

Authority: 47 U.S.C. 901 et seq., Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

■ 2. Section 300.1(b) is revised to read as follows:

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

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(b) The federal agencies shall comply with the requirements set forth in the January 2008 edition of the NTIA Manual, as revised through May 2011, which is incorporated by reference with approval of the Director, Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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Dated: September 8, 2011.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110627355-1539-02]

RIN 0648-BB08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 46

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

ACTION: Final rule.

SUMMARY: This final rule partially approves Framework Adjustment (FW) 46 to the NE Multispecies Fishery Management Plan (FMP), which increases the haddock incidental catch cap allocated to the Atlantic midwater trawl herring fishery to 1 percent of the Georges Bank (GB) haddock Acceptable Biological Catch (ABC) and to 1 percent of the Gulf of Maine (GOM) haddock ABC, thereby, adjusting final fishing year (FY) 2011 specifications for the other fishery components of these ABCs. In addition, this action modifies the method for estimating haddock catch in the herring fishery and the relevant accountability measures (AMs) such that, upon attainment of the cap, the midwater trawl herring fleet may not

catch or land herring in excess of the incidental catch limit (2,000 lb (907.2 kg)) in or from the appropriate haddock stock area. In addition, in this action NMFS disapproves measures in FW 46 that would have required open access herring vessels using midwater trawl gear to report total kept catch, and notify the Office of Law Enforcement, prior to landing. NMFS also disapproves a measure to require all midwater trawl vessels to report gear used on each trip into the Gulf of Maine or Georges Bank. FW 46 was developed by the New England Fishery Management Council (Council) to address the haddock incidental catch cap in the Atlantic herring fishery to allow the herring fishery to achieve optimum yield, by establishing a better opportunity to fully harvest the available herring quota, while providing incentives for the midwater trawl fishery to minimize haddock catch and, ensuring that haddock catch is adequately controlled and monitored.

DATES: This rule is effective September 14, 2011, except for § 648.10(l), which will become effective September 28, 2011.

ADDRESSES: Copies of FW 46, its Regulatory Impact Review (RIR), the final environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Analysis (IRFA) prepared by the Council are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. A Final Regulatory Flexibility Analysis (FRFA) was prepared for this final rule and is comprised of the EA, the preamble, and the Classification sections of the final rule. The FW 46 EA/RIR/IRFA are also accessible via the Internet at <http://www.nefmc.org/nemulti/index.html> or <http://www.nero.noaa.gov>. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Melissa Vasquez, Fishery Policy Analyst, *phone:* 978-281-9166, *fax:* 978-281-9135.

SUPPLEMENTARY INFORMATION: A proposed rule to implement measures in FW 46 was published on July 19, 2011 (76 FR 42663), soliciting public comment through August 3, 2011. After review of all public comments, NMFS has approved several of the proposed

measures in FW 46, determining that approved measures, as listed below, are consistent with the goals of the FMP as described in Amendment 16 to the FMP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable laws. These final measures are unchanged from those that were proposed.

Background

The Atlantic herring fishery is currently allocated a sub-Annual Catch Limit (ACL) of haddock that is equal to 0.2 percent of the combined GOM and GB haddock ABCs, to account for haddock that is incidentally caught in the herring fishery. When this cap is reached, herring vessels are restricted to an incidental possession limit of 2,000 lb (907.2 kg) of herring per trip in specific portions of the GOM and GB, which effectively closes these areas to directed herring fishing. The Council initiated FW 46 in January 2011 to address industry concerns that the haddock incidental catch cap was becoming too constraining on the herring fishery, particularly given the increased, healthy biomass of haddock on GB and the fact that the commercial groundfish fishery is not likely able to harvest its own sub-ACL for these stocks. An early effective closure of the directed herring fishery as a result of catching the incidental catch cap could result in thwarting fishery participants from potentially achieving optimum yield and limiting the supply of herring bait to the lobster fishery. For example, in FY 2010, the herring fishery was constrained by the cap and had to modify its behavior, which may have resulted in up to \$5.5 million in foregone herring from Herring Management Area 3. Thus, the Council developed FW 46 to revise the haddock incidental catch cap for the Atlantic herring fishery to allow for the achievement of optimum yield through establishing a better opportunity to fully harvest the available herring quota, while providing incentives for the midwater trawl herring fishery to minimize haddock catch, and ensuring that haddock catch is adequately controlled and monitored. A complete discussion of the development of FW 46 and the pre-FW 46 haddock incidental catch cap measures and their rationale appears in the preamble to the proposed rule and is not repeated here.

Disapproved Measures

Requirement for Open Access Vessels To Report Total Kept Catch

FW 46, as submitted by the Council, required all midwater trawl vessels (including any vessel issued an open access incidental herring permit (Category D)) to report total catch kept. NMFS has partially disapproved this measure as it applies to a Category D vessel, because it determined that additional reporting by Category D vessels is not necessary at this time and would be an unnecessary reporting burden contrary to National Standard 7 of the Magnuson-Stevens Act, given that weekly VTR submissions (as implemented by a recent regulatory amendment to the Atlantic Herring FMP, 76 FR 54385; September 1, 2011) is sufficient to monitor this small component of the herring fishery.

Requirement for Midwater Trawl Vessels To Report Gear

In addition, although FW 46, as submitted by the Council, also required a midwater trawl vessel to report gear when reporting total kept catch prior to landing, in this rule, NMFS disapproves that measure because NMFS has determined that it would not be necessary for the timely monitoring of the proposed haddock incidental catch caps and, therefore, would be an unnecessary reporting burden contrary to National Standard 7 of the Magnuson-Stevens Act.

Requirement for Open Access Vessels To Submit a Pre-Landing Hail

Although FW 46, as submitted by the Council, proposed to expand the current pre-landing hail requirements to all vessels using midwater trawl gear, NMFS disapproves that measure as it applied to an open access herring permit holder (Category D). Because Category D permits represent a small portion of the herring fishery,

accounting for very little of the Atlantic herring landings (0.5 percent in FY 2010), and rarely using midwater trawl gear in applicable Areas (Category A vessels accounted for all landings by midwater trawl gear in FY 2008–2010), NMFS believes that requiring pre-landing hails of Category D vessels is an unnecessary reporting burden at this time, and is contrary to National Standard 7 of the Magnuson-Stevens Act.

Approved Measures

Incidental Catch Cap for Midwater Trawl Vessels

To achieve the stated purposes of this action to maximize opportunities to fish for herring on GB, provide incentives to minimize the bycatch of haddock in the herring fishery, and reduce unnecessary economic impacts on the herring fishery, FW 46 replaces the current combined GOM and GB haddock incidental catch cap with separate stock-specific caps for the GOM and GB haddock stocks, equal to 1 percent of the GOM haddock ABC and 1 percent of the GB haddock ABC, respectively. These caps apply to all vessels with a Federal Atlantic herring permit of any category using midwater trawl gear (both single and paired midwater trawl vessels) in Herring Management Areas 1A, 1B, and/or 3. The stock-specific caps better account for differences between these two stocks and eliminate the possibility that catches of one stock could trigger the closure of both stock areas. The amount of the cap is calculated according to the procedures established by Amendment 16 for the setting of ACLs and sub-ACLs for various components of the fishery for each stock, and the cap calculation method revised by FW 44 to the FMP (see Appendix III to FW 44, available on the Council's Web site at <http://www.nefmc.org/nemulti/index.html>). The net result is that the GOM haddock

catch cap is calculated based on one percent of the GOM haddock ABC (deducted from the sub-ABC allocated to commercial fisheries, which includes the Federal commercial groundfish fishery, state waters fishery, the Atlantic herring fishery, and the other commercial sub-component) with a subsequent reduction for management uncertainty. Similarly, the GB haddock incidental catch cap is based on one percent of the GB haddock ABC, and a reduction for management uncertainty (deducted from the ABC available to U.S. fishermen). Because FW 46 increases the percentage shares of the GOM and GB haddock sub-ABCs that are allocated to the herring midwater trawl fishery, the ACE available to sectors declines slightly, as does the amount of the ACL available to common pool groundfish fishing vessels.

As noted in FW 46, these final measures are being implemented in-season, after the beginning of the 2011 Northeast multispecies (May 1, 2011–April 30, 2012) and herring (January 1, 2011–December 31, 2011) fishing years (FY). Therefore, this final rule revises the FY 2011 and FY 2012 sub-ACLs specified for the GOM haddock and GB haddock stocks in the FW 44 and FW 45 final rules, respectively (75 FR 18356; April 9, 2010 and 76 FR 23042; April 25, 2011) (see Table 1). The sub-ACLs published here supersede all other sub-ACLs specified for GOM and GB haddock in previous rules. Given that the haddock cap for the midwater trawl herring fishery is monitored based on the groundfish FY, upon publication of this final rule, NMFS will use observer data and other available data and information from applicable herring trips to estimate haddock catches by the herring fishery since the start of FY 2011 (beginning May 1, 2011). The catch estimate will then be counted against the increased stock-specific haddock caps.

TABLE 1—TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2011 AND FY 2012 [Mt, live weight]*

| Stock | Total ACL | | Groundfish sub-ACL | | Mid-water trawl herring fishery | |
|--------------------|-------------------|---------|--------------------|---------|---------------------------------|---------|
| | FY 2011 | FY 2012 | FY 2011 | FY 2012 | FY 2011 | FY 2012 |
| | GOM haddock | 833 | 699 | 1,086 | 912 | 11 |
| GB haddock** | 32,611 | 27,632 | 30,580 | 25,911 | 318 | 270 |

* The GOM haddock allocations to the recreational groundfish fishery for FY 2011 and FY 2012 remain unchanged from the FW 44 final rule. FY 2011 and FY 2012 ACL-subcomponents not listed here also remain unchanged from the FW 44 and FW 45 final rules.

