, then selecting this alternative could result in harvest levels inconsistent with rebuilding the stock within the time frames outlined in the Magnuson-Stevens Act. This is particularly important for the recreational sector which harvests a greater proportion of the gag total catch than the commercial sector. Conversely, should these discrepancies result in a more optimistic condition of the stock, the recreational catch target and bag limit could be increased in subsequent actions.

This proposed temporary rule does not establish any new reporting, record-keeping, or other compliance requirements.

#### List of Subjects in 50 CFR Part 622

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

Dated: October 12, 2010.

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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.*

##### § 622.20 [Amended]

2. In § 622.20, paragraph (b)(2)(iv)(A) is suspended.

3. In § 622.34, paragraph (v) is added to read as follows:

##### § 622.34 Gulf EEZ seasonal and/or area closures.

(v) *Closure of the recreational sector for gag.* The recreational sector for gag in the Gulf EEZ is closed. During the closure, all recreational harvest and possession of gag grouper in or from the Gulf EEZ is prohibited. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

4. In § 622.39, paragraph (b)(1)(ii) is suspended, and paragraph (b)(1)(viii) is added, to read as follows:

##### § 622.39 Bag and possession limits.

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

(viii) Groupers, combined, excluding goliath grouper, Nassau grouper, and

gag—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 red grouper per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

\* \* \* \* \*

5. In § 622.42, paragraphs (a)(1)(iii)(A)(3) and (a)(1)(iii)(B)(3) are suspended, and paragraphs (a)(1)(iii)(A)(4) and (a)(1)(iii)(B)(4) are added, to read as follows:

##### § 622.42 Quotas.

(a) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) \* \* \*

(4) For fishing year 2011 and subsequent fishing years—4.83 million lb (2.19 million kg).

(B) \* \* \*

(4) For fishing year 2011 and subsequent fishing years—100,000 lb (45,359 kg).

\* \* \* \* \*

[FR Doc. 2010-26198 Filed 10-15-10; 8:45 am]

BILLING CODE 3510-22-P

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 080513659-0476-01]

RIN 0648-AW75

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

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

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

**SUMMARY:** NMFS proposes regulations to implement measures in Amendment 4 to the Atlantic Herring (Herring) Fishery Management Plan (FMP). Amendment 4 was developed by the New England Fishery Management Council (Council) to bring the FMP into compliance with new Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements by: Revising definitions and the specifications-setting process, consistent with annual catch limit (ACL) requirements; and establishing fishery closure thresholds, a haddock incidental catch cap, and overage paybacks as

accountability measures (AMs). In addition, the amendment designates herring as a “stock in the fishery”; establishes an interim acceptable biological catch (ABC) control rule; and makes adjustments to the specification process by eliminating consideration of total foreign processing (JVpt), including joint venture processing (JVP) and internal waters processing (IWP), and reserve from the specification process, and eliminates the Council’s consideration of total allowable level of foreign fishing (TALFF).

**DATES:** Public comments must be received no later than 5 p.m., eastern standard time, on December 2, 2010.

**ADDRESSES:** An environmental assessment (EA) was prepared for Amendment 4 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 Amendment 4, including the EA, the Regulatory Impact Review (RIR), and the 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-AW75, by any one of the following methods:

(A) *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal <http://www.regulations.gov>;

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

(C) Mail to NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Herring Amendment 4.”

*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**

The Magnuson-Stevens Act, which was re-authorized in January 2007, now requires the establishment of ACLs and AMs to end and/or prevent overfishing in all FMPs. A notice of intent (NOI) was published in the **Federal Register** (73 FR 26082, May 8, 2008) announcing the Council’s intent to develop Amendment 4 and prepare an environmental impact statement (EIS) analyzing the impacts of the proposed management measures. As stated in the NOI, the purpose of Amendment 4 is to bring the Herring FMP into compliance with ACL and AM requirements. Because herring is not subject to overfishing, the Herring FMP is required to be in compliance with ACL and AM requirements by 2011. In addition, the NOI also identified the following issues to be addressed: Catch monitoring and reporting, interactions with river herring, access by midwater trawl vessels to groundfish closed areas, and interactions with the Atlantic mackerel fishery. In June 2009, the Council determined there was not sufficient time to develop and implement all of the measures contemplated in the NOI by 2011, so it decided to split Amendment 4 into two separate actions. The Council determined that Amendment 4 would continue to address ACL and AM requirements and other specification issues, but that all other issues (e.g., catch monitoring and reporting, interactions with river herring and Atlantic mackerel, access to groundfish closed areas) would be considered in Amendment 5 to the Herring FMP. A supplemental NOI, announcing this change and notifying the public that an EA, rather than an EIS, was being prepared to analyze the impacts of Amendment 4, was published in the **Federal Register** on December 28, 2009 (74 FR 68577).

