

# Atlantic States Marine Fisheries Commission

## Atlantic Herring Management Board

*February 2, 2021*

*4:00 – 5:15 p.m.*

*Webinar*

### Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary.

- |   |           |
|---|-----------|
| 1. Welcome/Call to Order ( <i>C. Patterson</i> )  | 4:00 p.m. |
| 2. Board Consent  | 4:00 p.m. |
| • Approval of Agenda  |           |
| • Approval of Proceedings from October 2020   |           |
| 3. Public Comment   | 4:05 p.m. |
| 4. Set Sub-Annual Catch Limit for the 2021-2023 Fishing Years<br>( <i>K. Rootes-Murdy</i> ) <b>Final Action</b>   | 4:15 p.m. |
| 5. Update on Amendment 8 and Consider Impacts to Area 1A Fishery<br>( <i>K. Rootes-Murdy</i> )                    | 4:30 p.m. |
| 6. Update on New England Fishery Management Council and Commission<br>Coordination Discussions ( <i>R. Beal</i> ) | 5:00 p.m. |
| 7. Other Business/Adjourn   | 5:15 p.m. |

# MEETING OVERVIEW

## Atlantic Herring Management Board

Tuesday, February 2, 2021

4:00 p.m. – 5:15 p.m.

Webinar

Chair: Cheri Patterson (NH) Assumed Chairmanship: 02/20	Technical Committee Chair: Renee Zobel (NH)	Law Enforcement Committee Representative: Delayne Brown (NH)
Vice Chair: Megan Ware (ME)	Advisory Panel Chair: Jeff Kaelin (NJ)	Previous Board Meeting: October 19, 2020
Voting Members: ME, NH, MA, RI, CT, NY, NJ, NMFS, USFWS (9 votes)		

### 2. Board Consent

- Approval of Agenda
- Approval of Proceedings from October 2020

**3. Public Comment** – At the beginning of the meeting public comment will be taken on items not on the agenda. Individuals that wish to speak at this time must sign-in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Board Chair may determine that additional public comment will not provide additional information. In this circumstance the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Board Chair may allow limited opportunity for comment. The Board Chair has the discretion to limit the number of speakers and/or the length of each comment.

### 4. Set Sub-Annual Catch Limit for the 2021-2023 Fishing Years (4:15-4:30 p.m.) Final Action

#### Background

- In October the Board set seasonal allocations for the 2020 Area 1A fishery but the sub-ACL specifications were not available at the time. The New England Fishery Management Council (Council) recommended specifications for 2021-2023 through Framework 8 to NOAA Fisheries in September 2020. **(Briefing Materials)**
- NOAA Fisheries is still reviewing Framework 8, therefore a proposed rule on 2021-2023 sub-ACL specifications has not been published yet. A final rule is expected to be published after the Board Meeting.

#### Presentations

- Overview of the 2021-2023 sub-ACL specifications by K. Rootes-Murdy

#### Board actions for consideration at this meeting

- Set the 2021-2023 sub-ACL specifications via Board motion, pending release of a proposed rule by NOAA Fisheries

## **5. Update on Amendment 8 and Consider Impacts to Area 1A Fishery (4:30-5:00 p.m.)**

### **Background**

- Amendment 8 was initiated by the Council in 2014. The Amendment specifies changes to Atlantic herring management including the establishment of a long-term acceptable biological catch control rule and the prohibition of midwater trawl gear inshore of 12-nautical mile from Canada to Connecticut and inshore of 20 nautical miles off the east coast of Cape Cod.
- NOAA Fisheries recently published a final rule on the Amendment, with an effective date of February 10, 2021 (**Briefing Materials**)

### **Presentations**

- Update on Amendment 8 and Potential Impacts to Area 1A Fishery by K. Rootes-Murdy

## **6. Update on New England Fishery Management Council and Commission Coordination Discussions (5:00-5:15 p.m.)**

### **Background**

- Concerns have been raised in recent years that management alternatives considered by the Commission may have been inconsistent with the federal Atlantic Herring FMP and Council comments on specific measures may not be given appropriate consideration by the Commission.
- A technical work group of Commission Plan Review Team and Council Plan Development Team members, co-chaired by the Commission Herring Board and Council Herring Committee chairs, met in 2020 to discuss a proposed list of shared management responsibilities for review by Leadership.

### **Presentations**

- Update by R. Beal

## **7. Other Business/Adjourn**

## Atlantic Herring Technical Committee Task List

**Activity Level: Medium**

**Committee Overlap Score: Medium**

### Committee Task List

While there are no Board tasks for the TC at present, there are several annual activities in which TC members participate, both through the Commission and NEFMC

- Participation on ASMFC PDT
- Participation on NEFMC PDT (currently working on Framework 7)
- Summer/fall collection of spawning samples per the spawning closure protocol
- Annual state compliance reports are due February 1

### TC Members

Renee Zobel (NHFG – Chair), Kurt Gottschall (CT DMF), Dr. Matt Cieri (ME DMR), Micah Dean (MA DMF), Corinne Truesdale (RI DFW), Deirdre Boelke (NEMFC), Jonathan Deroba (NOAA NEFSC), Carrie Nordeen (NOAA)

**DRAFT PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
ATLANTIC HERRING MANAGEMENT BOARD**

**Webinar  
October 19, 2020**

These minutes are draft and subject to approval by the Atlantic Herring Management Board.  
The Board will review the minutes during its next meeting.

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**INDEX OF MOTIONS**

1. **Move to approve agenda** by Consent (Page 1).
2. **Move to approve proceedings of August 5, 2020** by Consent (Page 1).
3. **Move to allocate the 2021 Area 1A Sub-ACL seasonally with 72.8 percent available from June through September, and 27.2 percent allocated from October through December. The fishery will close when 92 percent of the seasonal period's quota has been projected to be harvested, and underages from June through September shall be rolled into the October through December period** (Page 3). Motion by Megan Ware; second by Ray Kane. Motion carried (Page 4).
4. **Motion to adjourn** by Consent (Page 5).

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## ATTENDANCE

### Board Members

Megan Ware, ME, proxy for P. Keliher (AA)	Eric Reid, RI, proxy for Sen. Sosnowski (LA)
Sen. David Miramant, ME (LA)	Matt Gates, CT, proxy for J. Davis (AA)
Cheri Patterson, NH (AA), Chair	Bill Hyatt, CT (GA)
G. Ritchie White, NH (GA)	Jim Gilmore, NY (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Emerson Hasbrouck, NY (GA)
Dan McKiernan, MA (AA)	John McMurray, NY, proxy for Sen. Kaminsky (LA)
Raymond Kane, MA (GA)	Joe Cimino, NJ (AA)
Sarah Ferrara, MA, proxy for Rep. Peake (LA)	Tom Fote, NJ (GA)
Conor McManus, RI, proxy for J. McNamee (AA)	Adam Nowalsky, NJ, proxy for Asm. Houghtaling (LA)
David Borden, RI (GA)	Allison Murphy, NMFS

**(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)**

### Ex-Officio Members

Renee Zobel, Technical Committee Chair	Delayne Brown, Law Enforcement Representative
Jeff Kaelin, Advisory Panel Chair	

