

*C. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14-FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**II. Background**

The August NPRM proposed amendments to the Agency's financial assistance programs resulting from the Fixing America's Surface Transportation (FAST) Act, including amendments based on the funding formula recommendations derived from the Motor Carrier Safety Assistance Program (MCSAP) Formula Working Group (working group). The NPRM proposed reorganizing the Agency's regulations to create a standalone subpart for the High Priority Program. It also proposed other programmatic changes to reduce redundancies, require the use of 3-year MCSAP commercial vehicle safety plans (CVSPs), and align the financial assistance programs with FMCSA's current enforcement and compliance programs.

The comment period for the NPRM was set at 45 days, and would end on October 7, 2019. FMCSA received a request to extend the comment period for an additional 45 days from the CVSA (available in the docket). CVSA stated that the original 45-day period did not allow enough time to prepare and approve comments on such a complicated and important issue.

In consideration of the CVSA request, FMCSA extends the public comment period until October 21, 2019.

Issued under authority delegated in 49 CFR 1.87.

Dated: October 1, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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**BILLING CODE 4910-EX-P**

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

[Docket No. 191001-0048]

RIN 0648-BI80

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 8**

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

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

**SUMMARY:** This rule proposes regulations to implement Amendment 8 to the Atlantic Herring Fishery Management Plan. The New England Fishery Management Council developed Amendment 8 to specify a long-term acceptable biological catch control rule for Atlantic herring and address localized depletion and user group conflict. This amendment would establish an acceptable biological catch control rule that accounts for herring's role in the ecosystem and prohibit midwater trawling in inshore Federal waters from the U.S./Canada border to the Rhode Island/Connecticut border. Amendment 8 is intended to support sustainable management of the herring resource and help ensure that herring is available to minimize possible detrimental biological impacts on predators of herring and associated socioeconomic impacts on other user groups.

**DATES:** Public comments must be received by November 25, 2019.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2019-0078, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal.
  1. Go to [www.regulations.gov/](http://www.regulations.gov/) #!docketDetail;D=NOAA-NMFS-2019-0078;
  2. Click the "Comment Now!" icon and complete the required fields; and
  3. Enter or attach your comments.
- **Mail:** Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule for Herring Amendment 8."

**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 us. 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. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of Amendment 8, including the Environmental Impact Statement, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EIS/RIR/IRFA) prepared in support of this action are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at: <http://www.nefmc.org>.

**FOR FURTHER INFORMATION CONTACT:**

Carrie Nordeen, Fishery Policy Analyst, phone: (978) 282-9272 or email: [Carrie.Nordeen@noaa.gov](mailto:Carrie.Nordeen@noaa.gov).

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

The goal of the Atlantic Herring Fishery Management Plan (FMP) is to manage the herring fishery at long-term sustainable levels and objectives of the FMP include providing for full utilization of the optimum yield (OY) and, to the extent practicable, controlled opportunities for participants in other New England and Mid-Atlantic fisheries. The Herring FMP describes OY as the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, taking into account the protection of marine ecosystems, including maintenance of a biomass that supports the ocean ecosystem, predator consumption of herring, and biologically sustainable human harvest. This includes recognition of the importance of herring as one of many forage species of fish, marine mammals, and birds in the Greater Atlantic Region. Consistent with these aims, the goals for Amendment 8 are to: (1) Account for the role of herring within the ecosystem, including its role as forage; (2) stabilize the fishery at a level designed to achieve OY; and (3) address localized depletion in inshore waters.

On February 26, 2015 (80 FR 10458), the New England Fishery Management Council (Council) published a notice of intent (NOI) to prepare an EIS for Amendment 8 to consider long-term harvest strategies for herring, including an acceptable biological catch (ABC) control rule that addressed the biological and ecological requirements of the herring resource. The importance of herring as a forage species was underscored by the Council's specified intent to consider a wide range of ABC control rule alternatives, including those that explicitly account for herring's role in the ecosystem. The Council held scoping meetings during March and April of 2015 to solicit comments on ABC control rule alternatives.