** Due to the need to re-specify the U.S. ABCs for GB haddock for FY 2012, consistent with the U.S./Canada Resource Sharing Understanding, all sub-components of the ABCs for GB haddock for FY 2012 will be re-specified when information on the Canadian TACs is available.

TABLE 2—DISTRIBUTION OF GROUNDFISH SUB-ACL BETWEEN COMMON POOL AND SECTOR VESSELS FOR FY 2011 AND FY 2012

[Mt, live weight]

| Stock | Groundfish sub-ACL | | Common pool sub-ACL | | Sector sub-ACL | |
|--------------------|--------------------|---------|---------------------|----------|----------------|----------|
| | FY 2011 | FY 2012 | FY 2011 | FY 2012* | FY 2011 | FY 2012* |
| GOM haddock | 1,086 | 912 | 8 | 6 | 770 | 647 |
| GB haddock** | 30,580 | 25,911 | 187 | 158 | 30,393 | 25,753 |

* The FY 2012 common pool and sector sub-ACLs are based on final FY 2011 sector rosters submitted to NMFS May 1, 2011. It is almost certain that the FY 2012 sub-ACLs for the common pool and sectors will change and be re-specified prior to FY 2012 due to annual changes in sector rosters.

** Due to the need to re-specify the U.S. ABCs for GB haddock for FY 2012, consistent with the U.S./Canada Resource Sharing Understanding, all sub-components of the ABCs for GB haddock for FY 2012 will be re-specified when information on the Canadian TACs is available.

TABLE 3—FINAL ACE EACH SECTOR WOULD RECEIVE BY STOCK FOR FY 2011

[1,000 lb and mt, live weight]*

| Sector name (defined below) | GOM Haddock | | GB Haddock west | |
|-----------------------------|-------------|--------|-----------------|----------|
| | 1,000 lb | mt | 1,000 lb | mt |
| FGS | 22.43 | 10.17 | 2932.44 | 1330.13 |
| MPBS | 1.31 | 0.60 | 3.89 | 1.77 |
| NCCS | 5.83 | 2.64 | 55.98 | 25.39 |
| NEFS 2 | 314.38 | 142.60 | 5303.39 | 2405.58 |
| NEFS 3 | 211.05 | 95.73 | 74.26 | 33.68 |
| NEFS 4 | 103.17 | 46.80 | 2466.58 | 1118.82 |
| NEFS 5 | 5.56 | 2.52 | 1810.76 | 821.35 |
| NEFS 6 | 65.35 | 29.64 | 1348.52 | 611.68 |
| NEFS 7 | 9.64 | 4.37 | 1749.59 | 793.60 |
| NEFS 8 | 3.68 | 1.67 | 2696.94 | 1223.31 |
| NEFS 9 | 80.58 | 36.55 | 5524.58 | 2505.91 |
| NEFS 10 | 44.32 | 20.10 | 144.18 | 65.40 |
| NEFS 11 | 42.94 | 19.48 | 16.57 | 7.52 |
| NEFS 12 | 14.73 | 6.68 | 1.22 | 0.55 |
| NEFS 13 | 14.70 | 6.67 | 6869.34 | 3115.88 |
| PCCGS | 36.78 | 16.68 | 14.58 | 6.62 |
| SHS 1 | 688.04 | 312.09 | 13301.48 | 6033.45 |
| SHS 3 | 26.04 | 11.81 | 899.84 | 408.16 |
| TSS | 7.95 | 3.60 | 668.28 | 303.13 |
| All Sectors Combined | 1698.46 | 770.41 | 45882.44 | 20811.93 |
| Common Pool | 16.74 | 7.59 | 282.35 | 128.07 |

—Georges Bank Cod Fixed Gear Sector (FGS), Maine Permit Banking Sector (MPBS), Northeast Coastal Communities Sector (NCCS), Northeast Fishery Sector (NEFS), Port Clyde Community Groundfish Sector (PCCGS), Sustainable Harvest Sector (SHS), and Tri-State Sector.

* All ACE values for sectors outlined in Table 3 assume that each sector Moratorium Right Identifier has a valid permit for FY 2011. ACE values are based on final FY 2011 sector rosters submitted May 1, 2011.

This final rule revises the current haddock catch cap monitoring requirements such that only the haddock catches from vessels issued a Federal Atlantic herring permit and fishing with midwater trawl gear in Atlantic Herring Management Areas 1A, 1B, and/or 3 (GOM and GB) will be counted against the incidental haddock catch caps. Haddock catch reported by observers on observed herring trips using midwater trawl gear in Herring Management Areas 1A, 1B, and/or 3 will be extrapolated to estimate total haddock catch by the herring midwater trawl fleet in these herring management areas, for purposes of monitoring the attainment of each stock-specific cap. This extrapolation method contrasts to monitoring methods used prior to this rule, in which haddock caught was

derived only from summing the reports of observers, dealers, vessels, and law enforcement officials.

FW 46 states that NMFS will develop the extrapolation methodology and post it on the Northeast Regional Office *Web site* (See **ADDRESSES**), and that NMFS will monitor and post catches of haddock by the herring fishery at least monthly on its *Web site*. NMFS intends to use the cumulative methodology it currently uses to extrapolate catches of butterfish in the *Loligo* squid fishery and to estimate discards by sector vessels in the groundfish fishery, to extrapolate haddock catches by the herring midwater trawl fishery. This method is described in detail on the Northeast Regional Office *Web site* (http://www.nero.noaa.gov/ro/fso/reports/reports_frame.htm) and is

summarized briefly here. This method derives a ratio of the kept catch (or discards) of the species in question to the total weight of all species kept on observed trips (total kept), based on all observed trips as of a certain date (cumulative sums of landings or discards and total kept of all species). The ratio is then expanded to a total catch estimate by applying the ratio to the total kept of all species from all trips by the applicable component of the fishery. For example, an observed haddock catch rate would be derived from the ratio of the sum of all haddock catch to the sum of all species kept on observed herring midwater trawl trips in Herring Management Areas 1A, 1B, and 3 to date. This rate would then be applied to the total weight of all species kept from all midwater trawl trips in

these same areas to date, to estimate total haddock catch by the herring midwater trawl fleet in each of the GOM and GB haddock stock areas.

A vessel with a Category A and/or B Atlantic herring permit is still required to land all haddock brought on deck or pumped into the hold, and may land up to 100 lb (45 kg) total of other regulated NE multispecies (§ 648.86(k)) per trip, but is prohibited from selling any groundfish for human consumption. In addition, these groundfish possession restrictions are revised to allow a Category C or D vessel and fishing any part of a trip with midwater trawl gear in Herring Management Areas 1A, 1B, or 3, to possess and land haddock and up to 100 lb (45 kg) of other groundfish, consistent with the revised scope of the cap. Consistent with the current requirements for a Category A or B vessel, such a Category C or D vessel is required to land all haddock, but is prohibited from selling it for human consumption. Additionally, NMFS has revised the regulations at § 648.86(k) to clarify that the 100 lb (45 kg) NE multispecies possession limit is meant to apply to NE multispecies other than haddock.

FW 46 eliminates the current AM where all vessels issued an Atlantic herring permit are prohibited from possessing or landing herring in excess of the incidental herring limit in the entire GOM/GB Herring Exemption Area, once the combined GOM/GB haddock cap is reached. FW 46 instead establishes smaller, stock-specific AM areas (the “Herring GOM Haddock AM Area” and the “Herring GB Haddock AM Area”), which would only apply to a herring vessel using midwater trawl gear in the GOM and GB, upon attainment of the cap. The intent of this measure is to make the haddock catch caps less constraining on the herring fishery by accounting for differences between the haddock stocks, and by limiting the AMs to the herring midwater trawl fleet, which has been primarily responsible for haddock catches in the herring fishery. If the Regional Administrator determines that the haddock incidental catch cap for a specific haddock stock has been caught, any vessel issued a herring permit and using midwater trawl gear would be prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area (see Tables 2 and 3). Additionally, the haddock possession/landing limit for the applicable AM Area would be reduced to 0 lb (0 kg) for herring midwater trawl vessels and all Category A and B vessels. For example, if the GOM

haddock catch cap were reached, the herring possession limit would be reduced to the incidental catch level (2,000 lb (907 kg)) in the Herring GOM Haddock AM Area (see Table 2) for any vessel issued a herring permit and fishing any part of a trip with midwater trawl gear. Upon reaching the fishery haddock cap, a Category A or B vessel (regardless of gear used) or a Category C or D vessel fishing with midwater trawl gear would not be able to possess/land any haddock, but would still be able to land up to 100 lb (45 kg) of other NE multispecies from the applicable AM area. In addition, in this example, a midwater trawl vessel would still be able to retain herring in or from areas of 1A, 1B, or 3 that do not overlap with the Herring GOM Haddock AM Area. A herring vessel that fishes both inside and outside of an AM Area for which the haddock cap has been triggered on a given trip would be required to comply with the most restrictive measures, meaning the vessel is restricted to the 2,000 lb (907 kg) herring possession limit for that trip. The reduced haddock possession/landing limit would not apply to a herring vessel that also holds a NE multispecies permit when it is on a declared NE multispecies trip.

TABLE 2—HERRING GOM HADDOCK AM AREA

| Point | N. latitude | W. longitude |
|------------|-------------|--------------|
| HGA1 | (1) | 69°20' |
| HGA | 43°40' | 69°20' |
| HGA3 | 43°40' | 69°00' |
| HGA4 | 43°20' | 69°00' |
| HGA5 | 43°20' | (2) |
| HGA6 | 42°20' | (3) |
| HGA7 | 42°20' | 70°00' |
| HGA8 | (4) | 70°00' |

¹ The intersection of the Maine coastline and 69°20' W. long.