### Staff

Robert Beal	Jeff Kipp
Toni Kerns	Laura Leach
Maya Drzewicki	Savannah Lewis
Kristen Anstead	Sarah Murray
Max Appelman	Caitlin Starks
Dustin Colson Leaning	Deke Tompkins
Chris Jacobs	Geoff White

### Guests

Pat Augustine, Coram, NY	Aubrey Ellertson, CFR Foundation
Michael Auriemma, NJ DEP	Marianne Ferguson, NOAA
Richard Balouskus, RI DEM	Cynthia Ferrio, NOAA
Peter Benoit, Ofc. of Sen. King, ME	Rick Frenzel, BlackTree Inc
Dave Bethoney, U MASS	Emily Gilbert, NOAA
Deidre Boelke, NEFMC	Willy Goldsmith, SGA
Jeff Brust, NJ DEP	Zoe Goozner, Pew Trusts
Beth Casoni, MA Lobstermen Assn.	Kurt Gottschall, CT DMF
Mike Celestino, NJ DEP	Melanie Griffin
Benson Chiles, Chiles Consulting	Matthew Heyl, NJ DEP
Matt Cieri, ME DMR	Wilson Laney
Heather Corbett, NJ DEP	Chip Lynch, NOAA
Kathy Cyr, USCG	John Maniscalco, NYS DEC
Jessica Daher, NJ DEP	Matthew Rogers, VMRC

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**Guests (Continued)**

Nichola Meserve, MA DMF  
Brandon Muffley, MAFMC  
Allison Murphy, NOAA  
Derek Orner, NOAA  
Nick Popoff, FL FSW  
Brandon Raguz, NOAA  
Brad Schondelmeier, MA DMF  
Tara Scott, NOAA  
Melissa Smith, ME DMR

Stephanie Sykes, Cape Cod Fishermen  
Corinne Truesdale, RI DEM  
Beth Versak, MD DNR  
Mike Waine, ASA  
Ashley Weston, NOAA  
Kate Wilke, TNC  
Chris Wright, NOAA  
Erik Zlokovitz, MD DNR

The Atlantic Herring Management Board of the Atlantic States Marine Fisheries Commission convened via webinar; Monday, October 19, 2020, and was called to order at 9:00 a.m. by Chair Cheri Patterson.

#### **CALL TO ORDER**

CHAIR CHERI PATTERSON: Well good morning, and welcome to the Atlantic Herring Management Board webinar. I'm Cheri Patterson, the Chairperson, and I would like to call the meeting to order at this point. I hope everybody is doing well and hanging in there. We won't be conducting a roll call.

Toni has already essentially accounted for people to be on the Board, and whether we have a quorum or not, so we will not be conducting that roll call process.

#### **APPROVAL OF AGENDA**

CHAIR PATTERSON: I would like to move forward with the Board's consent to approve the agenda. Are there any objections or edits to approving the agenda from the Board members? If so, please raise your hand. Whose hand is raised?

MS. TONI KERNS: David Miramant.

CHAIR PATTERSON: David, go ahead.

SENATOR DAVID MIRAMANT: In error, never mind.

CHAIR PATTERSON: Okay, thank you. Seeing no hands raised, then the agenda is approved.

#### **APPROVAL OF PROCEEDINGS**

CHAIR PATTERSON: I would like to move forward with approving the proceedings, the August 2020 meeting. Is there any edits or changes to the proceedings? If so, please raise your hand.

MS. KERNS: There are no hands raised.

CHAIR PATTERSON: The proceedings are approved by consent.

#### **PUBLIC COMMENT**

CHAIR PATTERSON: Is there any public comment?

MS. KERNS: I don't see any hands raised, Cheri.

#### **SET 2021 FISHERIES SPECIFICATIONS**

CHAIR PATTERSON: Let's move forward with the 2021 Fisheries Specifications. We will be looking at setting the next quota period for Area 1A for next year. That will be our final action for this, and we will be getting an update on the Fisheries Specifications from Max. Go ahead, Max.

MR. MAX APPELMAN: You should see the presentation up on the screen. Thank you again, Madam Chair, and good morning everyone. I have two sets of slides. The first is just to review the 2021-2023 Specs Package, and then another set of slides to review the decisions before the Board today regarding Area 1A in 2021.

First for specifications, they were again done through a framework action, Framework 8, which was approved by the Council late last month. A press release from the Council was included in your briefing materials, and in there are specifications for 2021 to 2023. That framework was submitted to NOAA Fisheries for a review, but a final rule has not been issued yet.

As far as catch limits, the framework proposes a lower catch limit for Area 1A. The Sub-ACL for 2021 is 1,391 metric tons, and then for 2022 and 2023 at 1,184 metric tons. Those catch limits were informed by results of the 2020 management track assessment, which the Board reviewed last August, and projections from that as well as recommendations from the Councils SSC, Advisory Panel, and of course the Herring Committee.

These catch limits are also informed by the ABC Control Rule, which is proposed in Amendment 8. It's a pretty significant decrease relative to 2020, which was already a low catch limit than the fishery is used

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to seeing. Of note the initial package, the initial projections showed an increase in the ABC for 2023, but the SSC recommended maintaining the 2022 ABC into 2023, due to scientific uncertainty primarily around the recruitment estimates in the projections.

The results of the assessment continue to show low levels of recruitment in recent years. This recommendation is in line with previous SSC recommendations in the past. A few other key specifications from Framework 8, the management uncertainty buffer was set similarly to how it's been set in the past based on 10-year average of Canadian catches. The border transfer was set at 0 metric tons.

Typically, the Council allocates a small percentage of the ACL for at-sea transfers from U.S. vessels to Canadian vessels, but this activity has not occurred much in recent years. That was set at 0 metric tons to provide as much opportunity to the fishery. The RSA in 2022 and 2023 was set at 0 percent. Again, typically there is a 3 percent set aside for research.

However, it was discussed that at these very low catch limits 3 percent isn't really sufficient to support research. It was in the best interest to hold that set aside for the fishery. However, it was set at 3 percent for 2021, because research was already awarded this year, and some of that work is expected to wrap up in 2021, so maintaining that opportunity.

As far as the carryover, it was set at 5 percent. Typically, we see 10 percent rollover, and this was sort of viewed as a balance between providing more fishing opportunity for the fishery, while also maintaining protection for the resource during these years of a low biomass and low catch limits.

Then the last bullet under here is adjustments to the incidental catch limit for herring in Areas 2 and 3, to help harvesters fully utilize the mackerel quota. Notice that is for Areas 2 and 3. These decisions did not impact the catch

limits for the incidental possession limits for herring in Area 1A. Just letting folks know about the decisions there. You can see more details about that in the briefing materials. For the decisions around the 2023 specifications were sort of viewed as a placeholder. There is a management track assessment scheduled for 2022, and so it is likely that results of that management track would inform 2023 and forward, so it's likely that those specifications could change.