An ABC control rule is a formulaic approach for setting a harvest limit. For herring and other stocks with a defined overfishing limit (OFL), the ABC is reduced from the OFL by scientific uncertainty, such as uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, so that the OFL will not be exceeded. The ABC control rule is developed by the Council to reflect its risk tolerance for not exceeding the OFL and provides guidance to the Council's Scientific and Statistical Committee for recommending annual ABCs based on the best available scientific information about stock status. The specific parameters of an ABC control rule are: (1) Upper biomass parameter; (2) maximum fishing mortality ( $F$ ); and (3) lower biomass parameter. The values assigned to each of these parameters dictate the overall "shape" or function of the ABC control rule and determine whether  $F$  increases or decreases in response to the current estimate of stock biomass.

The Council developed alternatives for a herring ABC control rule using a Management Strategy Evaluation (MSE). MSE is a decision-making tool that uses computer modeling to compare the performance of alternatives (*i.e.*, management strategies) under various scenarios to achieve multiple, competing objectives. Because we do not have a complete understanding of the ocean ecosystem and all the sources of uncertainty, MSEs are useful to evaluate how alternatives perform under different environmental conditions. The Council held two public workshops to generate stakeholder input to help identify objectives for the MSE analysis. Input generated by the workshops was considered by the Council and, for the most part, adopted and included in Amendment 8. The MSE used three models, a herring model, a predator

model, and an economic model, to compare ABC control rule performance. The models simulated how well the ABC control rules achieved herring management objectives, such as biomass, yield, revenue, and predator considerations, under simulated environmental conditions related to herring growth, stock assessment bias, and productivity of herring. Results of the MSE informed the range of ABC control rule alternatives and impact analyses of those alternatives in Amendment 8.

On August 21, 2015 (80 FR 50825), the Council published a supplemental NOI announcing it was expanding the scope of Amendment 8 to consider localized depletion in inshore waters. The supplemental NOI defined localized depletion as harvesting more fish from an area than can be replaced within a given time period. It also explained the Council was seeking input from the interested public as to how to define, measure, and evaluate impacts, and minimize inshore, localized depletion in the herring fishery as part of Amendment 8. Public comment during the supplemental scoping made it clear that localized depletion concerns voiced by many stakeholders were not just related to the biological impacts of herring removals on the herring stock and on predators of herring. Public comment also indicated that impacts of localized depletion should be measured and evaluated relative to competing uses for the herring resource and potentially negative economic impacts on businesses that rely on predators of herring.

The Council's interest in the localized depletion of herring extends back to the early development of the Herring FMP. Despite a lack of quantitative evidence demonstrating localized depletion, Amendment 1 to the Herring FMP (72 FR 11252, March 12, 2007) prohibited midwater trawling for herring in Herring Management Area 1A from June through September as a proactive measure to prevent potential negative impacts on the stock, the fishery, and predators of herring resulting from over harvesting in Area 1A.

Ultimately, the Council's consideration of localized depletion in Amendment 8 included describing localized depletion as involving user group conflict and included both an evaluation of impacts of the user group conflict and consideration of competing interests for how herring should be used. The Council's concern with localized depletion and user group conflict is explained in this excerpt from the Council's April 2016 problem

statement: ". . . concerns with concentrated, intense commercial fishing of Atlantic herring in specific areas and at certain times that cause detrimental socioeconomic impacts on other user groups (commercial, recreational, ecotourism) who depend upon adequate local availability of Atlantic herring to support business and recreational interests both at sea and on shore." The range of localized depletion and user group conflict alternatives in Amendment 8 were developed to address potential localized depletion of herring to minimize possible detrimental biological impacts on predators of herring and associated socioeconomic impacts on other user groups.

A Notice of Availability (NOA) for Amendment 8 was published in the **Federal Register** on August 21, 2019 (84 FR 43573). The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows us to approve, partially approve, or disapprove measures recommended by the Council in an amendment based on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. The Council develops policy for its fisheries, and we defer to the Council on policy decisions unless those policies are inconsistent with the Magnuson-Stevens Act or other applicable law. As such, we are seeking comments on whether measures in Amendment 8 are consistent with the Herring FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. The comment period for the NOA ends on October 21, 2019. Comments submitted on the NOA and/or this proposed rule prior to October 21, 2019, will be considered in our decision to approve, partially approve, or disapprove Amendment 8. We will consider comments received by the end of the comment period for this proposed rule November 25, 2019 in our decision to implement measures proposed by the Council.