² The intersection of the U.S./Canada maritime boundary and 43°20' N. lat.

³ The intersection of the U.S./Canada maritime boundary and 42°20' N. lat.

⁴ The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00' W. long.

TABLE 3—HERRING GB HADDOCK AM AREA

| Point | N. latitude | W. longitude |
|-------------|-------------|--------------|
| HBA1 | 42°20' | 70°00' |
| HBA2 | 42°20' | (1) |
| HBA3 | 40°30' | (1) |
| HBA4 | 40°30' | 66°40' |
| HBA5 | 39°50' | 66°40' |
| HBA6 | 39°50' | 68°50' |
| HBA7 | (2) | 68°50' |
| HBA8 | 41°00' | (3) |
| HBA9 | 41°00' | 69°30' |
| HBA10 | 41°10' | 69°30' |
| HBA11 | 41°10' | 69°50' |

TABLE 3—HERRING GB HADDOCK AM AREA—Continued

| Point | N. latitude | W. longitude |
|-----------|-------------|--------------|
| HBA12 ... | 41°20' | 69°50' |
| HBA13 ... | 41°20' | (4) |
| HBA14 ... | (5) | 70°00' |
| HBA15 ... | (6) | 70°00' |
| HBA16 ... | (7) | 70°00' |

¹ The intersection of the U.S./Canada maritime boundary.

² The intersection of the boundary of Closed Area I and 68°50' W. long.

³ The intersection of the boundary of Closed Area I and 41°00' N. lat.

⁴ The intersection of the east-facing shoreline of Nantucket, MA, and 41°20' N. lat.

⁵ The intersection of the north-facing shoreline of Nantucket, MA, and 70°00' W. long.

⁶ The intersection of the south-facing shoreline of Cape Cod, MA, and 70°00' W. long.

⁷ The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00' W. long.

FW 46 implements an automatic haddock sub-ACL reduction as an additional AM, if the herring midwater trawl fishery haddock catch exceeds the incidental catch cap for the AM area in a given FY. If it is determined that the total catch of haddock by herring midwater trawl vessels exceeds either of the herring midwater trawl fishery GOM or GB haddock sub-ACLs for a FY, that sub-ACL would be reduced by the amount of the overage in the following FY. For example, if final accounting of the FY 2011 total haddock midwater trawl catch in the GOM haddock stock area indicates that the GOM haddock incidental catch cap had been exceeded by 5 mt, the FY 2012 GOM haddock sub-ACL for the herring midwater trawl fishery would be reduced by 5 mt to account for the overage that occurred during FY 2011. Any reductions to the midwater trawl haddock sub-ACLs would be announced by NMFS, consistent with the Administrative Procedure Act (APA), in the **Federal Register**, prior to the start of the next groundfish FY (May 1). Although not addressed by FW 46, NMFS has added language to § 648.90(a)(5)(iii), under the authority provided to the Secretary under Section 305(d) of the Magnuson-Stevens Act to promulgate regulations necessary to carry out an FMP, to clarify that if final catch accounting indicating an overage were not completed until after the end of a groundfish FY, the overage would still be applied to the final specifications for the next groundfish fishing year after which the overage occurred. This would be consistent with the process and timing NMFS has developed for applying and announcing overage paybacks for sectors in the NE multispecies fishery.

Any vessel with a limited access herring permit (Category A, B, and C

permits) using midwater trawl gear is required to report total kept catch by modified haddock stock area through daily Vessel Monitoring System (VMS) catch reports. A final rule published on September 1, 2011 (76 FR 54385), implemented requirements in the Atlantic Herring FMP for a limited access herring vessel (including any vessel with a herring limited access incidental permit) to submit daily catch reports through VMS to report herring catch by herring management area. Upon the effective date of this final rule, a limited access herring vessel fishing with midwater trawl gear in Herring Management Areas 1A, 1B, or 3 is now also required to report total weight kept of all species (including herring, mackerel, groundfish, and any other fish kept) by modified haddock stock area in these daily reports.

The Council has initiated development of Amendment 5 to the Atlantic Herring FMP, which considers several alternatives that address interactions between the herring fishery and the groundfish fishery, and measures designed to improve catch monitoring. If approved, Amendment 5 would likely modify monitoring and reporting requirements for the herring fishery, including those that NMFS will use to monitor the proposed haddock incidental catch caps. Therefore, this rule provides the authority to the Regional Administrator to revise the reporting requirements implemented through this final rule, if the RA determines that revisions to such requirements are necessary to allow for the effective monitoring of the haddock incidental catch caps.

Any Category A and B vessel intending to use midwater trawl or purse seine gear on a declared herring trip, and any vessel issued a Category C and/or D herring permit and intending to fish or fishing any part of a trip with midwater trawl gear in Herring Management Areas 1A, 1B, or 3, is now required to notify the NMFS Northeast Fisheries Observer Program (NEFOP) at least 72 hrs prior to beginning a trip, and declare whether or not it intends to fish any part of a trip in Closed Area I (CAI).

A vessel issued a Category A or B permit, and on a declared herring trip fishing with midwater trawl or purse seine gear, and a vessel issued a Category C permit that fishes any part of a trip with midwater trawl gear in Herring Management Areas 1A, 1B, and/or 3, is now required to notify the NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hrs prior to crossing the VMS demarcation line, or at least 6 hrs prior

to landing, if fishing inside the VMS demarcation line.

Any federally permitted herring dealer or processor (including at-sea processors) that culls or separates out non-herring catch in the course of normal operations is now required to separate out all haddock offloaded from any vessel issued any Federal herring permit that fished in Herring Areas 1A, 1B, and/or 3 with midwater trawl gear, and any vessel issued a Category A and/or B permit, regardless of gear used or area fished. In addition, such haddock may not be sold for any purpose and must be retained for at least 12 hrs on land to allow inspection by enforcement officials.

This final rule also revises the CA I restrictions regarding observers and net slippage for midwater trawl vessels, which are currently applicable to only Category A and B herring permit holders, by expanding these restrictions to any vessel issued a herring permit that fishes with midwater trawl gear in CA I. Thus, any vessel issued a herring permit is prohibited from fishing in CA I with midwater trawl gear without an observer. In addition, no vessel issued a herring permit and fishing with midwater trawl gear in CA I may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer. All exemptions from the current requirements continue to apply to any vessel now subject to these restrictions.

Comments and Responses

There were six comments received on the proposed measures from one member of the public, three fishing industry organizations, and two coalitions of fishing and marine industry and environmental. Four commenters generally or partially supported the proposed measures, and two commenters generally opposed the action.

Comment 1: Lund's Fisheries, Inc., and the O'Hara Corporation supported the proposed action and the Cape Cod Commercial Hook Fishermen's Association (CCCHFA) and the Coalition for the Atlantic Herring Fishery's Orderly, Informed, and Responsible Long Term Development (CHOIR) offered partial support for the proposed action. Lund's Fisheries, Inc., and O'Hara Corporation supported the increase in the haddock incidental catch cap to 1 percent, because it would allow the herring fishery to more fully utilize the available GB herring quota, while

encouraging the midwater trawl fishery to avoid haddock. They requested that NMFS move as quickly as possible to implement the measures in order to minimize adverse economic impacts to the herring fishery in FY 2011. CCCHFA supported maintaining a bycatch cap and extrapolating haddock catches across the fleet, but commented that increasing the incidental catch cap would reduce incentives for the midwater trawl fishery to avoid haddock. CHOIR also partially supported the increase in the cap, but only over other less restrictive measures considered by the Council, and noted concern that FW 46 would establish a precedent for allowing increasing bycatch in the herring fishery.

Response: NMFS agrees that the proposed action will allow the herring fishery to achieve optimum yield through establishing a better opportunity to fully harvest the available herring quota. Contrary to comments made by CCCHFA, NMFS believes that the measures implemented by this final rule maintain incentives for herring midwater trawl vessels to avoid haddock catches and ensure that haddock catch is adequately controlled and monitored, as outlined further in the response to Comment 2 below. In addition, concerns expressed by CHOIR about the potential for this action to establish a precedent for future bycatch increases by the herring fishery are addressed in the response to Comment 2 below. Thus, NMFS has approved FW 46 as proposed, and is implementing these measures as soon as possible in order to minimize impacts to the fishery.

Comment 2: The Herring Alliance, CCCHFA, and one member of the public opposed increasing the haddock incidental catch cap. The Herring Alliance and CCCHFA commented that the current cap is an effective measure to reduce bycatch in the herring fishery, but commented that increasing the cap reduces incentives to avoid haddock, and is inconsistent with National Standard 9, and other related provisions of the Magnuson-Stevens Act. They request NMFS disapprove the increase in the cap and instead work with the Council to develop measures to reduce bycatch in the herring fishery. They also asserted that FW 46 does not create meaningful incentives for herring vessels to avoid haddock, and therefore does not meet the objectives of FW 46. The Herring Alliance also questioned the need for the haddock cap increase, when FY 2010 was the first year the herring fishery had caught more than half the cap amount. CHOIR also suggested that FW 46 would establish a

precedent for allowing increasing bycatch in the herring fishery. Finally, one member of the public proposed a 75-percent decrease in haddock bycatch from previous years.