Just as a reminder that the implementation date for this framework is anticipated for January 1 of 2021. Again, this specs package in Framework 8 was approved by the Council late last month. It's been passed on to NOAA Fisheries for final review, but a final rule has not been issued yet. Madam Chair, so I thought this would be a good place to just stop if there are any questions from the Board on Framework 8. I do have another set of slides to review today's decisions for Area 1A in 2021, but if there are any questions on Framework 8, I am happy to take those now.

CHAIR PATTERSON: Thank you, Max. Board members, do you have any questions for Max, please raise your hand.

MS. KERNS: I don't see any hands raised, Cheri.

CHAIR PATTERSON: Okay Max, go ahead on to your next set of slides then, thank you.

MR. APPELMAN: Now we're talking about the decision points today. In a typical year at this time there would be two decision points available to the Board, a focus for the Board. The first would be to approve the specifications as recommended by the Council, and then the second one would be to determine the period allocation for the upcoming fishing season, whether it be seasonal, trimesters or bimonthly, with some qualifications as to when the periods would close, and how underages would be handled.

However, similar to last year and I think the year before that as well, at this time the specifications package has not been formally approved by NOAA. The Board waited for Final Rule from NOAA Fisheries

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Draft Proceedings of the Atlantic Herring Management Board  
October 2020

before setting specifications for the upcoming year. Of course, the Board could set them today as approved by the Council, but there would be a general understanding that those numbers could change, and that would certainly have to be addressed later.

In the past, last year and the years before, the Board has waited until February, once a final rule has been released, before setting specs. With that aside, the Board still needs to set a quota period for next year, and so that is the focus of today's decision. As a reminder, the quota periods are outlined in Amendment 3.

The Board can consider distributing the Area 1A Sub-ACL using bimonthly periods, using trimesters, or the seasonal quota approach. The Board can also decide whether quota from January 1 through May will be allocated to later in the fishing season. Just showing up on the screen what the Board decided for 2020.

It was a seasonal split with 72.8 percent of the quota allocated from June through September, and the remainder available from October through December. Here are the quota period options available in Amendment 3, keeping in mind these percentages are fixed. This is the suite of options available to the Board today. There are other Days Out measures available to control effort in the fishery, which are set later by the states of Maine, New Hampshire, Massachusetts, landing days, weekly landing limits, provisions on transfers and things like that.

Again, the Board for 2020 chose no landings prior to June 1, with 72.8 percent allocated from June to September, and 27.2 percent of the quota allocated from October to December. I'm sorry that was June to September and October to December. Just to recap again. The decision point today is really to set the quota periods for 2021, either seasonal, trimester, or bimonthly.

The Board could set specs for 2021 today if it so chooses, or like in the past wait until February, following final approval from NMFS, which was done the last few years. That is all I have, Madam Chair, happy to take any questions or of course move it to the Board for discussion.

CHAIR PATTERSON: Could you roll back one more slide, so people can see what we're going to be focusing on for decision points? Thank you. I would like to open up to the Board any questions in regards to this aspect of Max's presentation.

MS. KERNS: I don't see any hands yet, Cheri.

CHAIR PATTERSON: Is there any motion out there to set quota periods for the 2021 Area 1 Sub-ACL.

MS. KERNS: Megan Ware.

CHAIR PATTERSON: Megan, go ahead.

**MS. MEGAN WARE: I had submitted a motion to staff, and if they are able to bring that up that would be helpful. My motion is to allocate the 2021 Area 1A Sub-ACL seasonally with 72.8 percent available from June through September, and 27.2 percent allocated from October through December. The fishery will close when 92 percent of the seasonal period's quota has been projected to be harvested, and underages from June through September shall be rolled into the October through December period.**

CHAIR PATTERSON: Is there a second?

MS. KERNS: I have Ray Kane.

CHAIR PATTERSON: Thank you, Ray. Megan, would you like to speak to the motion?

MS. WARE: Sure, this is the same allocation we've used for this year, so it's just maintaining what we did in 2020 for 2021, and I think with the options that we currently have in Amendment 3, this is probably the best fit for right now.

CHAIR PATTERSON: Are there any questions towards this motion from the Board members?

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MS. KERNS: I see no hands.

CHAIR PATTERSON: Is there any questions or comment from the public?

MS. KERNS: I don't see any hands, and just as a reminder to raise your hand you click on the hand button and I think the red arrow will be pointed down when your hand is raised. I see none.

CHAIR PATTERSON: To move this motion forward, is there any opposition to this motion?

MS. KERNS: I see no hands raised.

**CHAIR PATTERSON: Motion is approved by consent.** Is there any other discussion on waiting for setting any other area specs to the February meeting?

MS. KERNS: I see no hands.

**UPDATE ON NEW ENGLAND FISHERY  
MANAGEMENT COUNCIL AND COMMISSION  
COORDINATION DISCUSSIONS**

CHAIR PATTERSON: Okay. That moves us to the next agenda item. Where there have been some concerns in the recent years raised on having Commission versus Council inconsistencies in developing measures for Atlantic herring. Therefore, the Council and Commission leadership discussed these issues.

They put together a technical workgroup to see if there can't be any sort of agreement on defining roles of each of those management bodies being the Commission and the Council, by identifying which measures that each would be addressing for managing Atlantic herring. I will turn over to Toni an update on the coordination discussions in regards to this concern.

MS. KERNS: Thank you, Madam Chair. I'm actually going to defer to Bob Beal on this issue.

CHAIR PATTERSON: Go ahead, Bob.

EXECUTIVE DIRECTOR ROBERT E. BEAL: Good morning, Cheri, and thank you for the time, and welcome everyone to the 79th Annual Meeting. It doesn't seem like a normal annual meeting, and it doesn't seem like New Jersey where I am, but that's okay. We'll make it through this week, I suppose.

Yes, just to give a bit of an update to follow on what the Chair said. You know Cheri noted there has been ongoing discussions for a number of years about responsibilities and roles, and jurisdictional questions between ASMFC and the New England Council involving Atlantic herring.

The leadership group has met a couple times, composed of the Chairs, Vice-Chairs, and Executive Directors, and talked about how to coordinate things better. A couple meetings two or three years ago, the outcome was sort of an agreement to coordinate better, and a voting seat was set up on New England Council's Committee, and we transitioned from a Section to a management board to allow a voting sea for New England Council on the Commission's management body. Even with those adjustments to the coordination there are still some remaining concerns about how different responsibilities are divided up. As the Chair said, a working group was formed. They pulled together a really comprehensive white paper that gave a great background on the sea herring fishery, and the history of management actions of the Council and Commission, and it included a series of suggestions on improved coordination, and allocating roles and responsibilities moving forward.

There is a great work product coming out of that group. The leadership group, Chairs, Vice-Chairs and Executive Directors met again last week to review the working paper, and had an initial discussion. No decisions were made. We agreed to all go home, sort of digest the paper a little bit more, and we'll get back together in a few weeks.

We just didn't have sufficient time to review the paper and come up with any concrete recommendations prior to this meeting. We are kind of all reading the paper and thinking about where we want to go from

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here, and how to better coordinate the issues associated with these different roles and responsibility.