## Proposed Measures

This rule proposes a long-term ABC control rule for herring. Under the proposed control rule, when biomass is at or above 50 percent of the biomass associated with maximum sustainable yield ( $B_{MSY}$ ) or its proxy, ABC is the catch associated with a maximum fishing mortality ( $F$ ) of 80 percent of  $F_{MSY}$  or its proxy. When biomass falls below 50 percent of  $B_{MSY}$  or its proxy,  $F$  declines linearly to 0 at 10 percent of  $B_{MSY}$  or its proxy. The control rule would set ABC for a three-year period

but would allow ABC to vary year-to-year in response to projected changes in biomass. This rule proposes that the control rule could be revised via a framework adjustment if a quantitative assessment is not available, if projections are producing ABCs that are not justified or consistent with available information, or if the stock requires a rebuilding program.

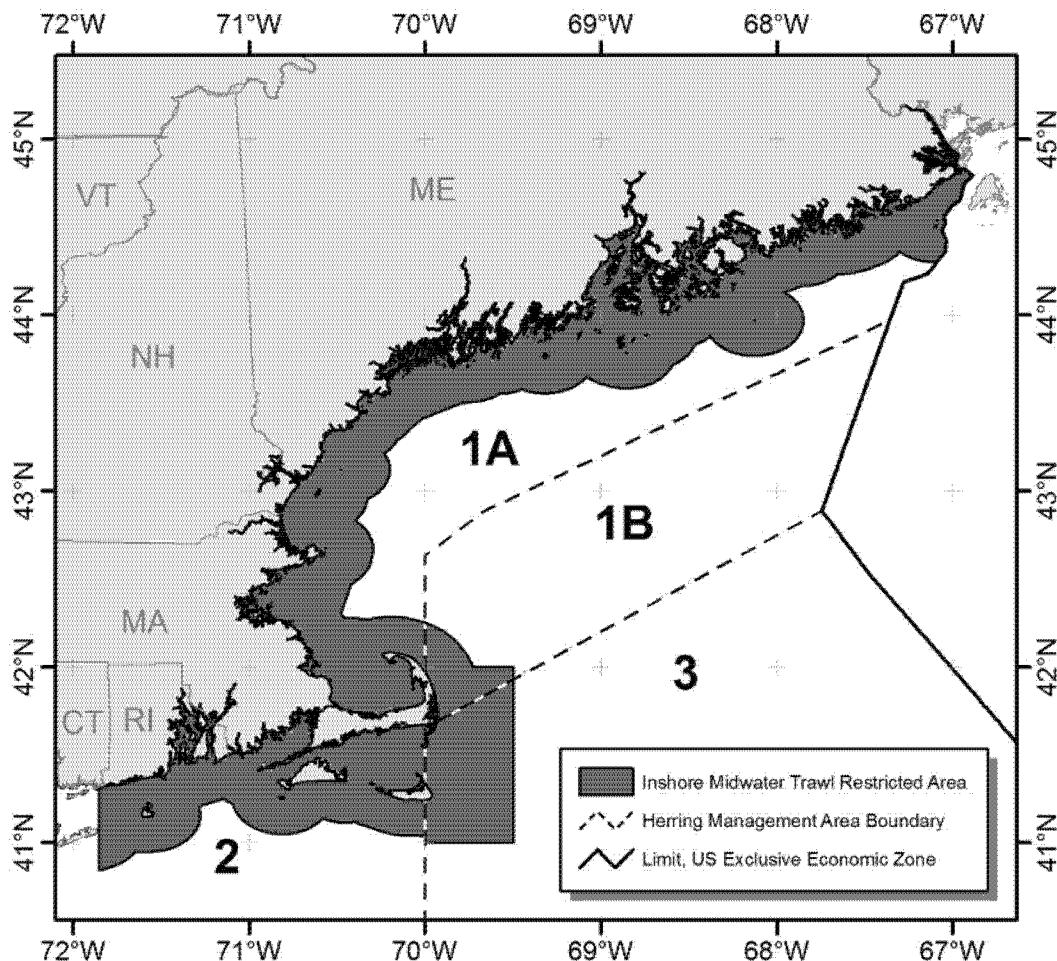
The proposed control rule is intended to explicitly account for herring as forage in the ecosystem by limiting F to 80 percent of  $F_{MSY}$  when biomass is high and setting it at zero when biomass is low. It is also intended to generate an ABC consistent with specific criteria identified by the Council, including low variation in yield, low probability of the stock becoming overfished, low probability of a fishery shutdown, and catch limits set at a relatively high proportion of MSY. The Council anticipates that short-term negative economic impacts on participants in the herring or lobster fisheries, resulting from a reduced herring harvest in response to low herring biomass, may become a long-term economic benefit