The Council held three public meetings on Amendment 4 during January 2010. Following the public comment period that ended on January 12, 2010, the Council adopted Amendment 4 on January 26, 2010.

This action proposes management measures that were recommended by the Council as part of Amendment 4. If implemented, these management measures would:

- Revise current definitions and the specification-setting process to include ACLs and AMs;
- Designate herring as a “stock in the fishery;”

- Establish an interim ABC control rule;
- Eliminate JVpt, including JVP and IWP, and reserve from the specifications process; and
- Eliminate the Council’s consideration of TALFF.

A Notice of Availability (NOA) for Amendment 4 was published on August 12, 2010 (75 FR 48920). The comment period on the NOA ends on October 12, 2010.

**Proposed Measures**

The proposed measures are based on the description of the measures in Amendment 4; NMFS seeks comments on all proposed measures.

*ACL Specification Process*

The Magnuson-Stevens Act requires each Regional Fishery Management Council to establish a mechanism for specifying ACLs that do not exceed fishing-level recommendations made by its Scientific and Statistical Committee (SSC) and prevent overfishing. While the current Herring FMP contains a specification-setting process and measures to prevent overfishing, several modifications to the specification process are necessary to bring the FMP into compliance with new Magnuson-Stevens Act requirements. These modifications include: The addition of new FMP definitions; changes to the existing FMP definition for optimum yield (OY); incorporation of SSC recommendations into the specification of ABC; and explicit consideration of scientific and management uncertainty when setting specifications.

Amendment 4 proposes that the herring specifications set an overfishing limit (OFL), which corresponds to a maximum sustainable yield (MSY). ABC would be recommended by the Council’s SSC. During the setting of ABC, scientific uncertainty would be considered, and ABC may be reduced from the OFL to account for scientific uncertainty. Scientific uncertainty includes, but is not limited to, uncertainty related to stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues.

Amendment 4 also proposes to set a stock-wide ACL that would be equal to or less than ABC. During the setting of the stock-wide ACL, management uncertainty would be considered. The stock-wide ACL may be reduced from the ABC to account for management uncertainty, which includes, but is not limited to, uncertainty related to expected catch of herring in the New Brunswick weir fishery and discard

estimates of herring caught in Federal and state waters.

The stock-wide ACL is specified to account for all herring catch. Estimates of discards are reported by harvesters, and provided by NMFS observers. The available information suggests that discards in the herring fishery are low, relative to the amount of landed herring. Therefore, the Council determined no specific deduction is required, between the ABC and stock-wide ACL, to account for management uncertainty related to discards at this time. If new information on discards becomes available, Amendment 4 proposes to provide the Council with flexibility to incorporate that information into the stock-wide ACL-setting process as appropriate.

The Herring FMP authorizes specifications for JVPT, JVP, IWP, reserve, and TALFF to be set for the herring fishery. Historically, JVPT (including JVP and IWP) was allocated to enable foreign processing operations to accept catch from U.S. vessels; 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, accordingly neither JVPT or TALFF have been allocated since 2005. Because the U.S. herring industry is capable of harvesting and processing the entire available yield in the foreseeable future, and to maximize U.S. economic benefits, Amendment 4 proposes to eliminate the annual specifications of JVPT, JVP, and IWP from the Herring FMP. Additionally, while TALFF could still be awarded consistent with the Magnuson-Stevens Act, if the Secretary of Commerce determines there is inadequate domestic harvesting capacity and other requirements of the Magnuson-Stevens Act Section 201 are satisfied, Amendment 4 proposes that the Council would not consider TALFF during development of the specifications.

Historically, the reserve was specified 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 in 2008 and Amendment 4's proposed consideration of sources of scientific and management uncertainty in the setting of OFL, ABC, and ACL, the Council concluded that specifying a reserve is no longer necessary. Therefore, Amendment 4 proposes to

eliminate the specification of reserve from the Herring FMP.