That is the update. We've had one review of the paper, Madam Chair, and it's a great document. We just need to figure out what is the best course moving forward to provide the best comprehensive management of the sea herring fishery. During our leadership call there was some conversation about the importance of, there is a number of things that the Commission does that are really important.

There is obviously a number of things that the Council does that are really important to herring management. We kind of need to figure out how to work together and comprehensively manage this species across the jurisdictions, and across the differing roles and responsibilities, and frankly abilities of each group as well. That's the update, and Madam Chair, happy to answer any questions if there are any.

CHAIR PATTERSON: Does the Board have any questions of Bob?

MS. KERNS: I don't see any hands.

#### **ADJOURNMENT**

CHAIR PATTERSON: Okay. This is going smoothly. Is there any other business?

MS. KERNS: No hands.

CHAIR PATTERSON: Well, with that being said. The meeting is adjourned.

(Whereupon the meeting adjourned at 9:24  
a.m. on October 19, 2020.)



# New England Fishery Management Council

FOR IMMEDIATE RELEASE  
September 30, 2020

PRESS CONTACT: Janice Plante  
(607) 592-4817, [jplante@nefmc.org](mailto:jplante@nefmc.org)

## Atlantic Herring: Council Adopts 2021-2023 Specifications; Adjusts Herring Measures to Facilitate Mackerel Harvest

During the first day of its [September 29-October 1, 2020 webinar meeting](#), the New England Fishery Management Council took final action on Framework Adjustment 8 to the Atlantic Herring Fishery Management Plan. Next, the framework will be submitted to the National Marine Fisheries Service (NMFS/NOAA Fisheries) for review and final approval.

Framework 8 contains two parts:

- Specifications for the 2021-2023 fishing years for Atlantic herring; and
- Adjustments to measures in the herring plan that potentially inhibit the Atlantic mackerel fishery from achieving optimum yield (OY).

The Council based the 2021-2023 catch limits on the best scientific information available, which included:

1. Results from the [2020 Management Track Stock Assessment](#) for Atlantic herring;
2. Overfishing limit (OFL) and acceptable biological catch (ABC) [recommendations](#) from its Scientific and Statistical Committee (SSC), which followed the ABC control rule in [Amendment 8](#); and
3. Input from the Herring Plan Development Team.

The SSC initially considered a higher ABC for 2023 but ended up recommending that the Council maintain the 2022 ABC of

2021-2023 Atlantic Herring Specifications (in Metric Tons)			
Specification	2021	2022	2023
Overfishing Limit (OFL)	23,423	26,292	44,600
Acceptable Biological Catch (ABC)	9,483	8,767	8,767
Management Uncertainty	4,669	4,669	4,669
Optimum Yield / Annual Catch Limit (OY/ACL)	4,814*	4,098*	4,098*
Domestic Annual Harvest	4,814	4,098	4,098
Border Transfer	0	0	0
Domestic Annual Processing	4,814	4,098	4,098
U.S. At-Sea Processing	0	0	0
Area 1A Sub-ACL (28.9%)	1,391	1,184	1,184
Area 1B Sub-ACL (4.3%)	207	176	176
Area 2 Sub-ACL (27.8%)	1,338	1,139	1,139
Area 3 Sub-ACL (39%)	1,877	1,598	1,598
Fixed Gear Set-Aside	30	30	30
Research Set-Aside as % of Sub-ACLs	3%	0%	0%

\* If the New Brunswick weir fishery catch through October 1 is less than the associated "trigger," then 1,000 mt of the management uncertainty buffer will be added to the Area 1A sub-ACL.



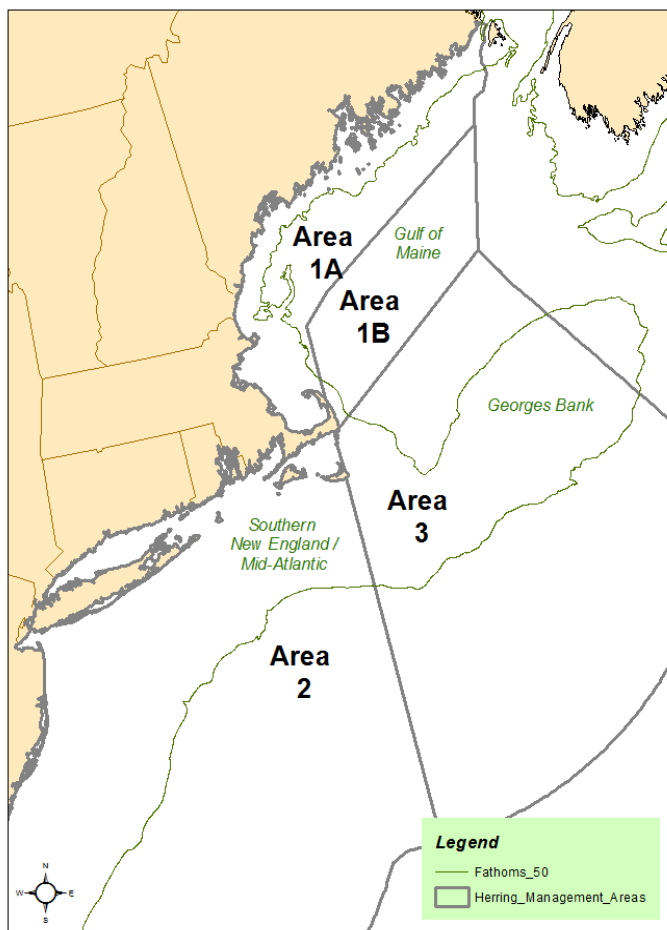
# New England Fishery Management Council

8,767 metric tons (mt) in 2023 for this framework. The Council agreed to do so for two primary reasons:

- The lower ABC helps reduce scientific uncertainty, which the SSC deemed important, especially since the new assessment concluded that the resource is now overfished, even though overfishing is not occurring; and
- Both the SSC and Council viewed the 2023 ABC as a placeholder. A new management track assessment for herring is [scheduled for 2022](#), and the 2023 specifications will be updated based on the 2022 assessment results.

The Council takes into account management uncertainty when it sets specifications. While management uncertainty comes from several sources, the biggest one is the weir fishery in New Brunswick, Canada since the Council cannot control catches in that fishery. For the 2021-2023 specifications, the Council voted to set the management uncertainty buffer at 4,669 mt, which reflects the most recent 10-year catch totals from that New Brunswick fishery.

Given the low catch limits available to the U.S. fishery in the near future, the Council voted to set border



Atlantic Herring Management Areas 1A, 1B, 2, and 3. – NEFMC graphic

transfers at zero for the next three fishing years. Typically, the Council allocates a small percentage of fish to at-sea transfers from U.S. vessels to Canadian vessels, which buy herring from U.S. boats for the food-fish market. Border transfer activity has not occurred for the past several years, so the allocation has not been utilized since 2015.

While expressing strong support for the Atlantic Herring Research Set-Aside (RSA) Program, the Council determined that, given the current low quotas, 0% of the annual catch limit (ACL) should be reserved for the RSA program in 2022 and 2023. The Council approved a 3% set-aside for 2021 so that an ongoing project could be completed.