for industry participants, especially if the proposed control rule results in low variation in yield, low probability of a fishery shutdown, and low probability of overfishing. Relative to other control rules considered by the Council, the proposed control rule is designed to more effectively balance the goal and objectives of the Herring FMP, including managing the fishery at long-term sustainable levels, taking forage for predators into account to support the ocean ecosystem, and providing a biologically sustainable harvest as a source of revenue for fishing communities and bait for the lobster fishery.

Shortly before the Council took final action on Amendment 8, an updated stock assessment concluded that herring biomass is low, and the probability of overfishing and the stock becoming overfished is high. While not directly applicable to a long-term harvest policy, the Council noted that under herring's current condition of low biomass, setting catch more conservatively than status quo may increase the likelihood of stock growth. In turn, this would

have positive impacts on the herring fishery, predators, and predator fisheries.

This rule also proposes prohibiting the use of midwater trawl gear inshore of 12 nautical miles (22 km) from the U.S./Canada border to the Rhode Island/Connecticut border and inshore of 20 nautical miles (37 km) off the east coast of Cape Cod. Specifically, federally permitted vessels would be prohibited from using, deploying, or fishing with midwater trawl gear within the inshore midwater trawl restricted area located shoreward of the 12-nautical mile (22-km) territorial sea boundary from Canada to Connecticut and within thirty-minute squares 114 and 99 off Cape Cod (Figure 1). Midwater trawl vessels would be able to transit the inshore midwater trawl restricted gear area provided gear was stowed and not available for immediate use. The proposed measure would be in addition to the existing prohibition on midwater trawling for herring in Area 1A during June 1 through September 30.

**Figure 1. Proposed Inshore Midwater Trawl Restricted Area**

The Council recommended the proposed inshore midwater trawl restricted area to minimize local depletion and user group conflict when midwater trawl vessels harvesting herring overlap with other user groups (*i.e.*, commercial fisheries, recreational fisheries, ecotourism) that rely on herring as forage and provide inshore conservation benefits. The Council focused on midwater trawl gear to mitigate potential negative socioeconomic impacts on other user groups in response to short duration, high volume herring removals by midwater trawl vessels that are relatively more mobile and capable of fishing in offshore areas than vessels using other gear types. Information to quantify the impact of midwater trawling on other user groups is scarce, so the amendment analyzed the degree of overlap between midwater trawl vessels and other user groups. The

proposed measure is intended to incorporate areas with a high degree of overlap between midwater trawl vessels and other user groups throughout the year. Specifically, it incorporates the overlap with predator fisheries in the Gulf of Maine and southern New England throughout the year, as well as the overlap with ecotourism and the tuna fishery in Area 1A during the fall. While overlap with the midwater trawl vessels does not necessarily translate into negative biological impacts on predators, less overlap may reduce potential user conflicts, provided midwater trawl effort does not shift into other areas and generate additional overlap.