Response: In evaluating the approvability of FW 46 measures, in light of this comment the other comments received, NMFS considered several competing mandates and considerations set forth in the Magnuson-Stevens Act. With respect to this particular comment, NMFS considered the requirements of National Standard 1, which requires that FMPs prevent overfishing while achieving optimum yield; National Standard 8, which requires the consideration of the importance of the herring fishery to communities in order to achieve sustained participation of such communities and, to the extent practicable minimize adverse impacts on such communities; and National Standard 9, which requires an FMP to reduce bycatch, to the extent practicable. FW 46 represents an acceptable balance of these standards. As more fully described below, the framework increases the opportunity for the herring fishery to achieve optimum yield, while still preventing overfishing and with no adverse impact on the health of the herring or groundfish stocks, most notably haddock. Because of the greater opportunity for the herring fishery to achieve optimum yield, fishing communities involved in the herring fishery are more likely to be positively impacted without any perceivable detriment to other fisheries or communities, such as those more dependent on the groundfish fishery. Concerns about minimizing haddock bycatch, to the extent that haddock incidental catch is considered bycatch as defined by the Magnuson-Stevens Act, are more than adequately accounted for and allayed in the balancing of the practicability standard of National Standard 9. As described in Framework 46 and below, the opportunity provided by these measures for ensuring the achievement of optimum yield of Atlantic herring presents little or no possibility of undermining conservation objectives for haddock stocks in light of the healthy, abundant status of those stocks, and the wide gap between the ACL and actual catch of haddock by the groundfish fishery.

NMFS agrees with the Council that the haddock catch cap is an effective measure to create incentives to avoid haddock and, thus, has approved the catch cap for the herring fishery. NMFS believes, in light of Magnuson-Stevens Act provisions as discussed above, that

the revised cap represents a better balance of controlling incidental catch and bycatch of haddock and other stocks, reducing uncertainty in the fishery, and providing the herring fishery a better opportunity to achieve optimum yield. Although maintaining the current cap at 0.2 percent of the combined GOM and GB haddock ABCs may have created a greater incentive for the midwater trawl fleet to avoid haddock, due to the lower relative current amount, this alternative was not practicable because it failed to meet other stated objectives of FW 46 and competing National Standards discussed above. Moreover, the approved measures increase the haddock catch cap, and revise the cap and associated AMs to be specific to those areas and gears that are primarily responsible for haddock catches, thereby substantially reducing the risk of negative economic impacts to the entire herring fleet, while still maintaining an incentive for that component of the fishery to avoid haddock. While the haddock catch cap is increased from 0.2 to 1 percent, a separate cap is established for each haddock stock, eliminating the possibility that the entire cap could be caught in one haddock stock area and threaten mortality targets for that haddock stock. Furthermore, FW 46 introduces a more comprehensive and effective method for more accurately estimating haddock catches across the fleet that will provide more direct control on total haddock catches by the midwater trawl fishery and reduce uncertainty for the herring fishery. Because this new method significantly differs from the current method of merely summing actual observed catches, it is not possible to conclude that the 1-percent haddock cap will result in a five-fold increase in the amount of haddock that may be caught by the herring fishery, as alleged by the commenters. For example, extrapolating haddock catches observed in 2006 under the current method showed that the estimated total catch of haddock was potentially nearly four times the 0.2-percent cap. Since the existing cap only counted observed catches of haddock, it did not monitor the overall catches of haddock by the entire fleet. In fact, when all of these changes are considered together, Framework 46 should result in more direct control on the total haddock catch by the fleet than the current 0.2-percent cap.

Furthermore, as described in the EA, the magnitude of catches from one stock area, as a proportion of biomass of these stocks, is not likely to have negative

biological impacts on the status of the haddock stocks, or any effect on the populations of marine mammals or seabirds. In contrast, the revised haddock cap measures are likely to provide substantial economic benefits to the herring fishery, when compared to the no action alternative, without any negative biological impacts. Given these social and economic benefits, and that there is almost no likelihood of negative biological impacts, FW 46 achieves its stated objectives while minimizing bycatch to the extent practicable, consistent with the Magnuson-Stevens Act National Standards.

The herring fishery may be expected to be constrained under the current system more in future years than in the past. Although the herring fishery has not previously come close to achieving the cap, except for FY 2010, the herring fishery effort may be expected to increase in Area 3 as a result of area TAC allocations specified for the herring fishery in recent years. The Council reduced Area 1A TAC allocations through the FY 2010–2012 herring fishery specifications (75 FR 48874; August 12, 2010) to address concerns about the disproportionate amount of effort that exists on this inshore component of the herring stock, despite the fact that it constitutes only approximately 18 percent of the available biomass. The EA for the 2010–2012 herring specifications noted that higher Area 3 TACs (compared to Area 1A) might provide an opportunity for the herring fleet to regain yield lost from the Area 1A TAC reductions, but raised concerns that this effort might be inhibited by haddock bycatch measures. Given these steps by the Council to shift herring fishery effort to the offshore stock component, and continued declines in both herring and haddock stock biomasses and, subsequently, sub-ACLs, the herring fishery may be expected to bump up against the cap more frequently in future years under the no action alternative.

NMFS cannot prevent the Council from considering or proposing future changes to the haddock catch cap for the herring fishery. However, as noted above, any such change must be consistent with applicable law, including the competing mandates and considerations set forth in the Magnuson-Stevens Act under National Standards 1, 8, and 9. If any future changes to the haddock catch cap for the herring fishery are proposed, NMFS will evaluate that action on its own merit, independent from any previous management action, based on these and other national standards and applicable law, and consider further public

comment before making a final decision to approve or disapprove any such future action.

Regarding the suggestions to disapprove the measure or require a 75-percent reduction in haddock bycatch from previous years, NMFS can only approve, disapprove, or partially approve a Council action, but cannot modify the measures proposed in FW 46. Reducing the haddock cap by 75 percent from previous years represents a new management proposal and, as such, would require consideration and action by the Council as well as an opportunity for public comment on the measure. NMFS approved the measures proposed in FW 46 because they are consistent with the objectives of FW 46 and the NE Multispecies FMP, and other applicable laws, and will allow the prosecution of the herring fishery, while minimizing haddock catches by the herring fishery to the extent practicable.

Comment 3: The Herring Alliance commented that FW 46 does not meet its objective to encourage midwater trawl vessels to fish offshore simply by facilitating herring fishing in Herring Management Area 3, because Herring Management Area 3 also contains inshore fishing grounds where the herring fleet may encounter the inshore component of the herring stock.

Response: NMFS believes that, based upon the biology and ecology of the herring stock, and the definition of the herring management areas, FW 46 achieves its objective to encourage vessels to fish offshore. The herring stock complex is assessed as a unit stock, but is comprised of inshore (GOM) and offshore (GB) stock components. The stock components segregate during spawning and mix during feeding and migration. The herring management areas were developed in recognition of these different stock components and, despite mixing of components, provide a method to manage the fishing mortality of each stock component somewhat independently. According to the EA that accompanied the 2010–2012 herring fishery specifications, while some mixing may occur, most fishing mortality on the inshore stock component occurs in Areas 1A, 1B, and 2, and fishing mortality on the offshore component occurs in Area 3. The purpose of FW 46 is to address the haddock catch cap, while achieving the four stated objectives, including providing incentives for midwater trawl vessels to fish offshore. FW 46 was not initiated to address or redefine Herring Management Areas established by the Atlantic Herring FMP. To the extent that Area 3 represents the “offshore”

component of the herring fishery effort and the area where the majority of fishing effort on the offshore component of the herring stock occurs, FW 46 reduces the risk of an early closure of this area, thereby facilitating further development of the offshore fishery in this area.

Comment 4: Three commenters commented on the scope of the proposed measures. The Herring Alliance supported focusing the scope of the cap on midwater trawl vessels and establishing a separate cap for each haddock stock, but commented that Category C and D herring vessels should be excluded from the proposed measures, because they do not have documented catches of haddock or herring with midwater trawl gear in the areas of concern. Lund’s Fisheries, Inc. supported excluding Area 2 from the cap and AMs, because this area is critical to the winter mackerel fishery.

Response: NMFS agrees that having separate caps for each haddock stock will provide more direct control on fishing mortality for each haddock stock resulting from herring midwater trawl fishery operations and more direct accountability for those vessels actually responsible for haddock catches. NMFS also agrees that revising the cap to focus on those areas and gears where haddock catches have been observed achieves FW 46’s objectives, and is necessary to reduce the impact of the cap on the herring fishery as a whole by eliminating unnecessary restrictions on those segments of the fishery that have historically not had much interaction with haddock.

The Council intended that the cap measures apply to all midwater trawl vessels, regardless of herring permit category, because this is the gear with documented catches of haddock. Although only Category A and B vessels have documented landings with midwater trawl gear, there is no prohibition on Category C or D vessels using midwater trawl gear, which is the gear most likely to catch haddock incidentally. The application of the measures to a Category C or D vessel imposes no burden unless such vessel chooses to use midwater trawl gear, in which case the relevance of the regulations are justified. Furthermore, future modifications to the Atlantic Herring FMP may change incentives and result in changes in fishing practices, such that Category C and/or D vessels begin to target herring using midwater trawl gear. If Category C and D midwater trawl vessels were excluded from these measures at this time, such changes in fishing behavior might undermine the FW 46 measures in the future. Thus,

NMFS has approved FW 46 measures regarding Category C and D vessels, as proposed, because they are preventative in nature and consistent with the stated objectives of the action. However, the FW 46 requirements (including reporting requirements) only apply to vessels with Category C and D permits when fishing with midwater trawl gear in Areas 1A, 1B and/or 3. Category C or D vessels fishing with purse seine or otter trawl gear, or midwater trawl gear in Area 2, will be unaffected by this action.