As a result of these decisions, the quotas for Herring Management Areas 1A, 1B, 2, and 3 flowed from there and are shown in the table on page 1.

**CARRYOVER:** Also related to catch limits, the Council agreed to allow 5% of unharvested catch from 2019 and/or 2020 from each management area – not 10% as would be allowed under “no action” – to automatically roll over to fishing years 2021 and/or 2022 respectively. The Council viewed this as a “balance” between addressing the





# New England Fishery Management Council

needs of the fishery while maintaining protection of the resource. This balance was considered to be especially important in light of the current low biomass situation. The Council recognized that additional fish may be caught in one particular management area through the carryover allowance, but this also could lead to less fish being available in another area because the overall annual catch limit cannot be exceeded. Since near-term allocations for all areas will be extremely low, the Council determined that the 5% carryover was more appropriate than 10% and is expected to have lower risks of unintended distributional impacts on various segments of the fishery that access the resource in different areas and seasons.

**RIVER HERRING/SHAD:** The Council made no changes to the river herring and shad catch caps that currently apply to the Atlantic herring fishery.

## Stock Status

**Q:** Why are herring quotas so low?

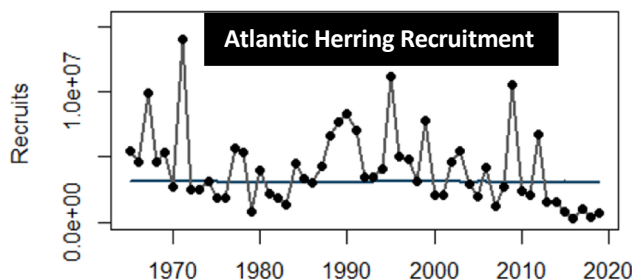
**A:** According to the new [management track stock assessment](#), the resource is at an extremely low level of spawning stock biomass (SSB). The Council is using a new ABC control rule to set catch limits. The control rule is applied to the estimate of SSB (see box at right). In 2020, the projection of SSB was 21% of the maximum sustainable yield (MSY) level for the herring resource. At this low level of biomass, the maximum fishing mortality rate (F) allowed is 24% of the fishing mortality rate estimated to produce MSY for the herring resource.

**Q:** What did the assessment peer review panel say?

**A:** The [peer review panel](#) said that trends in relative abundance of herring from all four surveys used in the assessment “indicate a substantial decline in stock abundance during the past few years.” The panel added, “Survey indices in 2019 were at or near record-low values.”

**Q:** Did the assessment show any signs of recent, improved recruitment?

**A:** No. Fishery and survey data have not yet detected improved recruitment, which has been at record low levels for the past seven years as seen in this graphic.



## What Does the ABC Control Rule Do?

The Council adopted an ABC control rule for Atlantic herring as part of [Amendment 8](#) to better account for herring’s important role as a forage species. The amendment is under review by NOAA Fisheries. This relatively new control rule was used to develop the ABC recommendations for 2021-2023 and 2019-2021.

The control rule is biomass based. When biomass is greater than 50% of SSB at MSY, the maximum fishing mortality rate can be up to 80% of F at MSY. When biomass falls below 50% of SSB at MSY, then the allowable fishing mortality rate declines linearly. When SSB falls to 10% of SSB at MSY or lower, fishing mortality is set at zero, which means the ABC is zero.



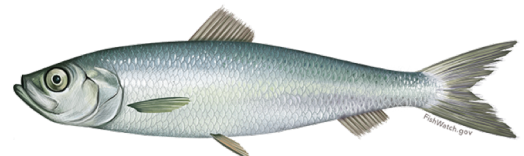
# New England Fishery Management Council

**MACKEREL-RELATED ACTIONS:** The Council voted to adjust two measures in the Atlantic herring plan that potentially inhibit mackerel fishermen from being able to more fully utilize the mackerel quota.

- The Council voted to adjust the current 2,000-pound incidental possession limit of herring in the mackerel fishery in Herring Management Areas 2 and 3 as follows:
  - When 90% of each area’s sub-ACL is reached, the mackerel fishery’s incidental catch limit of Atlantic herring would be limited to 40,000 pounds;
  - When 98% of each herring management area’s sub-ACL is reached, the incidental catch limit of Atlantic herring would be 2,000 pounds; and
  - If the total ACL for the herring fishery is reached at 95%, then the incidental “backstop” catch limit for the mackerel fishery would be 2,000 pounds.
- In Area 1B, which currently is subject to a seasonal closure from January through April, the Council voted to eliminate the closure to potentially allow directed mackerel harvests during the early winter months when mackerel typically are present in the area.

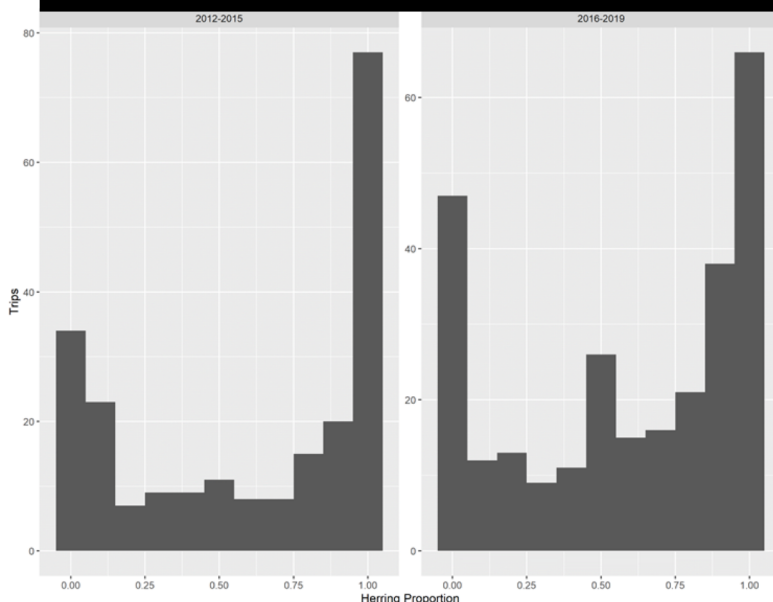


*Mackerel and herring often intermix, and many of the region’s midwater trawlers target both species. When the incidental possession limit for Atlantic herring is 2,000 pounds, vessels generally find it challenging to fish for and target mackerel in certain areas and seasons when both species are present. Framework 8 to the herring plan includes two measures to help the mackerel fishery potentially better utilize its available quota.*



– NOAA Fisheries graphics

**Proportion of Herring Landed on Midwater Trawl Trips With > 1 Pound of Atlantic Mackerel: 2012-2015 Versus 2016-2019**



**What are These Bar Graphs Showing:** The proportion of herring on midwater trawl trips landing mackerel has varied over time. The number of trips where midwater trawl vessels landed *primarily mackerel* are shown on the left side of each bar graph, while the trips where midwater trawlers landed *primarily herring* are depicted on the right side of each graph. The bars in the middle depict trips where mackerel and herring were intermixed.

**Questions?** Contact Deirdre Boelke, the Council’s Atlantic herring plan coordinator, at (978) 465-0492, ext. 105, email [dboelke@nefmc.org](mailto:dboelke@nefmc.org).