The Herring FMP specifies that herring research set-aside (RSA) can equal up to three percent of the sub-annual catch limit for a herring management area. This rule proposes that RSA compensation fishing using

midwater trawl gear would be permitted within the inshore midwater trawl restricted area. The Council recommended permitting RSA compensation fishing within the inshore midwater trawl restricted area to help ensure the RSA would be harvested and those funds would be available to support the projects awarded RSA. Vessels engaged in herring RSA compensation fishing typically operate as authorized by an exempted fishing permit (EFP) so they can request exemptions from certain regulations that would otherwise restrict herring harvest. While vessels would be permitted to use midwater trawl gear within the inshore midwater trawl restricted area while RSA compensation fishing, it does not mean that compensations trips would be without restrictions. Terms and conditions of the EFP must be consistent with the Magnuson-Stevens Act, other applicable

law, and Herring FMP. Additionally, we would consider whether additional terms and conditions would be required for EFPs to ensure RSA compensation trips do not exacerbate the overlap between midwater trawl vessels and other user groups.

This rule proposes that the inshore midwater trawl restricted area or new closures to address localized depletion and/or user group conflict could be modified or implemented via framework adjustment. The list of framework provisions at § 648.206 already includes closed areas; this amendment would add the inshore midwater trawl restricted area to that list.

The Council's recommendation to prohibit midwater trawling in inshore areas is an allocation decision intended to balance the needs of user groups and provide conservation benefits.

Consistent with objectives in the Herring FMP, the proposed measure is intended to facilitate an efficient, fair, and equitable accommodation of social, economic, and ecological factors associated with achieving OY, in part by providing, to the extent practicable, controlled opportunities for participants in other New England and Mid-Atlantic fisheries. Because midwater trawl vessels historically harvested a larger percentage of herring than other gear types and are able to fish offshore, the Council recommended prohibiting them from inshore waters to help ensure herring was available inshore for other user groups and predators of herring.

The proposed inshore midwater trawl restricted area is designed to be reasonably large enough to address the overlap between midwater trawl vessels and other user groups and, ultimately, user group conflict in inshore waters. This proposed measure is likely to negatively impact the midwater trawl fleet, with potentially increased trip costs and lower annual catches, but the Council believes that, on balance, the benefits to other user groups, such as potentially reduced trips costs, higher annual catches, and improved safety, outweigh the costs to midwater trawl vessels. The proposed measure may also have biological benefits if moving midwater trawl vessels offshore minimizes catch of river herring and shad, reduces fishing pressure on the inshore component of the herring stock, and helps ensure herring are available to predators. Herring is currently assessed as one stock, but it likely has stock components. Reducing fishing pressure inshore would benefit an inshore stock component. Analyses in Amendment 8 estimate that in recent years approximately 30 percent of the midwater trawl fleet's annualized

revenue came from within the proposed inshore midwater trawl restricted area. Negative economic impacts on the midwater trawl fleet may be mitigated if the fleet is able to offset lost revenue from inshore areas with increased revenue from offshore areas. Herring catch limits are currently low, so the fishery has the capacity to harvest the OY. Recent midwater trawl landings (2007–2015) offshore of the proposed midwater trawl restricted area (36,903 mt) are much higher than the Council-recommended OY for 2020 and 2021 (11,621 mt). In the longer-term, the fishery will likely adapt to be able harvest an increased OY, provided vessels are able to locate herring.

#### **Proposed Clarifications**

We propose the following revision and clarifications to § 648.202(a) under the authority of section 305(d) to the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to carry out a FMP or the Magnuson-Stevens Act.

First, this rule proposes revising the title from "Purse Seine/Fixed Gear Only Area" to "Midwater Trawl Restricted Area." Bottom trawl gear, in addition to purse seine and fixed gear, is permitted in the referenced area; only midwater trawl gear is prohibited in the area. The proposed revision is a more accurate description of the referenced area and is necessary to clarify the intent of the regulation.

Second, this rule proposes clarifying that the regulation applies to all federally permitted vessels fishing for herring. The regulation currently applies midwater trawl gear restrictions to vessels fishing for herring. This clarification is necessary to specify that restrictions on fishing for herring with midwater trawl gear only apply to federally permitted vessels and do not apply to vessels with only a state herring permit fishing exclusively in state waters.

