

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

RIN 0648–AY47

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Amendment 5**

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

**ACTION:** Announcement of availability of fishery management plan amendment; request for comments.

**SUMMARY:** NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP) (Amendment 5), incorporating the Final Environmental Impact Statement (FEIS) and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce and is requesting comments from the public.

**DATES:** Comments must be received on or before 5 p.m., local time, June 21, 2013.

**ADDRESSES:** The Council prepared a FEIS for Amendment 5 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 5, including the FEIS, the Regulatory Impact Review (RIR), and the IRFA, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The FEIS/RIR/IRFA is also accessible via the internet at <http://www.nero.nmfs.gov>.

You may submit comments on this document, identified by NOAA–NMFS–2013–0066, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov) / [#!docketDetail;D=NOAA-NMFS-2013-0066](http://#!docketDetail;D=NOAA-NMFS-2013-0066), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Herring Amendment 5 NOA.”

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

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

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

**SUPPLEMENTARY INFORMATION:****Background**

The goals of Amendment 5 are to: (1) Improve the collection of real-time, accurate catch information; (2) enhance the monitoring and sampling of catch at-sea; and (3) address bycatch issues through responsible management.

On May 8, 2008 (73 FR 26082), the Council published a notice of intent (NOI) to prepare an EIS for Amendment 4 to Atlantic Herring FMP to consider measures to: Improve long-term monitoring of catch (landings and bycatch) in the herring fishery, implement annual catch limits (ACLs) and accountability measures (AMs) consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and develop a sector allocation process or other limited access privilege program for the herring fishery. The Council subsequently conducted scoping meetings during May and June of 2008 to discuss and take comments on alternatives to these measures. After considering the complexity of the issues under consideration in Amendment 4, the Council voted on June 23, 2009, to split the action into two amendments to ensure the MSA requirements for complying with provisions for ACLs and AMs were met by 2011. The ACL and AM components moved forward in Amendment 4, all other measures formerly considered in Amendment 4 were to be considered in Amendment 5. A supplementary NOI was published on December 28, 2009, (74 FR 68577) announcing the split between the amendments, and that impacts

associated with alternatives considered in Amendment 5 would be analyzed in an EIS. At that time, measures considered under Amendment 5 included: Catch-monitoring program, measures to address river herring bycatch, midwater trawl access to groundfish closed areas, and measures to address interactions with the Atlantic mackerel fishery.

Following further development of Amendment 5, the Council conducted MSA public hearings in March 2012, National Environmental Policy Act public hearings at the beginning of June 2012, and following the public comment period on the draft EIS that ended on June 4, 2012, the Council adopted Amendment 5 on June 20, 2012. The Council submitted Amendment 5 to NOAA Fisheries Service (NMFS) for review on September 10, 2012.

Following a series of revisions, the Council submitted a revised version of Amendment 5 to NMFS on March 25, 2013. In Amendment 5, measures recommended by the Council would:

- Modify the herring transfer at-sea and offload definitions to better document the transfer of fish;
- Expand possession limit restrictions to all vessels working cooperatively, consistent with pair trawl requirements;
- Eliminate the vessel monitoring system (VMS) power-down provision for limited access herring vessels, consistent with VMS provisions for other fisheries;
- Establish an “At-Sea Herring Dealer” permit to better document the at-sea transfer and sale of herring;
- Establish an “Areas  $\frac{2}{3}$  Open Access Permit” to reduce the potential for the regulatory discarding of herring in the Atlantic mackerel fishery;
- Expand dealer reporting requirements;
- Allow vessels to enroll as herring carriers with either a VMS declaration or letter of authorization to increase operational flexibility;
- Expand pre-trip and pre-landing notification requirements, as well as adding a VMS gear declaration, to all limited access herring vessels to help facilitate monitoring;
- Reduce the advance notice requirement for the observer pre-trip notification from 72 hours to 48 hours;
- Expand vessel requirements related to at-sea observer sampling to help ensure safe sampling and improve data quality;
- Establish measures to minimize the discarding of catch before it has been made available to observers for sampling;

- Increase observer coverage on Category A and B vessels and require industry contributions of \$325 per day;

- Establish the ability to consider a river herring catch cap in a future framework to directly control river herring fishing mortality;

- Allow the joint Sustainable Fisheries Coalition/University of Massachusetts School for Marine Science and Technology/Massachusetts Department of Marine Fisheries bycatch avoidance program to investigate providing real-time, cost-effective information on river herring distribution and fishery encounters in River Herring Monitoring/Avoidance Areas; and

- Expand at-sea sampling of midwater trawl vessels fishing in groundfish closed areas.

Public comments are solicited on Amendment 5 and its incorporated documents through the end of the comment period stated in this notice of availability (NOA). Following NMFS's review of the amendment under the MSA, a rule proposing the implementation of measures in Amendment 5 is anticipated to be published in the **Federal Register** for public comment. Public comments must be received by the end of the comment period provided in this NOA of Amendment 5 to be considered in the approval/disapproval decision on the

amendment. All comments received by the end of the comment period on the NOA of Amendment 5, whether specifically directed to NOA or the proposed rule, will be considered in the approval/disapproval decision. Comments received after the end of the comment period for the NOA will not be considered in the approval/disapproval decision of Amendment 5.

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

Dated: April 17, 2013.

**Kara Meckley,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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