- All herring documents and the presentation used during this meeting are available at [NEFMC September 29, 2020 Atlantic Herring Discussion](#).

**SUMMARY:** Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2021 adjustment to the civil penalties that the agency may assess against a person for violating certain NTSB statutes and regulations.

**DATES:** This final rule is effective on January 11, 2021.

**ADDRESSES:** A copy of this final rule, published in the **Federal Register (FR)**, is available at <http://www.regulations.gov> (Docket ID Number NTSB–2021–0001).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Silbaugh, General Counsel, (202) 314–6080 or [rulemaking@ntsb.gov](mailto:rulemaking@ntsb.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) requires, in pertinent part, agencies to make an annual adjustment for inflation by January 15th every year. OMB, M–16–06, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Feb. 24, 2016). The Office of Management and Budget (OMB) annually publishes guidance on the adjustment multiplier to assist agencies in calculating the mandatory annual adjustments for inflation.

The NTSB’s most recent adjustment was for fiscal year (FY) 2020, allowing the agency to impose a civil penalty up to \$1,722, effective January 15, 2020, on a person who violates 49 U.S.C. 1132 (Civil aircraft accident investigations), 1134(b) (Inspection, testing, preservation, and moving of aircraft and parts), 1134(f)(1) (Autopsies), or 1136(g) (Prohibited actions when providing assistance to families of passengers involved in aircraft accidents). Civil Monetary Penalty Annual Inflation Adjustment, 85 FR 2319 (Jan. 15, 2020).

OMB has since published updated guidance for FY 2021. OMB, M–21–10, *Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 23, 2020). Accordingly, this final rule reflects the NTSB’s 2021 annual inflation adjustment and updates the maximum civil penalty from \$1,722 to \$1,742.

**II. The 2021 Annual Adjustment**

The 2021 annual adjustment is calculated by multiplying the applicable maximum civil penalty amount by the cost-of-living adjustment multiplier, which is based on the Consumer Price Index and rounding to the nearest

dollar. OMB, M–21–10, *Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 23, 2020). For FY 2021, OMB’s guidance states that the cost-of-living adjustment multiplier is 1.01182.

Accordingly, multiplying the current penalty of \$1,722 by 1.01182 equals \$1,742.35, which rounded to the nearest dollar equals \$1,742. This updated maximum penalty for the upcoming fiscal year applies only to civil penalties assessed after the effective date of the final rule. The next civil penalty adjustment for inflation will be calculated by January 15, 2022.

**III. Regulatory Analysis**

The Office of Information and Regulatory Affairs Administrator has determined agency regulations that exclusively implement the annual adjustment are consistent with OMB’s annual guidance, and have an annual impact of less than \$100 million are generally not significant regulatory actions under Executive Order (E.O.) 12866. OMB, M–21–10, *Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 23, 2020). An assessment of its potential costs and benefits under E.O. 12866, *Regulatory Planning and Review* and E.O. 13563, *Improving Regulation and Regulatory Review* is not required because this final rule is not a “significant regulatory action.” Likewise, this rule does not require analyses under the Unfunded Mandates Reform Act of 1995 and E.O. 13771, *Reducing Regulation and Controlling Regulatory Costs* because this final rule is nonsignificant.

The NTSB does not anticipate this rule will have a substantial direct effect on state government or will preempt state law. Accordingly, this rule does not have implications for federalism under E.O. 13132, *Federalism*.

The NTSB also evaluated this rule under E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*. The agency has concluded that this final rule will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Paperwork Reduction Act of 1995 is inapplicable because the final rule imposes no new information reporting or recordkeeping necessitating clearance by OMB.

The Regulatory Flexibility Act of 1980 does not apply because, as a final rule, this action is not subject to prior notice and comment. *See* 5 U.S.C. 604(a).

The NTSB has concluded that this final rule neither violates nor requires further consideration under the aforementioned Executive orders and Acts.

**List of Subjects in 49 CFR Part 831**

Aircraft accidents, Aircraft incidents, Aviation safety, Hazardous materials transportation, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

Accordingly, for the reasons stated in the preamble, the NTSB amends 49 CFR part 831 as follows:

**PART 831—INVESTIGATION PROCEDURES**

■ 1. The authority citation for part 831 continues to read as follows:

**Authority:** 49 U.S.C. 1113(f).  
 Section 831.15 also issued under Pub. L. 101–410, 104 Stat. 890, amended by Pub. L. 114–74, sec. 701, 129 Stat. 584 (28 U.S.C. 2461 note).

**§ 831.15 [Amended]**

■ 2. Amend § 831.15 by removing the dollar amount “\$1,722” and adding in its place “\$1,742”.

**Robert L. Sumwalt III,**  
*Chairman.*

[FR Doc. 2021–00060 Filed 1–8–21; 8:45 am]

**BILLING CODE 7533–01–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 221228–0362]

**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:** Final rule.

**SUMMARY:** This rule implements Amendment 8 to the Atlantic Herring Fishery Management Plan. This amendment specifies a long-term acceptable biological catch control rule for herring and addresses localized

depletion and user group conflict. It also establishes an acceptable biological catch control rule that accounts for herring's role in the ecosystem and prohibits midwater trawling in inshore federal waters from the U.S./Canada border to the Rhode Island/Connecticut border. Amendment 8 supports sustainable management of the herring resource and seeks to ensure that herring is available to minimize possible detrimental biological impacts on predators of herring and associated socioeconomic impacts on other user groups.

**DATES:** Effective February 10, 2021.

**ADDRESSES:** 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. Consistent with the Magnuson-Stevens Fishery Conservation and Management Act definition of OY, 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. The Magnuson-Stevens Act further provides that OY is the maximum sustainable yield (MSY) from the fishery as reduced by any relevant economic, social, or ecological factor. In the Herring FMP, this includes recognition of the importance of herring as forage for 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.

An acceptable biological catch (ABC) control rule is a formulaic approach for setting a harvest limit that reflects the FMP's harvest policy. For herring and other stocks with a defined overfishing limit (OFL), the ABC is reduced from the OFL to account for an estimate of 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 allowable fishing mortality rate (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.

On August 21, 2015 (80 FR 50825), the Council published a supplemental notice of intent (NOI) announcing it was expanding the scope of Amendment 8 beyond an ABC control rule to consider localized depletion in inshore waters. Public comment during the supplemental scoping made it clear that localized depletion concerns voiced by many stakeholders included 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. Therefore, the Council's consideration of localized depletion in Amendment 8 included user group conflict, both an evaluation of impacts of the user group conflict and consideration of competing interests for how herring should be used.

Amendment 8 was adopted by the Council on September 25, 2018. We published a notice of availability (NOA) for the amendment in the **Federal Register** on August 21, 2019 (84 FR 43573), with a comment period ending

October 21, 2019. We published a proposed rule for the amendment in the **Federal Register** on October 9, 2019 (84 FR 54094), with a comment period ending November 25, 2019. After considering public comment, we approved Amendment 8, on behalf of the Secretary of Commerce, on November 19, 2019, and notified the Council of the amendment's approval in a letter dated that same day. This final rule implements Amendment 8 as approved. Because details of the Council's development of the measures in Amendment 8 were described in the NOA and proposed rule, they are not repeated here.