Third, the rule proposes clarifying the conditions under which midwater trawl vessels may transit the "Midwater Trawl Restricted Area" described above. Current regulations specify that midwater trawl vessels with a limited access herring permit may transit Area 1A during June through September with midwater trawl gear on board, provided the gear is stowed and not available for immediate use. This rule proposes clarifying that any federally permitted herring vessel may transit Area 1A during June through September, provided midwater trawl gear is stowed and not available for immediate use. The unnecessary addition of a limited

access permit requirement to transit Area 1A is likely a byproduct of the impact analysis identifying the number of limited access vessels that would be affected by the prohibition of midwater trawling in Area 1A implemented in Amendment 1 to the Herring FMP.

Lastly, we propose a revision to § 648.200(b)(3) under the authority of section 305(d) to the Magnuson-Stevens Act. This revision would change the reference from "at" § 648.201(a) to "in" § 648.201(a) to be consistent with other regulatory references within § 648.200.

#### **Classification**

Pursuant to section 304(a)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent the Magnuson-Stevens Act and other applicable law. In making the final determination, we will consider the data, views, and comments received during the public comment period.

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

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule would have on small entities, including small businesses, and also determines ways to minimize these impacts.

The IRFA includes this section of the preamble to this rule and analyses contained in Amendment 8 and its accompanying EIS/RIR/IRFA. A copy of the full analysis is available from the Council (see **ADDRESSEES**). A summary of the IRFA follows.

#### *Description of the Reason Why Action by the Agency Is Being Considered and Statement of the Objective of, and Legal Basis for, This Proposed Rule*

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

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

Effective July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing

industry for RFA compliance purposes only (80 FR 81194, December 29, 2015). A commercial fishing business is classified as a small business if it is independently owned and operated, is not dominant in its field of operation, and has combined annual receipts not in excess of \$11 million.

This action would affect all permitted herring vessels; therefore, the direct regulated entity is a firm that owns at least one herring permit. There are many firms that hold an open-access (Category D) herring permit. These firms harvest only a small fraction of herring; furthermore, they are minimally affected by the regulations.

As of June 1, 2018, there were 862 firms (852 small) that held at least one

herring permit. There were 126 (123 small) active firms that held at least one herring permit. There were 101 (94 small) firms that held at least one limited access (Categories A, B, C) herring permit or a Category E open access herring permit. There were 53 (50 small) firms that held a limited access or Category E herring permit and were active in the herring fishery. Table 1 characterizes “gross receipts” and “herring receipts” for firms that held a limited access or Category E open access herring permit. Table 2 characterizes “gross receipts” and “herring receipts” for firms that held a limited access or Category E open access herring permit and were active in the herring fishery. In both tables, the small entities are

further characterized by gear type to facilitate comparisons. There are fewer than three large entities that use midwater trawl gear, so the description of the large entities is not disaggregated to gear type to preserve confidentiality under the Magnuson-Stevens Act. Table 3 characterizes “gross receipts” and “herring receipts” for firms that held a herring permit and Table 4 characterizes “gross receipts” and “herring receipts” for firms that held a herring permit and were active in the herring fishery. Tables 3 and 4 include firms with Category D open access herring permits that would be minimally impacted by this action.

**TABLE 1—AVERAGE RECEIPTS FROM FIRMS WITH LIMITED ACCESS AND CATEGORY E OPEN ACCESS HERRING PERMITS IN 2017**

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large .....	7	All .....	\$20,396,374	\$492,598
Small .....	9	Midwater Trawl .....	2,499,646	1,241,225
Small .....	85	Non-Midwater Trawl .....	1,299,110	137,954

Source: NMFS.

**TABLE 2—AVERAGE RECEIPTS FROM FIRMS WITH LIMITED ACCESS AND CATEGORY E OPEN ACCESS HERRING PERMITS THAT WERE ACTIVE IN THE HERRING FISHERY IN 2017**

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large .....	3	All .....	\$16,567,731	\$1,149,395
Small .....	9	Midwater Trawl .....	2,499,646	1,241,225
Small .....	41	Non-Midwater Trawl .....	1,276,255	286,002

Source: NMFS.