With the implementation of Amendment 1 to the Herring FMP (72 FR 11252, March 12, 2007), the Council has the authority to set herring specifications for a period of 3 years. Amendment 4 proposes to maintain the current schedule of setting herring specifications for a period of 3 years.

The herring stock complex is considered to be a single stock, but it is comprised of inshore (Gulf of Maine (GOM)) and offshore (Georges Bank (GB)) stock components. These stock components segregate during spawning and mix during feeding and migration. Herring management areas were developed in recognition of these different stock components; each management area has a total allowable catch (TAC) to allow the fishing mortality of the stock components to be managed independently. Area 1 is located in the GOM and is divided into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on GB. Because the inshore stock component has substantially less biomass than the offshore stock component, it is likely more vulnerable to overfishing. Amendment 4 proposes maintaining the function of the herring management area TACs, but re-defining each area TAC as an area sub-ACL. The Area 1A TAC is currently allocated to two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Amendment 4 proposes to maintain these periods and allocate the Area 1A sub-ACL into two seasonal periods, January 1 through May 31, and June 1 through December 31.

The specification of OY is required by the Magnuson-Stevens Act and authorized in the current Herring FMP. OY is derived from MSY, as reduced by relevant economic, social, or ecological factors. Amendment 4 proposes that OY remain part of the specification-setting process, and that it would be equal to or less than ABC and used to address uncertainty related to economic, social, or ecological factors. For example, the Council may choose to allocate an OY that is reduced from ABC to address the role of herring as forage or the fishing mortality rate on the inshore stock component. If the Council allocates a reduced OY, it would be in addition to any consideration of scientific or management uncertainty and would be a specific reduction to address a specific issue.

### *Stocks in a Fishery*

The Magnuson-Stevens Act requires that an FMP contain a description of the fish species in a fishery, and National Standard 1 guidelines task the Council with determining which specific target stocks and/or non-target stocks to include in the fishery. Target stocks are defined as stocks that fishers seek to catch for sale or personal use, and non-target stocks are fish caught incidentally during the pursuit of target stocks. In general, any stock managed through an FMP is considered to be in that fishery. While other species are caught incidentally when fishing for herring, herring is the target stock, and the only stock directly managed by the Herring FMP. For these reasons, Amendment 4 proposes that herring be the stock in the fishery. The Council retains the authority to designate additional stocks in the fishery in a future action. Bycatch in the herring fishery will continue to be addressed and minimized to the extent possible, consistent with other requirements of the Magnuson-Stevens Act.

### *Interim ABC Control Rule*

The ABC control rule is the specified method of setting the ABC, giving full consideration to scientific uncertainty. The ABC control rule is based on scientific advice from a Council's SSC and, when possible, considers the probability of overfishing. The ABC control rule should consider the scientific uncertainty associated with stock assessment results, including time lags in updating assessments, the degree of retrospective revision of assessment results, and the uncertainty of stock projections.

During development of the 2010–2012 herring specifications, the SSC identified two sources of scientific uncertainty in the 2009 herring assessment: (1) The assessment model has a strong retrospective pattern that reduces estimates of stock size when updated with new (2001–2007) data; and (2) biomass projections suggest the herring stock can not rebuild to  $B_{MSY}$  (biomass that would support MSY) using long-term projections at  $F_{MSY}$  (fishing mortality rate for MSY). Given this magnitude of scientific uncertainty, the SSC determined that a herring ABC control rule cannot be derived until a new benchmark assessment is conducted to address these issues. In the meantime, the Council recommended that Amendment 4 contain an interim ABC control rule based on the SSC's 2010–2012 herring ABC recommendation. The interim control rule proposes that ABC be set

based on recent catch in the herring fishery, and that the Council determine the desired risk tolerance in setting the ABC. For example, recent catch could be the most recent catch data (single year) or an average of recent data (3-year or 5-year average). This interim ABC control rule will remain in effect until a new ABC control rule is developed following the next herring assessment.

#### *Accountability Measures*

The Magnuson-Stevens Act requires AMs to be developed in association with ACLs. AMs should minimize the frequency and magnitude of catch in excess of the ACLs (overages) and provide for subsequent harvest adjustments if ACLs are exceeded. Amendment 4 proposes designating two existing management measures as AMs, as well as establishing an additional AM that would require an overage deduction, if catch exceeds the stock-wide ACL or a sub-ACL. Amendment 4 also proposes that these AMs can be modified, as necessary, through a framework adjustment to the Herring FMP or through the herring fishery specifications process.