Comment 5: Three commenters supported extrapolating haddock catches to the entire herring midwater trawl fleet, because this increases accountability and provides more accurate monitoring. The Herring Alliance further supported extrapolating the haddock catches back to the start of FY 2011, if these measures are implemented mid-season. The Herring Alliance and CCCHFA commented that the proposed rule should have provided more detail on the extrapolation methodology NMFS intends to use to monitor the cap, so the public could have an opportunity to comment on it. The Herring Alliance requested that NMFS clarify how observed trips that encounter haddock, but do not retain any catch, and observed trips that have slipped tows, will be handled in the extrapolation. The Herring Alliance suggested that these fishing practices would undermine the extrapolation methodology and that NMFS should conduct an analysis of the observer effect in the herring fleet, and extend the CAI no-slippage provisions currently in place to all trips by Category A and B vessels, to facilitate more accurate observations. The Herring Alliance and CCCHFA both requested that NMFS post haddock catch cap monitoring updates on its Web site weekly, instead of monthly, consistent with how the cap is currently monitored.

Response: NMFS agrees that the extrapolation of haddock catches to the entire midwater trawl fleet will increase accountability for total haddock catches by the herring fishery and provide more accurate catch estimates that are less sensitive to changes in observer coverage rates, and has approved that measure. As stated in the proposed rule, NMFS intends to use the same methodology that it uses to monitor butterfish catch in the *Loligo* fishery and groundfish discards by sector vessels in the NE multispecies fishery. These methodologies are described in detail on NERO’s Web site (http://www.nero.noaa.gov/ro/fso/reports/reports_frame.htm), and were

summarized in the preamble to the proposed rule. According to this methodology, only discards and kept fish from observed tows to date are used in the calculation of an observed haddock catch rate for the applicable stock area. The numerator for the catch rate on a given date is generated by summing the observed haddock catch from all observed tows in the applicable stock area as of that date. Similarly, the denominator is the cumulative sum of all kept catch on all observed tows in the applicable stock area to date. Thus, haddock catches in a tow that was sampled by the observer would be added to the numerator, and if this haddock was the only catch retained (because it must be landed if brought on board), then this amount would be added to the denominator to generate a cumulative discard rate for all observed tows up to that date. Thus, the haddock catch rate is a cumulative rate made up of all observed tows across the fleet, not an individual catch rate for each observed trip or vessel. Tows that are slipped, or partially slipped, on an observed trip will not be incorporated into the extrapolation, because such tows are not considered to be "observed" by the observer. Although such slippage is of concern, and is a source of uncertainty, the NE Multispecies FMP takes into account such uncertainty in the method of calculating ABCs. Specifically, the sub-ABCs of GOM and GB haddock allocated to the midwater trawl fishery are reduced by 7 percent, as prescribed by FW 44, before arriving at the actual sub-ACLs that are monitored, in order to account for such management uncertainty in this component of the fishery.

Currently, the herring trips applied to the haddock catch cap are updated on a weekly basis, depending on the availability of data. NMFS intends to continue to update the haddock catch cap monitoring pages on its *Web site* on a weekly basis, provided the necessary data are available. Midwater trawl vessels will be reporting the "kept all" amount daily through their VMS catch reports, which will be used to extrapolate observed haddock catches. However, preliminary trip-summary information from observed midwater trawl trips catching groundfish is available within approximately 72 hrs of landing. Thus, while the total weight to which the haddock catch rates are applied to derive an estimate of the total catch of haddock may be updated almost daily, the frequency of updates to the haddock catch rates that are

extrapolated will be limited by the availability of observer data.

Comment 6: The Herring Alliance supported the proposal to require midwater trawl vessels fishing both inside and outside an AM area on the same trip when an AM is in place to comply with the most restrictive possession limits. However, the Herring Alliance suggested that NMFS prohibit herring vessels from towing midwater trawls across the boundaries between different haddock AM areas, since this inhibits the observer's ability to accurately assign catch from such tows to the proper area.

Response: NMFS has approved the requirement that vessels comply with the most restrictive measures when fishing both inside and outside an effective AM area on the same trip. With respect to the suggestion that NMFS prohibit midwater trawl vessels from towing across haddock stock areas, this would further complicate the regulations and be overly restrictive for herring midwater trawl vessels. The regulation as approved represents a balance between the need to implement and enforce possession limits and monitor catch and the industry's need for flexibility to fish and target herring.

Comment 7: The Herring Alliance commented that NMFS should clarify the description of the overage payback provision to clarify that any overage reduction to the haddock sub-ACL in response to an overage would apply in the year immediately following the year in which the overage occurred, even if final accounting of haddock catch by the herring fleet occurs after the end of the year in which the overage occurred.

Response: The Herring Alliance is correct, the overage reduction would apply in the year immediately following the year in which the overage occurred, even if final catch accounting is not completed until after the end of the FY. Although not directly addressed by FW 46, NMFS has added language to § 648.90(a)(5)(iii), under the authority provided to the Secretary by Section 305(d) of the Magnuson-Stevens Act to promulgate regulations necessary to carry out an FMP, to clarify that if final catch accounting indicating an overage were not completed until after the end of a groundfish FY, the overage would still be applied to the final specifications for the next groundfish fishing year after which the overage occurred.

Comment 8: The Herring Alliance commented that NMFS should revise the method of calculating the GOM haddock catch cap such that the herring midwater trawl fishery is allocated 1 percent of the commercial sub-ABC and

not 1 percent of the overall ABC, because this would be consistent with how shares are specified for the other commercial components of the commercial sub-ABC.

Response: The method of specifying the herring midwater trawl fishery haddock sub-ACL was implemented through FW 44 to the NE Multispecies FMP. FW 46 only revises the percentage that is applied to determine the herring fishery's share of the commercial sub-ABC, but does not revise the method of dividing the ABC into its various components. Revising the method of calculation would be outside the scope of FW 46 and NMFS's authority to approve, disapprove, or partially approve this action. FW 44 incorporated the haddock catch cap into the ACL and AM system implemented by Amendment 16, but endeavored to be consistent with the method of identifying the 0.2-percent share allocated to the herring fishery that was implemented by FW 43, which was based upon the Target TAC. Thus, the 1 percent is applied to the ABC, but deducted from the commercial sub-ABC, because the ABC is analogous to the Target TACs that were the basis for the original 0.2-percent haddock catch cap allocated to the herring fishery through FW 43. Secondly, because management uncertainty is considered separately for each component of the ABC, the first step in the calculation procedure must be the dividing of the ABC into components, prior to making the deduction for management uncertainty. In other words, although the haddock ABC is the initial basis for the calculation of the haddock sub-ACL for the herring fishery, the net amount allocated to the herring fishery reflects a deduction for management uncertainty. Any modifications to this distribution of the GOM haddock ABC would require further Council action.

Comment 9: The Herring Alliance commented that NMFS should require all Category A and B midwater trawl vessels to report all groundfish catch through their daily VMS catch reports, in order to facilitate the monitoring of groundfish bycatch thresholds in the groundfish closed areas.

Response: FW 46 was developed to address the haddock catch cap for the herring fishery, and was not intended to address groundfish bycatch in the closed areas. Requiring midwater trawl vessels to report all groundfish catch through daily VMS catch reports would be outside the scope of this action and NMFS's authority to promulgate the measures of FW 46 through the regulations. Groundfish bycatch in closed areas is monitored based on

complete, audited observer data, which contain latitudinal and longitudinal data that can be used assign to catch to the closed areas. Such data are not available until approximately 90 days after completion of the observed trip. Requiring midwater trawl vessels to report groundfish catch in daily VMS catch reports would not assist in obtaining more timely observer data, and would be an unnecessary reporting burden. Furthermore, Amendment 5 to the Atlantic Herring FMP, currently under development by the Council, is focusing on other issues related to the monitoring of the herring fishery, including catch of groundfish by the herring fishery in closed areas.

Comment 10: The Herring Alliance took issue with the descriptions of the need and objectives for FW 46 in the EA, alleging they did not reflect the original purpose of the action.

Response: The National Environmental Policy Act requires that an EA briefly specify the underlying purpose and need to which the agency is responding in proposing alternatives, including the proposed action (40 CFR 1502.13). The need is the underlying purpose of the action, while the stated objectives of the action are its intended goals. Thus, Section 3.2 of the EA separately describes the underlying need of FW 46—the need to take action to modify the provisions adopted in FW 43 to reflect current conditions in the fishery and to prevent the catch cap from unnecessarily constraining the herring fishery on GB, in addition to several other reasons—and the stated objectives of the action, which are those adopted by the Council at its January 2011 meeting. Furthermore, the Council approved FW 46 and the EA as consistent with their intent and goals at its April 2011 meeting.

Comment 11: The Herring Alliance made several suggestions to improve analyses in the EA, commenting that the EA relied only on dealer reports to analyze the occurrence of haddock being sold as bait. The Herring Alliance alleges the dealer reports are not accurate because dealers are not compliant with the requirement to report by species. They also commented that the EA did not analyze the presence of other evidence (other than catch of bottom-dwelling species), such as the presence of mud or rocks in the gear, when analyzing the degree of bottom contact by midwater trawl gear, and did not adequately address the possibility of localized haddock depletion due to concentrated midwater trawl fishing. They further commented that the analysis used to determine the “practicability” of the proposed action

with respect to National Standard 9 should have been described in more detail and should have incorporated the cost of bycatch reduction and mitigation strategies.