**TABLE 3—AVERAGE RECEIPTS FROM ALL FIRMS WITH A HERRING PERMIT IN 2017**

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large .....	10	All .....	\$19,873,801	\$344,818
Small .....	9	Midwater Trawl .....	2,499,646	1,241,225
Small .....	843	Non-Midwater Trawl .....	639,591	14,002

Source: NMFS.

**TABLE 4—AVERAGE RECEIPTS FROM ALL FIRMS WITH A HERRING PERMIT THAT WERE ACTIVE IN THE HERRING FISHERY IN 2017**

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large .....	3	All .....	\$16,567,731	\$1,149,395
Small .....	9	Midwater Trawl .....	2,499,646	1,241,225
Small .....	114	Non-Midwater Trawl .....	681,943	103,540

Source: NMFS.

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

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

*Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule*

This action does not duplicate, overlap, or conflict with any other Federal rules.

*Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities*

When evaluating ABC control rule alternatives, Alternative 1 is the non-preferred alternative with potential to lessen economic impacts on small entities compared to the proposed measure. Alternative 1 is less conservative than the proposed ABC control rule and represents the interim control rule that was used to set herring ABC for 2016–2018. Analyses in Amendment 8 suggest the difference between the average ABCs under Alternative 1 (24,553 mt) and the proposed ABC control rule (22,685 mt) in the short-term (2019–2021) is less than 2,000 mt. Long-term differences between the average ABCs resulting from Alternative 1 and the proposed ABC control rule are expected to be minimal. Relative to Amendment 8's goal for an ABC control rule, F is lower under the proposed ABC control rule (80 percent of  $F_{MSY}$ ) than under Alternative 1 (90 percent of  $F_{MSY}$ ), therefore, the proposed ABC control rule likely better accounts for herring's role as forage in the ecosystem by limiting fishing than Alternative 1.

When evaluating localized depletion and user group conflict alternatives, several of the non-preferred alternatives have the potential to lessen economic impacts on small entities compared to the proposed measure. The proposed measure would prohibit federally permitted vessels from fishing inshore with midwater trawl gear. Under the proposed measure, analyses in Amendment 8 estimate that herring revenue will decline by about 13 percent for small firms that use midwater trawl gear compared to the no action alternative. Additionally, under the proposed measure, small firms that use purse seine or bottom trawl gear may have revenue increases of 29 percent compared to the no action alternative. Negative economic impacts

on midwater trawl vessels may be mitigated if vessels are able to catch a greater percentage of fish offshore or if they switch to purse seine or bottom trawl gear and continue to fish inshore. Relative to the goals in Amendment 8, the proposed action is expected to minimize potential localized depletion and user group conflict, by reducing the overlap between midwater trawl vessels and other user groups, better than the non-preferred alternatives that would minimize economic impacts on midwater trawl vessels.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 1, 2019.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

- 1. The authority citation for part 648 continues to read as follows:

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

- 2. In § 648.14, add paragraphs (r)(1)(vi)(H) and (I) to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(r) \* \* \*

(1) \* \* \*

(vi) \* \* \*

(H) Use, deploy, or fish with midwater trawl gear within the inshore midwater trawl restricted area as defined in § 648.202(a)(2), unless the vessel is on a declared research set-aside trip and operating as authorized by an exempted fishing permit or the vessel has not been issued a valid, Federal permit under this part and fishes exclusively in state waters.

(I) Transit the inshore midwater trawl restricted area, defined in § 648.202(a)(2), with midwater trawl gear onboard unless midwater trawl gear is stowed and not available for immediate use, as defined in § 648.2 or the vessel has not been issued a valid, Federal permit under this part and fishes exclusively in state waters.

- \* \* \* \* \*
- 3. In § 648.200, revise paragraphs (b)(1) through (3) to read as follows:

**§ 648.200 Specifications.**

\* \* \* \* \*

(b) \* \* \*

(1) OFL must be equal to catch resulting from applying the maximum

fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is the fishing rate supporting maximum sustainable yield ( $F_{MSY}$  or proxy). Catch that exceeds this amount would result in overfishing.