**Approved Measures**

The 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. After reviewing public comment, we approved all the proposed measures in Amendment 8, as recommended by the Council. While the majority of public comment supported the implementation of Amendment 8, we also received public comment urging us to disapprove the amendment. Ultimately, we approved the proposed measures in Amendment 8 because we determined the measures were consistent with the Magnuson-Stevens Act and other applicable law. Comments that opposed the implementation of Amendment 8 did not sufficiently demonstrate that the ABC control rule or inshore midwater trawl restricted area were inconsistent with the Magnuson-Stevens Act or other applicable law.

**ABC Control Rule**

This rule establishes a long-term ABC control rule for herring. Under the control rule, when biomass (B) is at or above 50 percent of  $B_{MSY}$  or its proxy, ABC is the catch associated with an 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 sets ABC for a 3-year period, but allows ABC to vary year-to-year in response to projected changes in biomass. This rule specifies that the control rule can 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 control rule explicitly accounts 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 also generates 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  $MSY$ . This control rule is intended to result in low variation in yield, low probability of a fishery shutdown, and low probability of overfishing. As a result, 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. Relative to other control rules considered by the Council in Amendment 8, this 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.

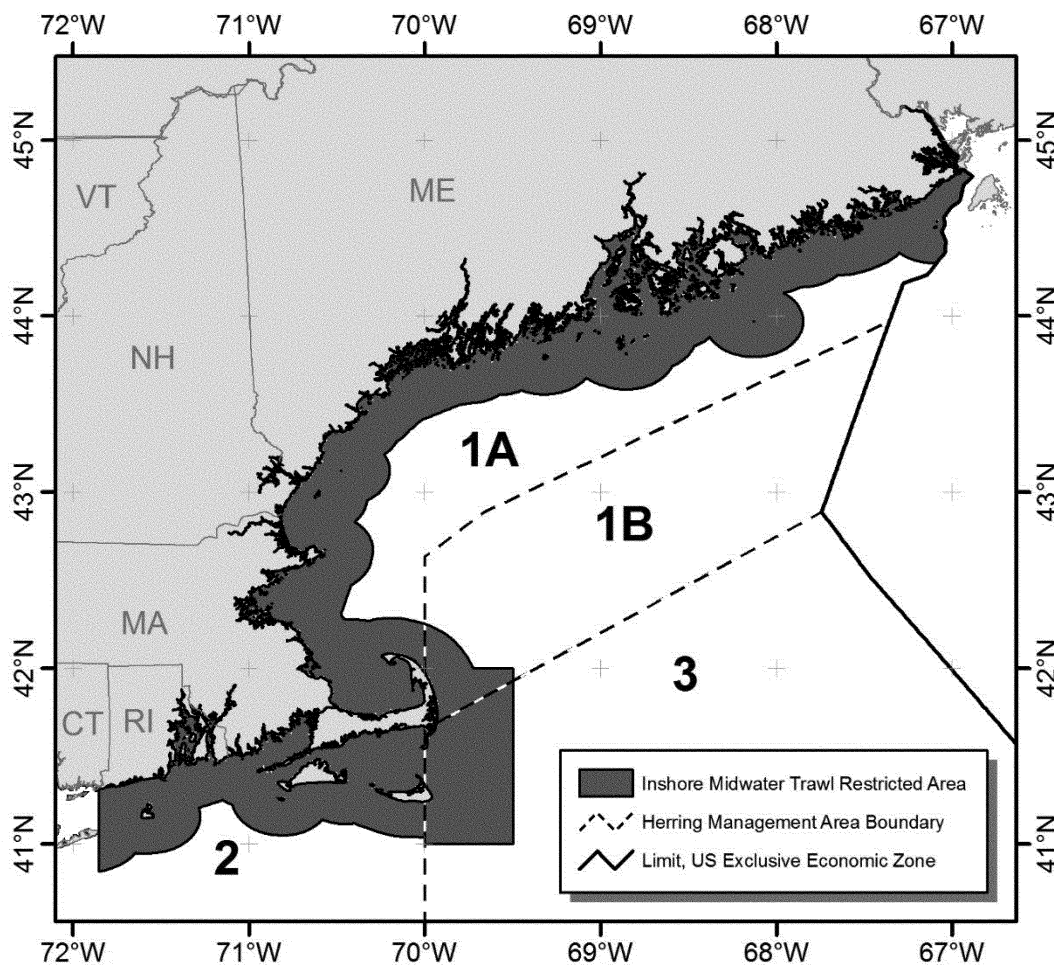
Shortly before the Council took final action on Amendment 8, the 2018 stock assessment concluded that herring biomass was low, and the probability of overfishing and the stock becoming overfished was high. While not directly applicable to a long-term harvest policy, the Council noted that under herring's current condition of low biomass, setting catch more conservatively than status quo may increase the likelihood of stock growth and, in turn, have positive impacts on the herring fishery, predators, and predator fisheries.

In August 2020, the report for the 2020 herring stock assessment determined the stock is overfished, but not subject to overfishing. Spawning stock biomass (SSB) is estimated to have declined since 2014, and the 2019 SSB was estimated at 29 percent (77,883 metric tons (mt)) of the SSB necessary to support  $MSY$  (269,000 mt) resulting in a determination of overfished.  $F$  for herring harvested by mobile gear (*i.e.*, midwater trawl, purse seine, bottom trawl) has declined since 2010, was estimated to be 0.25 in 2019, and is well below the overfishing threshold (0.54) so the stock is not experiencing

overfishing. Recruitment continues to be at historic lows, and in 2019 it was estimated at about 20 percent of median recruitment. On October 13, 2020, we notified the Council that the herring stock is overfished and requested it develop rebuilding measures.

#### *Inshore Midwater Trawl Restricted Area*

This rule prohibits 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 are 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 30-minute squares 114 and 99 off Cape Cod (Figure 1). Midwater trawl vessels are able to transit the inshore midwater trawl restricted gear area provided gear is stowed and not available for immediate use. This measure is in addition to the existing prohibition on midwater trawling for herring in Area 1A during June 1 through September 30.



**Figure 1 -- Inshore Midwater Trawl Restricted Area**

The Council recommended the inshore midwater trawl restricted area to minimize local depletion and its associated 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 this measure on vessels using 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 gear and because midwater trawl vessels 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

inshore midwater trawl restricted area incorporates 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 direct 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 3 percent of the sub-annual catch limit for a herring management area. This rule permits RSA compensation fishing using midwater trawl gear within the inshore midwater

trawl restricted area. The Council recommended allowing 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 are 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 the 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, consistent with the Herring FMP.