Current herring regulations at § 648.201(a) state that, if NMFS determines catch will reach 95 percent of the TAC allocated to a management area or seasonal period, then NMFS shall prohibit vessels from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip from that area or period. The remaining 5 percent of the TAC for that management area or period provides for the incidental catch of herring in other fisheries. In recognition that this measure functions as an AM, by slowing catch to prevent or minimize catch in excess of a management area or seasonal period TAC/sub-ACL, Amendment 4 proposes that this management area closure measure be designated as an AM.

Similarly, current Northeast multispecies regulations at § 648.86(a)(3)(ii) specify a haddock incidental catch cap to control haddock catch by herring vessels in the GOM/GB Herring Exemption Area. When the Regional Administrator has determined that the haddock incidental catch cap has been caught, all vessels issued a herring permit are prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in the GOM/GB Herring Exemption Area. Additionally, the haddock possession limit for all vessels issued All Areas or Areas  $\frac{2}{3}$  Limited Access permits is reduced to 0 lb (0 kg) in all of the herring management areas. Amendment 16 to the Northeast

Multispecies FMP (Amendment 16) designated haddock catch in the herring fishery as a sub-ACL for the Multispecies FMP (75 FR 18262, April 9, 2010). Consistent with Multispecies Amendment 16, Herring Amendment 4 proposes that the current haddock incidental catch cap be designated as an AM in the Herring FMP, with the clarification that the 0-lb (0-kg) haddock possession limit does not apply to herring vessels that also possess a Northeast multispecies permit and are operating on a declared groundfish trip.

As a way to account for ACL overages in the herring fishery, Amendment 4 proposes an AM that would provide for overage deductions. Once the total catch of herring for a fishing year is determined, using all available information, any ACL or sub-ACL overage would result in a reduction of the corresponding ACL/sub-ACL the following year. For example, if final accounting of the 2011 total herring catch in Area 1A, which is generally available in the spring of 2012, indicated that the Area 1A sub-ACL was exceeded by 5 mt, then, in 2013, the sub-ACL for Area 1A would be reduced by 5 mt to account for the overage that occurred during 2011. Additionally, if Amendment 4 is effective prior to final catch accounting for 2010, then any overage in 2010 would be deducted in 2012. All overage deductions would be announced by NMFS in the **Federal Register** prior to the start of the fishing year.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined preliminarily that this proposed rule is consistent with Amendment 4 to the Herring FMP, other provisions of the Magnuson-Stevens Act, 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.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA, which includes this section of the preamble to this rule and analyses contained in Amendment 4 and its accompanying EA/RIR/IRFA, describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble.

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

All participants in the herring fishery are small entities, as none grossed more than \$4 million annually; therefore, there are no disproportionate economic impacts on small entities. The proposed measures in Amendment 4 will affect all participants in the herring fishery, as they revise current definitions and the specifications-setting process in the Herring FMP, but these measures are not anticipated to have direct economic impacts. In 2009, there were 41 vessels issued All Areas Limited Access Permits, 4 vessels issued Areas 2 and 3 Limited Access Permits, 54 vessels issued Limited Access Incidental Catch Permits, and 2,272 vessels issued Open Access Permits. Section 6.2 in Amendment 4 describes the vessels, key ports, and revenue information for the herring fishery in more detail.

#### *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.

#### *Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives*

The proposed measures Amendment 4 are not anticipated to have direct economic effects on herring fishery participants. A detailed economic analysis of the proposed measures, as well as the non-selected alternatives, is in Section 7.2 of Amendment 4. The proposed measures are designed to bring the Herring FMP into compliance with new Magnuson-Stevens Act requirements by revising current definitions and the specification-setting process to include ACLs and AMs. In addition, the amendment designates herring as a "stock in the fishery;" establishes an interim ABC control rule; and makes adjustments to the specification process by eliminating JVpt, including JVP and IWP, and reserve from the specifications process, and eliminating the Council's consideration of TALFF. Alternative to the proposed measures is the status quo, which would retain all current definitions and the current specification process.