Response: Although additional or different information may have been used in the analysis of dealer reports for haddock bait sales or observer reports for the degree of midwater trawl contact with the sea floor, the analysis contained in FW 46 was based on the best available information and sufficient to assess the impacts of the proposed action relative to the no action alternative and alternative to the proposed action. In the absence of data other than dealer reports, there is no other firm basis to assume or estimate the amount of haddock that might be sold as bait when mixed with herring. The dealer data is compiled according to a transparent process that is relevant, timely, and inclusive of the herring fishery. NMFS utilizes validation and verification techniques as part of its standard procedures. In addition, haddock reported as bait would not be expected to be a common occurrence in the dealer reports, because the selling of culled haddock by dealers for any purpose is prohibited by the regulations. Regardless, the presence or absence of haddock in the bait supply would not affect the precision of haddock catch estimates under the approved measures, because dealer reports will no longer be used to monitor the haddock catch cap (only observer reports will be used in the calculation of total haddock catch). Furthermore, Amendment 5 to the Herring FMP, which is under the development by the Council to address monitoring and reporting requirements in the herring fishery, is considering weighmaster systems, among other alternatives, to improve catch reporting by vessels and dealers.

The EA addressed the issue of localized haddock and other groundfish depletion by examining the presence and absence of groundfish fishing effort in an area before and after midwater trawl fishing effort in Section 8.4.2. The EA concluded that a strong relationship could not be determined, but the analysis did not support the idea that groundfish effort is displaced by midwater trawl activity, suggesting that groundfish may still be present in an area after midwater trawl activity.

Finally, it is not clear what bycatch reduction or mitigation strategies the commenter is referring to that could have been incorporated into the practicability analysis. The Council did not consider gear modifications or other reduction strategies in the development of FW 46, and it is not clear how the EA

analysis could predict the extent to which any bycatch reduction or mitigation strategies would be undertaken by herring vessels in response to the cap, except to cease fishing operations in Area 3, as they did in FY 2010. The EA analysis concluded that the level of bycatch associated with the proposed action was practicable according to the National Standard Guidelines because the stock-specific caps would eliminate the remote possibility that the entire cap could be caught in the GOM haddock stock area and, thus, there would be almost no likelihood that haddock bycatch associated with the proposed action would have any impacts on the status of haddock stocks, or any effect on the population status of marine mammals or seabirds. It concluded further that the stock-specific caps will incentivize the midwater trawl fishery to reduce incidental catch and bycatch of haddock by avoiding fishing in areas and times where haddock are encountered in order to avoid an effective closure of the directed herring fishery. In addition, the increased, separate caps increased the likelihood that the herring GB quota would be harvested, providing opportunity for the herring fishery to achieve optimum yield, minimizing impacts on fishing practices and providing economic and cultural benefits.

In contrast, the EA concluded that the no action alternative, which maintained the current cap measures, was not practicable according to National Standard 9. The EA concluded that, although bycatch of haddock and other species under the current system would likely be lower than under the increased cap because the current cap would be more constraining if observer coverage levels remain high, there existed a small risk that a large portion of the shared cap could be caught in the GOM, threatening mortality targets for the GOM haddock stock. In addition, the current shared cap would have adverse effects on the economic, social, and cultural status of the herring fishery, which are mitigated under the increased stock-specific caps.

Thus, the approved measures represent a balance between allowing the herring fishery opportunity to achieve optimum yield, while providing incentives for the midwater trawl fishery to minimize haddock catch, and ensuring that haddock catch is adequately controlled and monitored.

Comment 12: The Herring Alliance took issue with the EA analysis of foregone herring yield, because the EA did not consider the fact that the herring

fleet has never fully harvested the Area 3 sub-ACL.

Response: The EA did not suggest that the herring fishery would necessarily catch the full Area 3 sub-ACL in absence of the haddock cap, but attempted to quantify the potential economic impacts that might result if the haddock cap in fact precluded the full utilization of the herring quota in Area 3. This analysis was based on the fact that the herring fleet is capable of achieving catches as high as the current Area 3 sub-ACL, as evidenced by their landings in 2001. Thus, the EA was merely analyzing the potential impacts that may result if the herring fleet were to be able to achieve the Area 3 sub-ACL, or at least catch more than it has in past years, if participation in the offshore fishery increases.

Comment 13: The Herring Alliance questioned the conclusion in the EA that the haddock catch cap was a driver of the low Atlantic mackerel catches in FY 2010, suggesting it was not supported by the analysis.

Response: Section 8.4.1 of the EA clearly stated that the low landings of mackerel in 2010 are likely due to fish availability and other factors. The EA acknowledged that vessels that participate in both the herring and mackerel fishery may have reduced mackerel effort as a result of concern over the haddock catch cap, which is a possible indirect economic impact of the haddock catch cap. However, the EA clearly noted that more information and analysis would be necessary to make a clear determination about causality.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

Pursuant to 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries finds good cause to waive the 30-day delayed effectiveness provision of the APA. The Atlantic herring fishery is allocated a portion of the allowable catch of GOM and GB haddock each year, to account for incidental catch of haddock in the herring midwater trawl fleet. When this cap is reached or exceeded, all herring vessels are restricted to very low incidental possession limits for herring in a large portion of their fishing grounds in the GOM and GB, thereby effectively closing the areas to directed fishing because such low possession limits do not permit an economically viable fishing trip. In FY 2010, the catch of

haddock primarily by the herring midwater trawl fleet reached approximately 81 percent of the haddock catch cap, and in October 2010, the herring midwater trawl fleet voluntarily moved to avoid fishing in areas with high haddock catch. As a result, fishing and processing operations were unnecessarily interrupted and the industry likely incurred increased operational costs. In addition, some of the GB herring TAC was not harvested, potentially resulting in lost economic yield for a large portion of the Atlantic herring fishery. This final rule implements measures in FW 46 that increase the haddock catch cap, thus reducing the risk that the cap would be constraining. If the stock-specific cap is reached, midwater trawl fishing for herring in that stock area would be restricted—unlike the current combined cap that, if reached, closes a large portion of the GOM and GB area to the entire herring fishery.

Summer and early fall are typically when herring fishery effort on GB and interactions with haddock are highest. Beginning in September, the restrictive haddock catch cap may force the herring fleet to curtail prematurely its fishing operations in Area 3 in order to avoid triggering the AMs. It is important that the revised haddock catch cap and accountability measures be implemented as soon as possible, before October 2011, in order to avert an effective early end to the herring fishing season on GB. After September 2011 these measures would have limited utility to herring fishery participants until summer 2012. Thus, delaying implementation would result in short-term adverse economic impacts to Atlantic herring vessels and associated shoreside facilities and fishing communities.

This final rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with Federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

A FRFA was prepared for this final rule, as required by section 604 of the Regulatory Flexibility Act (RFA). The FRFA, which includes the summary in this rule and the analyses contained in FW 46 and its accompanying EA/RIR/FRFA, describes the economic impact the measures proposed in FW 46 would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in FW 46 and the preamble to this rule.

No issues were raised by public comments specifically in response to the IRFA or with respect to the economic impacts of this action. Accordingly, no changes were made from the proposed rule as the result of any such comments.

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

Regulated entities include businesses owning vessels engaged in the Atlantic herring and NE multispecies fisheries. These measures would affect regulated entities engaged in commercial fishing for herring. Because the measures reduce the available GOM and GB haddock ABC for the groundfish fishery, vessels permitted in this fishery are potentially regulated by this action. However, because only approximately 17 percent of the haddock GOM and GB ABCs was landed in FY 2010 (and similar under-capture of available quota is expected in FY 2011–2012), it is not expected that NE multispecies permitted vessels would be affected by this action in the near-term or foreseeable future. The size standard for commercial fishing entities (NAICS code 114111) is \$4 million in sales. Although multiple vessels may be owned by a single owner, available tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for purposes of analysis, each permitted vessel is treated as a single entity. In 2008 and 2009, one vessel exceeded \$4 million in gross sales in each year, while in 2010, two vessels exceeded that threshold amount. During calendar year 2010, 86 vessels were issued a limited access herring permit. Therefore, because 2 entities operating in 2010 exceeded the gross sales threshold defining a large entity, 84 small commercial fishing entities were both regulated and potentially affected by the proposed action.

Description of Steps the Agency Has Taken to Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

In total, six alternatives to the action implemented by this final rule were considered during the development of FW 46. Detailed descriptions of all the alternatives considered are available in the FW 46 EA (See **ADDRESSES**). Four alternatives were rejected by the Council and the Groundfish Oversight Committee because they were difficult to implement and monitor, could not be implemented legally through a framework adjustment, and/or did not

meet the stated objectives of the framework. As detailed in the proposed rule for this action, the two other alternatives considered, including the no action alternative that would have maintained the haddock catch cap for the herring fishery at 0.2 percent of the combined GOM and GB haddock ABC, and a second alternative that would have incorporated the catch of haddock in the Atlantic herring fishery into the sub-ACL for other sub-components of the haddock fisheries, with options for AMs that would have implemented the proposed action as a backstop. The no action alternative was not selected because it would not maximize the chance for the GB herring TAC to be caught or exercise firm control over haddock catches by the herring fishery compared to the preferred alternative. The second alternative considered was not selected because it presented the least direct limitation on herring fishery haddock catches when compared to the preferred alternative and the no action alternatives and, thus, failed to provide adequate incentives for midwater trawl vessels to fish offshore and to minimize haddock incidental catch, as required by the framework's stated objectives.