(2) ABC must be less than the OFL. The Council's Scientific and Statistical Committee (SSC) shall recommend ABC to the Council by applying the ABC control rule in § 648.200 and considering scientific uncertainty. Scientific uncertainty, including, but not limited to, uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, shall be considered when setting ABC.

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

- \* \* \* \* \*
- 4. In § 648.202, revise paragraph (a) to read as follows:

**§ 648.202 Season and area restrictions.**

(a) *Midwater Trawl Restricted Areas*—  
(1) *Area 1A.* Federally permitted vessels fishing for Atlantic herring may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A vessel with midwater trawl gear on board may transit Area 1A from June 1–September 30, provided such midwater trawl gear is stowed and not available for immediate use as defined in § 648.2. Vessels may use any authorized gear type to harvest herring in Area 1A from October 1–May 31.

(2) *Inshore.* Federally permitted vessels may not use, deploy, or fish with midwater trawl gear within the inshore midwater trawl restricted area. A federally permitted vessel with midwater trawl gear on board may transit the inshore midwater trawl restricted area, provided such midwater trawl gear is stowed and not available for immediate use as defined in § 648.2. Vessels on a declared research set-aside trip are permitted to use, deploy, or fish with midwater trawl gear within the inshore midwater trawl restricted areas provided the vessel is operating as authorized by an exempted fishing permit. The Inshore Midwater Trawl Restricted Area includes all state and Federal waters between the U.S.

coastline and the following points,

connected in the order listed by straight lines, unless otherwise noted:

TABLE 1 TO PARAGRAPH (A)(2)

Point	Latitude	Longitude	Note
IMT1 .....	44° 17.986' N .....	67° 5.503' W .....	(1)(2)
IMT2 .....	42° 00.00' N .....	69° 43.474' W .....	(2)(3)
IMT3 .....	42° 00.00' N .....	69° 30.00' W .....	.....
IMT4 .....	41° 00.00' N .....	69° 30.00' W .....	.....
IMT5 .....	41° 00.00' N .....	70° 00.00' W .....	.....
IMT6 .....	41° 2.339' N .....	70° 00.00' W .....	(4)(5)
IMT7 .....	40° 50.637' N .....	71° 51.00' W .....	(5)(6)
IMT8 .....	41° 18.503' N .....	71° 51.00' W .....	(7)

<sup>1</sup> Point IMT1 represents the intersection of the U.S./Canada Maritime Boundary and the 12 nautical mile (nmi) Territorial Sea boundary.

<sup>2</sup> From Point IMT1 to Point IMT2 following the 12 nmi Territorial Sea boundary.

<sup>3</sup> Point IMT2 represents the intersection of the 12 nmi Territorial Sea boundary and 42°00' N lat.

<sup>4</sup> Point IMT6 represents the intersection of 70°00' W long. and the 12 nmi Territorial Sea boundary.

<sup>5</sup> From Point IMT6 to Point IMT7 following the 12 nmi Territorial Sea Boundary.

<sup>6</sup> Point IMT7 represents the intersection of 71°51' W long. and the 12 nmi Territorial Sea boundary.

<sup>7</sup> Point IMT8 represents the intersection of 71°51' W long. and the coastline of Watch Hill, RI.

\* \* \* \* \*

- 5. In § 648.206, revise paragraphs (b)(3), (37), and (38) and add paragraph (b)(39) to read as follows:

**§ 648.206 Framework provisions.**

\* \* \* \* \*

(b) \* \* \*

(3) Closed areas, including midwater trawl restricted areas, other than spawning closures;

\* \* \* \* \*

(37) River herring and shad Catch Cap Areas and Catch Cap Closure Areas;

(38) Modifications to the ABC control rule in § 648.200, including, but not limited to, control rule parameters, if a quantitative stock assessment is not available, if the projections are

producing ABCs that are not justified or consistent with available information, or if the stock requires a rebuilding program; and

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

\* \* \* \* \*

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