The current Herring FMP contains a specification-setting process and measures to prevent overfishing. The proposed action would re-define: The

specification-setting process to include OFL, ABC, and ACL; the allocating of OY; the management area TACs as sub-ACLs; and the management area closure measure and haddock incidental catch cap as AMs. Additionally, the proposed action includes an AM that would provide for an overage deduction if total catch exceeded an ACL. Because Amendment 4 proposes only minor adjustments to the existing specification-setting process and measures that prevent overfishing, the proposed action has no direct economic effects beyond those associated with the non-selected, status quo alternative. However, by revising the specifications-setting process to make the process, and the SSC's involvement in the process, more explicit and providing for overage deductions, the proposed action has the potential to better prevent overfishing, possibly creating a more sustainable fishery and better ensuring the longevity of the herring fishery as an economic resource, as compared to the non-selected, status quo alternative.

Designating herring as the stock in the fishery is administrative. While other species are caught incidentally when fishing for herring, herring is the only stock directly managed by the Herring FMP. Because there may be non-target stocks that warrant consideration in the future, the Council retains authority to designate additional stocks in the fishery in a future action. Designating herring as the stock in the fishery will not change how the current FMP operates; therefore, there are no economic differences between the proposed action and the non-selected, status quo alternative.

As described previously, the current Herring FMP contains a specifications-setting process and measures to prevent overfishing. Therefore, establishing an ABC control rule in Amendment 4 is similar to the non-selected, status quo, alternative. However, making the ABC-setting process, and the SSC's involvement in that process, explicit has the potential to better prevent overfishing, possibly creating a more sustainable fishery and better ensuring the longevity of the herring fishery as an economic resource, as compared to the non-selected, status quo alternative.

Amendment 4 proposes to eliminate JVPT, including JVP and internal waters processing IWP, and reserve from the specifications process. Because the U.S. herring fishery has experienced growth in both harvesting and processing capacity, and has sufficient capacity to harvest the available yield, JVPT, including JVP and IWP, has been allocated at zero since 2005. Accordingly, there are no economic

differences between the proposed action and the non-selected, status quo alternative. Historically, the reserve was specified 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 Amendment 4's proposed consideration of OFL, ABC, and ACL to account for sources of scientific and management uncertainty, specifying a reserve is redundant; therefore, there are no economic differences between the proposed action and the non-selected, status quo alternative. Additionally, while TALFF could still be awarded, consistent with the Magnuson-Stevens Act, by the Secretary of Commerce, Amendment 4 proposes that the Council would not consider TALFF during development of the specifications. Like JVPT, TALFF has been specified at zero since 2005. Because there is no functional difference between not considering TALFF and setting TALFF at zero, there are no economic differences between the proposed action and the non-selected, status quo alternative.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 12, 2010.

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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 § 648.200, paragraphs (a) introductory text, (b)(1), (b)(2), (b)(3), (b)(4), (e), and (f) introductory text are revised, and paragraphs (b)(5) and (g) are added to read as follows:

##### § 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring

Oversight Committee: Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limit (ACL), Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), U.S. at-sea processing (USAP), border transfer (BT), the sub-ACL for each management area, including seasonal periods as specified at § 648.201(d) and modifications to sub-ACLs as specified at § 648.201(f), and the amount to be set aside for the RSA (from 0 to 3 percent of the sub-ACL from any management area). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

\* \* \* \* \*

(b) \* \* \*

(1) OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is usually the fishing rate supporting maximum sustainable yield ( $F_{MSY}$ ). Catch that exceeds this amount would result in overfishing.

(2) ABC must be equal to or less than the OFL. The Council's Scientific and Statistical Committee (SSC) shall recommend ABC to the Council. Scientific uncertainty, including, but not limited to, uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, shall be considered when setting ABC. If the stock is not overfished and overfishing is not occurring, then ABC may be based on  $F_{MSY}$  or its proxy, recent catch, or any other factor the SSC determines appropriate. If the stock is overfished, then ABC may be based on the rebuilding fishing mortality rate for the stock ( $F_{REB}$ ), or any other factor the SSC determines appropriate.

(3) ACL must be equal to or less than the ABC. Management uncertainty, which includes, but is not limited to, expected catch of herring in the New Brunswick weir fishery and the uncertainty around discard estimates of herring caught in Federal and state waters, shall be considered when setting the ACL. Catch in excess of the ACL shall trigger accountability measures (AMs), as described at § 648.201(a).

(4) OY may not exceed OFL (i.e.,  $MSY$ ) and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of  $MSY$ , as reduced by social, economic, and ecological factors. OY may equal DAH.

(5) DAH is comprised of DAP and BT.