The economic impacts of this action on affected regulated small entities are positive and not different from economic impacts to large entities. NMFS disapproved measures as they apply to open access vessels that would have resulted in differential impacts to entities that represent a de minimus portion of the directed herring fishery. This action would have no short-term measurable economic impacts to vessels participating in the groundfish fishery, because it implements small allocations of haddock to the herring fishery that would have no effect on current groundfish revenues, based on most recent fishing activities, and only minor effects, if any, on possible future revenues, as these small allocations are unlikely to constrain the groundfish fishery or allow the herring fishery to displace groundfish effort. This action is likely to have a positive impact on large and small vessels participating in the Atlantic herring fishery, as it greatly reduces the possibility that a haddock catch cap would result in AMs that restrict the fishery to incidental catch limits throughout a large portion of the GOM and GB. This is because, unlike the no action alternative, the measures implemented by this final rule increase the haddock catch cap applicable to the herring fishery. Based on observed levels of haddock bycatch in the herring fishery and recent reductions in herring fishing effort (through greatly reduced

ACLs in 2010), a 1-percent haddock catch cap is unlikely to be reached in the short-term, but provides a backstop and establishes a mechanism to estimate fleet-wide bycatch on a real-time basis. This will provide more effective controls over the bycatch of haddock in the herring fishery compared to the no action alternative. In addition, contrary to existing measures that would be maintained under the no action alternative, this action separates the GOM and GB haddock stocks and related catch, thereby reducing the overall impact of an effective directed fishery closure, if one were to occur. It also eliminates impacts on purse seine and otter trawl vessels (typically smaller fishing operations) by restricting the cap and the AM to midwater trawl vessels only. Because this action makes it more likely that the haddock catch cap will not constrain herring fishing beyond levels anticipated in the Atlantic Herring FMP, this action will not result in a decline in revenue for the herring fishery and may increase fishing opportunities for the herring mid-water trawl fleet regardless of size for several months relative to baseline conditions that would result if the no action alternative would be maintained. Opportunities to prosecute the offshore fishery (Area 3, GB) and fully harvest the herring optimum yield should be higher under the proposed action than under baseline conditions. The precise magnitude of the positive impact is uncertain, though the offshore areas (Areas 2 and 3) of the herring fishery generated approximately \$17 million in gross herring revenues in calendar year 2009, and the revenues from fishing trips expected to be unconstrained due to the proposed action represent a relatively small fraction of that total.

This action and alternatives are described in detail in FW 46, which includes an EA, RIR, and FRFA (See **ADDRESSES**).

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

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement for limited access vessels using midwater trawl gear to report total kept catch via daily VMS catch reports has been approved by OMB on September 6, 2011, under OMB Control Number 0648-0202. This action does not duplicate, overlap, or conflict with any other Federal rules.

This action would expand some reporting requirements implemented through FW 43 to monitor the current herring fishery haddock incidental catch

cap, to include additional herring permit categories. Limited access herring permit holders fishing with midwater trawl gear in Herring Management Areas 1A, 1B, and/or 3 would be required to report total kept catch by haddock stock area via daily VMS catch reports. The proposed Atlantic herring regulatory amendment would require daily VMS catch reporting by limited access herring vessels for quota monitoring purposes, and the burden to the public of those catch report submissions has been analyzed in that regulatory amendment (76 FR 34947; June 15, 2011). This action would modify that proposed report to add two additional fields and thereby increase the cost per submission for limited access vessels that fish with midwater trawl gear in the GOM or on GB. Based on historic participation in the herring midwater trawl fishery, this change is expected to increase the total annual burden to the public for herring VMS catch reporting by \$160 to \$2,482, or \$26 per entity. This action would also expand the requirements for Category A and B vessels to notify the Northeast Fishery Observer Program by phone of their intent to take a trip, and to submit a pre-landing hail to enforcement via VMS, to additional permit categories when fishing with midwater trawl gear in the GOM or on GB. However, no Category C or D vessels have reported landing herring or mackerel using midwater trawl gear in the GOM or GB. Thus, based on historic participation in the herring midwater trawl fishery, this action would not be expected to change the reporting burden associated with these requirements. In addition, applying the requirement to submit a CA I Midwater Trawl Codend Release Affidavit to additional permit categories is not expected to change the reporting burden associated with this affidavit, based on historic participation in the CA I herring fishery.

Public reporting burden for these requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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 take to comply with a rule or group of rules. As part of this rulemaking, a small entity compliance guide will be sent to all holders of permits issued for the herring fishery and the NE. multispecies 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, Reporting and recordkeeping requirements.

Dated: September 9, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons stated 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 § 648.10, add paragraph (l) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(l) *Area-specific reporting requirements for limited access Atlantic herring vessels fishing in Atlantic Herring Management Areas 1A, 1B, and 3—(1) Reporting requirements for vessel operators.* The owner or operator of any vessel issued a limited access herring permit that fishes any part of a tow with midwater trawl gear (including midwater pair-trawl gear) in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (f)(3), must report the estimated total amount of all species retained (in pounds, landed weight) from each of the GOM and GB modified haddock stock areas as defined in paragraph (l)(2) of this section, via the required reporting method specified for Atlantic herring owners or operators at § 648.7(b)(2)(i), unless otherwise specified by § 648.201.

(2) *GOM and GB Modified Haddock Stock Areas.* For the sole purpose of the area-specific reporting requirements in paragraph (l)(2) of this section, the GOM and GB Modified Haddock Stock Areas are defined in paragraphs (l)(2)(i) and (l)(2)(ii) of this section. Copies of a map depicting these areas are available from

the Regional Administrator upon request.

(i) *GOM Modified Haddock Stock Area.* The GOM Modified Haddock Stock Area is bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

GOM MODIFIED HADDOCK STOCK AREA

| Point | N. latitude | W. longitude |
|-----------|-------------|--------------|
| GMH1 | (1) | (1) |
| GMH2 | 42°20' | (2) |
| GMH4 | 42°20' | 70°00' |
| GMH4 | (3) | 70°00' |

¹The intersection of the shoreline and the U.S.-Canada maritime boundary.

²The intersection of 42°20' N. lat. and the U.S./Canada maritime boundary.

³The intersection of the Cape Cod, MA, coastline and 70° 00' W. long.

(ii) *GB Modified Haddock Stock Area.* The GB Modified Haddock Stock Area is bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

GB MODIFIED HADDOCK STOCK AREA

| Point | N. latitude | W. longitude |
|------------|-------------|--------------|
| GBM1 | (1) | 70°00' |
| GBM2 | 42°20' | 70°00' |
| GBM3 | 42°20' | (2) |
| GBM4 | 40°30' | (2) |
| GBM5 | 40°30' | 66°40' |
| GBM6 | 39°50' | 66°40' |
| GBM7 | 39°50' | 70°00' |
| GBM8 | (3) | 70°00' |

¹The intersection of the North-facing shoreline of Cape Cod, MA and 70°00' W. long.

²The U.S.-Canada maritime boundary as it intersects with the EEZ.

³The intersection of the South-facing shoreline of Cape Cod, MA and 70°00' W. long.

3. In § 648.14, revise paragraphs (k)(1)(i)(D); (r)(1)(vi)(A), (B), and (C); (r)(1)(vii)(E); (r)(1)(viii)(B); and (r)(2)(i) through (v); and add paragraphs (r)(1)(vi)(E) and (F) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(1) * * *

(i) * * *

(D) Any haddock, and up to 100 lb (45 kg) of other regulated NE. multispecies other than haddock, were harvested by a vessel issued an All Areas Limited Access Herring Permit and/or an Area 2 and 3 Limited Access Herring Permit on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl

gear, pursuant to the requirements in § 648.80(d) and (e), and such fish are not sold for human consumption.

* * * * *

(r) * * *

(1) * * *

(vi) * * *

(A) For the purposes of observer deployment, fail to notify NMFS at least 72 hr prior to departing on a declared herring trip with a vessel issued an All Areas Limited Access Herring Permit and/or an Area 2 and 3 Limited Access Herring Permit and fishing with midwater trawl or purse seine gear, or on a trip with a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that is fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), pursuant to the requirements in § 648.80(d) and (e).

(B) Possess, land, transfer, receive, sell, purchase, trade, or barter; or attempt to transfer, receive, sell, purchase, trade, or barter, or sell more than 2,000 lb (907 kg) of Atlantic herring per trip taken from the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(1), by a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, after the haddock cap for the area(s) has been reached pursuant to § 648.86(a)(3), unless all herring possessed or landed by the vessel was caught outside the applicable Accountability Measure Area(s).

(C) Transit the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(1), with a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, when the 2,000-lb (907.2 kg) limit specified in § 648.86(a)(3)(ii)(A)(1) is in place for the area being transited, in possession of more than 2,000 lb (907.2 kg) of herring, unless all herring on board was caught outside of the applicable Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, and all fishing gear is stowed and not available for immediate use, as required by § 648.23(b).

* * * * *

(E) Possess or land haddock taken from the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(1), by a vessel issued an Atlantic herring permit and

that fished with midwater trawl gear, after the haddock cap for the area(s) has been reached pursuant to § 648.86(a)(3), unless all haddock possessed or landed by the vessel was caught outside the applicable Accountability Measure Area(s).

(F) Transit the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(1), with a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, when the 0-lb (0-kg) haddock possession limit in § 648.86(a)(3)(ii)(A)(1) is in place for the area being transited, in possession of haddock, unless all haddock on board was caught outside of the applicable Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, and all fishing gear is stowed and not available for immediate use, as required by § 648.23(b).

(vii) * * *

(E) Discard haddock at sea that has been brought on deck, or pumped into the hold, of a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or on a trip with a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear, pursuant to the requirements in § 648.80(d) and (e).

* * * * *

(viii) * * *

(B) Fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS at least 6 hr prior to landing herring at the end of a declared herring trip, if a vessel has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit and is fishing with either midwater trawl or purse seine gear, or a Limited Access Incidental Catch Herring Permit and is fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3).

* * * * *

(2) * * *

(i) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated NE. multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, white hake, and Atlantic wolffish); or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated NE. multispecies for human consumption; if the regulated NE. multispecies are

landed by a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear pursuant to § 648.80(d).