\* \* \* \* \*

(e) *In-season adjustments.* The specifications and sub-ACLs established pursuant to this section may be adjusted by NMFS to achieve conservation and management objectives, after consulting with the Council, during the fishing year in accordance with the Administrative Procedure Act (APA). Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(f) *Management areas.* The specifications process establishes sub-ACLs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

\* \* \* \* \*

(g) All aspects of AMs, as described at § 648.201(a), can be modified through the specifications process.

3. Section 648.201 is revised to read as follows:

**§ 648.201 AMs and harvest controls.**

(a) *AMs.* (1) *Management area closure.* If NMFS projects that catch will reach 95 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A sub-ACL allocated to the first seasonal period as set forth in paragraph (d) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip and/or >2,000 lb (907.2 kg) of Atlantic herring per day in such area, except as provided in paragraphs (b) and (c) of this section. These limits shall be enforced based on a calendar day, without regard to the length of the trip. NMFS shall implement these restrictions, in accordance with the APA, through notification in the **Federal Register**.

(2) *Haddock incidental catch cap.* If NMFS determines that the incidental catch allowance in § 648.85(d) has been caught, all vessels issued an Atlantic herring permit or fishing in the Federal portion of the Gulf of Maine/Georges Bank (GOM/GB) Herring Exemption Area, defined at § 648.85(a)(3)(ii)(A)(1), shall be prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from the GOM/GB Herring Exemption Area, unless all herring possessed and landed by the vessel were caught outside the GOM/GB Herring Exemption Area and

the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the Exemption Area. Upon this determination, the haddock possession limit shall be reduced to 0 lb (0 kg) for all vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, regardless of where they were fishing, unless the vessel also possesses a Northeast Multispecies permit and is operating on a declared groundfish trip. NMFS shall implement the described fishing restrictions in accordance with the APA.

(3) *ACL overage deduction.* If NMFS determines that total catch exceeded any ACL or sub-ACL for a fishing year, then the amount of the overage shall be subtracted from that ACL or sub-ACL for the fishing year following total catch determination. NMFS shall make such determinations and implement any changes to ACLs or sub-ACLs, in accordance with the APA, through notification in the **Federal Register**, prior to the start of the fishing year during which the reduction would occur.

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

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

(d) The sub-ACL for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal sub-ACLs for Area 1A, including the specification of the seasonal periods, shall be set through the annual specification process described in § 648.200.

(e) 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 44°36.2 N. Lat. and 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.

(f) 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 sub-ACL in November. NMFS will notify the Council of this adjustment and publish the adjustment in the **Federal Register**.

4. In § 648.204, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), and (a)(4) are revised to read as follows:

**§ 648.204 Possession restrictions.**

(a) A vessel must be issued a valid limited access herring permit to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area in the EEZ, provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(1) A vessel issued an All Areas Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(2) A vessel issued only an Areas 2 and 3 Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3 as defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201. Such a vessel may fish in Area 1 only if issued an open access herring permit or a Limited Access Incidental Catch Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Limited Access Incidental Catch Herring Permit may fish for, possess, or land up to 55,000 lb (25 mt) of Atlantic herring in any calendar day, from any management area defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area.

(4) A vessel issued an open access herring permit may not fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip and/or per calendar day, provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

\* \* \* \* \*  
5. In § 648.206, paragraphs (b)(8), (b)(25), (b)(28), and (b)(30) are revised, and paragraph (b)(31) is added to read as follows:

**§ 648.206 Framework provisions.**

\* \* \* \* \*

(b) \* \* \*

(8) Distribution of the ACL;

\* \* \* \* \*

(25) In-season adjustments to ACLs;

\* \* \* \* \*

(28) ACL set-aside amounts, provisions, adjustments;

\* \* \* \* \*

(30) AMs; and

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

\* \* \* \* \*

6. In § 648.207, paragraph (g) is revised to read as follows:

**§ 648.207 Herring Research Set-Aside (RSA).**

\* \* \* \* \*

(g) If a proposal is approved, but a final award is not made by NMFS, or if NMFS determines that the allocated RSA cannot be utilized by a project, NMFS shall reallocate the unallocated or unused amount of the RSA to the respective sub-ACL by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided that the RSA can be available for harvest before the end of the fishing year for which the RSA is specified.

\* \* \* \* \*

[FR Doc. 2010-26195 Filed 10-15-10; 8:45 am]

**BILLING CODE 3510-22-P**