(ii) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out, and retain, for at least 12 hr, all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(iii) Sell, purchase, receive, trade, barter, or transfer; or attempt to sell, purchase, receive, trade, barter, or transfer; to another person, any haddock or other regulated NE. multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, white hake, and Atlantic wolffish) separated out from a herring catch offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(iv) While operating as an at-sea herring processor, fail to comply with requirements to separate out and retain all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(v) Fish with midwater trawl gear in Closed Area I, as specified at § 648.81(a), without a NMFS approved observer onboard, if the vessel has been issued an Atlantic herring permit.

* * * * *

■ 4. In § 648.15, revise paragraphs (d)(1) and (e) to read as follows:

§ 648.15 Facilitation of enforcement.

* * * * *

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d). Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hr for dealers and processors on land, and for 12 hr after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Authorized officers must be given access to inspect the haddock.

* * * * *

(e) *Retention of haddock by herring vessels using midwater trawl gear.* A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may not discard any haddock that has been brought on the deck or pumped into the hold.

■ 5. In § 648.80, revise paragraphs (d)(4) through (d)(6), (d)(7)(i) and (d)(7)(ii) introductory text, and (e)(4) to read as follows:

§ 648.80 NE. Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(4) The vessel does not fish for, possess or land NE. multispecies, except that a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit and fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to paragraph (d) of this section, may possess and land haddock

and other regulated multispecies consistent with the catch caps and possession restrictions in § 648.86(a)(3) and (k). Such haddock or other regulated NE. multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated NE. multispecies that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to paragraph (d) of this section, may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), must provide notice of the following information to NMFS at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment: Vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and whether the vessel intends to engage in fishing in Closed Area I, as defined in § 648.81(a), at any point in the trip; and

(6) A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip with midwater trawl gear, or a vessel issued a Limited Access Incidental Catch Herring Permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator

may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

(7) *Fishing in Closed Area I.* (i) No vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear, may fish, possess or land fish in or from, Closed Area I unless it has declared first its intent to fish in Closed Area I as required by paragraph (d)(5) of this section, and is carrying onboard a NMFS-approved observer.

(ii) No vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in Closed Area I, may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer (e.g., an Atlantic herring at-sea processing vessel or an Atlantic herring carrier vessel), or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

* * * * *

(e) * * *

(4) The vessel does not fish for, possess, or land NE. multispecies, except that vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip may possess and land haddock or other regulated species consistent with possession restrictions in § 648.86(a)(3) and (k), respectively. Such haddock or other regulated multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated species that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may not discard haddock that has been brought on the deck or pumped into the hold;

* * * * *

■ 6. In § 648.85, revise paragraph (d) to read as follows:

§ 648.85 Special management programs.

* * * * *

(d) *Haddock incidental catch allowance for some Atlantic herring vessels.* The haddock incidental catch

allowance for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), is 1 percent of each of the ABCs for GOM haddock and GB haddock (U.S. catch only) specified according to § 648.90(a)(4) for a particular NE. multispecies fishing year. Such haddock catch will be determined as specified in § 648.86(a)(3)(ii).

* * * * *

■ 7. In § 648.86, revise paragraphs (a)(3)(i), (a)(3)(ii)(A)(1) and (2), and (k); and add paragraphs (a)(3)(ii)(A)(3) and (4) to read as follows:

§ 648.86 NE. Multispecies possession restrictions.

* * * * *

(a) * * *

(3) * * *

(i) *Incidental catch allowance for some Atlantic herring vessels.* A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may only possess and land haddock, in accordance with requirements specified in § 648.80(d) and (e).

(ii) * * *

(A) * * *

(1) When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock as specified in § 648.85(d), has been caught, no vessel issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, i.e., the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(2) and (3) of this section, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a NE. multispecies

permit and is operating on a declared (consistent with § 648.10(g)) NE multispecies trip. In making this determination, the Regional Administrator shall use haddock catches observed by NMFS-approved observers by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

(2) *Herring GOM Haddock Accountability Measure Area.* The Herring GOM Haddock AM Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

HERRING GOM HADDOCK ACCOUNTABILITY MEASURE AREA

| Point | N. latitude | W. longitude |
|------------|-------------|--------------|
| HGA1 | (1) | 69°20' |
| HGA | 43°40' | 69°20' |
| HGA3 | 43°40' | 69°00' |
| HGA4 | 43°20' | 69°00' |
| HGA5 | 43°20' | (2) |
| HGA6 | 42°20' | (3) |
| HGA7 | 42°20' | 70°00' |
| HGA8 | (4) | 70°00' |

¹ The intersection of the Maine coastline and 69°20' W. long.
² The intersection of the U.S./Canada maritime boundary and 43°20' N. lat.
³ The intersection of the U.S./Canada maritime boundary and 42°20' N. lat.
⁴ The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00' W. long.

(3) *The Herring GB Haddock Accountability Measure Area.* The Herring GB Haddock AM Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

HERRING GOM HADDOCK ACCOUNTABILITY MEASURE AREA

| Point | N. latitude | W. longitude |
|------------|-------------|--------------|
| HBA1 | 42°20' | 70°00' |
| HBA2 | 42°20' | (1) |
| HBA3 | 40°30' | (1) |
| HBA4 | 40°30' | 66°40' |
| HBA5 | 39°50' | 66°40' |
| HBA6 | 39°50' | 68°50' |
| HBA7 | (2) | 68°50' |
| HBA8 | 41°00' | (3) |
| HBA9 | 41°00' | 69°30' |
| HBA10 ... | 41°10' | 69°30' |
| HBA11 ... | 41°10' | 69°50' |
| HBA12 ... | 41°20' | 69°50' |
| HBA13 ... | 41°20' | (4) |
| HBA14 ... | (5) | 70°00' |
| HBA15 ... | (6) | 70°00' |

HERRING GOM HADDOCK ACCOUNTABILITY MEASURE AREA—Continued

| Point | N. latitude | W. longitude |
|-----------|-------------|--------------|
| HBA16 ... | (7) | 70°00' |

¹ The intersection of the U.S./Canada maritime boundary.
² The intersection of the boundary of Closed Area I and 68°50' W. long.
³ The intersection of the boundary of Closed Area I and 41°00' N. lat.
⁴ The intersection of the east-facing shoreline of Nantucket, MA, and 41°20' N. lat.
⁵ The intersection of the north-facing shoreline of Nantucket, MA, and 70°00' W. long.
⁶ The intersection of the south-facing shoreline of Cape Cod, MA, and 70°00' W. long.
⁷ The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00' W. long.

(4) The haddock incidental catch caps specified are for the NE multispecies fishing year (May 1–April 30), which differs from the herring fishing year (January 1–December 31). If the haddock incidental catch allowance is attained by the herring midwater trawl fishery for the GOM or GB, as specified in § 648.85(d), the 2,000-lb (907.2-kg) limit on herring possession in the applicable AM Area, as described in paragraph (a)(3)(ii)(A)(2) or (3) of this section, shall be in effect until the end of the NE multispecies fishing year. For example, the 2011 haddock incidental catch cap is specified for the period May 1, 2011–April 30, 2012, and the 2012 haddock catch cap would be specified for the period May 1, 2012–April 30, 2013. If the catch of haddock by herring midwater trawl vessels reached the 2011 incidental catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2012), the 2,000-lb (907.2-kg) limit on possession of herring in the applicable AM Area would extend through April 30, 2012. Beginning May 1, 2012, the 2012 catch cap would go into effect.

(k) *Other regulated NE multispecies possession restrictions for some Atlantic herring vessels.* A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit on a declared herring trip, regardless of area fished or gear used, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may possess and land haddock, and up to 100 lb (45 kg), combined, of other regulated NE multispecies, other than haddock, in accordance with the requirements in § 648.80(d) and (e). Such fish may not be sold for human consumption.

■ 8. In § 648.90, revise paragraph (a)(4)(iii)(D), and add paragraph (a)(5)(iii) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

- (a) * * *
- (4) * * *
- (iii) * * *

(D) *Haddock catch by the Atlantic herring fishery.* One percent each of the GOM haddock and GB haddock ABC (U.S. share only) shall be allocated to the Atlantic herring fishery, pursuant to the restrictions in §§ 648.85(d) and 648.86(a)(3), and pursuant to the process for specifying ABCs and ACLs described in paragraph (a)(4) of this section. An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

* * * * *

- (5) * * *

(iii) *AMs if the incidental catch cap for the Atlantic herring fishery is exceeded.* At the end of the NE multispecies fishing year, NMFS shall evaluate Atlantic herring fishery catch using VTR, VMS, IVR, observer data, and any other available information to determine whether a haddock incidental catch cap has been exceeded based upon the cumulative catch of vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3. If the catch of haddock by all vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, exceeds the amount of the incidental catch cap specified in § 648.85(d) of this section, then the appropriate incidental catch cap shall be reduced by the overage on a pound-for-pound basis during the following fishing year. Any overage reductions shall be announced by the Regional Administrator in the **Federal Register**, accordance with the Administrative Procedure Act, prior to the start of the next NE multispecies fishing year after which the overage occurred, if possible, or as soon as possible thereafter if the overage is not determined until after the end of the NE multispecies fishing year in which the overage occurred.

* * * * *

■ 9. In § 648.201, revise paragraph (a)(2) to read as follows:

§ 648.201 AMs and harvest controls.

* * * * *

- (a) * * *

(2) If NMFS determines that the GOM and/or GB incidental catch cap for

* * * * *

haddock in § 648.85(d) has been caught, a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), may not fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel

complies with the gear stowage provisions specified in § 648.23(b) while transiting the applicable AM Area. Upon determination that a haddock incidental catch cap has been reached, the haddock possession limit shall be reduced to 0 lb (0 kg) for any vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, or a vessel

issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

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