This rule specifies that the inshore midwater trawl restricted area or new closures to address localized depletion and/or user group conflict may be modified or implemented via framework adjustment. The list of framework provisions at § 648.206 already includes closed areas; this amendment adds 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 inshore midwater trawl restricted area is intended to facilitate an efficient, fair, and equitable accommodation of relevant 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 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 while still providing midwater trawl vessels access to areas with fishing opportunities. This measure is likely to negatively impact the midwater trawl fleet, with potentially increased trip costs and lower annual catches, but 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 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 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 inshore midwater trawl restricted area (19,302 mt) are higher than the OY for 2020 and 2021 (11,621 mt). In the longer term, the fishery will likely adapt to be able to harvest an increased OY, provided vessels are able to locate herring.

#### Clarifications

This rule establishes 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 an FMP or the Magnuson-Stevens Act.

First, this rule revises 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. This revision is a more accurate description of the referenced area and is necessary to clarify the intent of the regulation.

Second, this rule clarifies that the regulation applies only 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 clarifies 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 clarifies 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 was 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.

This rule also revises § 648.200(b)(3) under the authority of section 305(d) to the Magnuson-Stevens Act. This revision changes the reference from "at" § 648.201(a) to "in" § 648.201(a) to be consistent with other regulatory references within § 648.200.

#### Revisions and Additional Clarifications to the Proposed Rule

This rule implements necessary minor administrative changes under section 305(d) to the Magnuson-Stevens Act that were not described in the proposed rule. First, it corrects definitions in § 648.2. The definition for *slippage in the Atlantic herring fishery* was inadvertently removed from the regulations, and this rule restores it. This rule also moves the definition for *observer or monitor* to the correct alphabetic order.

Second, this rule corrects several weblinks in regulations describing monitoring coverage (§ 648.11). The Northeast Fisheries Science Center's Fishery Sampling Branch's website was recently revised and, as a result, several weblinks to monitoring resources specified in the final rule implementing the New England Industry-Funded Monitoring (IFM) Omnibus Amendment (85 FR 7414; February 7, 2020) are now outdated. This rule corrects those outdated weblinks.

Third, this rule corrects minor typographical errors in § 648.11 that were implemented in the final rule for the IFM Amendment.

#### Comments and Responses

We received 268 comment letters on the NOA and proposed rule: 160 from the general public; 38 from members of the fishing industry; 29 from members of the herring fishery; 19 from members of the recreational and charter party fisheries; 13 from environmental advocacy groups; and 9 from state or town governments. Of the 268 letters, a letter from the Pew Charitable Trusts (Pew) included 8,942 signatures, a letter from the Conservation Law Foundation (CLF) included 553 comments from the public, a letter from the National Audubon Society (NAS) included 3,970 signatures and 201 comments from the public, and a letter from Saving Seafood included 22 comments from members of the fishing industry.

Development of this amendment was contentious because stakeholders are polarized on the inshore midwater trawling prohibition to minimize user

group conflict and, to a lesser extent, on the ABC control rule. Most of the commenters support the implementation of Amendment 8, including all state and town governments, all environmental advocacy groups, most recreational and charter party fisheries members, most of the general public, and some fishing industry members. Those commenters who do not support the implementation of Amendment 8 include most herring industry members, some fishing industry members, and some of the general public.

*Comment 1:* Some members of the herring industry assert that Amendment 8 is inconsistent with the Magnuson-Stevens Act, its National Standards, and the Herring FMP. They propose that current management measures, such as slippage consequence measures, coverage requirements, the seasonal prohibition on midwater trawling for herring in Area 1A, and catch caps, are more than sufficient to manage catch in the herring fishery. They caution that the cumulative impact of prohibiting midwater trawling inshore, low catch under the new ABC control rule, and existing restrictions was not fully analyzed in the final EIS (FEIS). They believe these cumulative restrictions threaten the loss of a year-round fishery, jeopardize continued participation in the fishery by harvesters and fishing communities, and negatively impact the bait supply for the lobster fishery.

*Response:* The Herring FMP is intended to provide, in part, controlled opportunities for participants in other New England and Mid-Atlantic fisheries. The inshore midwater trawl restricted area was developed to address issues of localized depletion and its associated user group conflict as described in the amendment's user group conflict problem statement. It is designed to support inshore fishing opportunities for a wide variety of fishing industry participants. The ABC control rule is designed to provide a long-term sustainable herring fishery and, similar to the inshore midwater trawl restricted area, the ABC control rule supports herring as forage for predators and other user groups. While measures such as slippage consequence measures, coverage requirements, and catch caps help manage herring catch, they were not developed explicitly to support opportunities for other user groups.

Herring are an important forage species in the Northeast U.S. shelf ecosystem and they are eaten by a wide variety of fish, marine mammals, and birds. Herring share the role of forage with other prey species (e.g., sandlance,

mackerels, squids, and hakes); the relative importance of herring as forage varies by predator and depends on whether other forage is available. Herring are important forage for Atlantic bluefin tuna, spiny dogfish, Atlantic cod, silver hake, and Atlantic striped bass, as well as seabirds (e.g., Atlantic puffins and terns) and marine mammals (e.g., baleen whales, toothed whales, and pinnipeds).

The amendment's FEIS analyzed the ecological and socioeconomic impacts of management measures on the herring fishery, the Atlantic mackerel fishery, and the lobster fishery, as well as predator fisheries and ecotourism. The FEIS also considered the impacts of these measures in concert with past, present, and reasonably foreseeable future actions. The FEIS concludes that short-term negative economic impacts on some fishery participants have the potential to become long-term economic benefits for all user groups. Negative impacts may be minimized for midwater trawl vessels if they are able to harvest herring offshore, other economical sources of bait are available for the lobster fishery, or the ABC control rule helps minimize the risk of the herring stock becoming overfished and subject to overfishing. The Council's consideration included the ecological and socioeconomic impacts of measures in Amendment 8, and recommended these measures to help ensure herring was available for predators and all user groups.

Section 6.1.1 of the FEIS describes how management measures are consistent with the Magnuson-Stevens Act and its National Standards. We determined these measures are consistent with the Magnuson-Stevens Act and its National Standards when we approved the amendment in November 2019. Our consideration of how measures are consistent with specific National Standards is further detailed in our responses to comments below.

#### *Inshore Midwater Trawl Restricted Area*

*Comment 2:* Commenters support implementation of the inshore midwater trawl restricted area because they believe it will:

- Protect Atlantic herring and river herring from localized inshore depletion by industrial-scale fishing;
- Reduce user group conflict and support coastal economies and commercial and recreational business that rely on predators;
- Balance the needs of all stakeholders in inshore waters where stakeholder overlap is the greatest, without setting a precedent for prohibiting other types of trawling;

- Recognize the importance of herring to inshore users, including striped bass, tuna, and cod fisheries, as well as ecotourism by helping maintain a large forage biomass for predators and those predator fisheries (e.g., striped bass, tuna, recreational and charter fisheries);

- Protect inshore waters from the impacts of midwater trawling and provide consistency with other countries that restrict midwater trawling;
- Decrease discarded catch of cod and haddock by midwater trawlers in inshore waters;
- Offer additional ecosystem protection to Stellwagen Bank;
- Protect discreet, localized aggregations of herring, as well as the ecosystem and coastal communities that rely on them; and
- Protect herring spawning areas, including spawning adults and eggs, especially off Cape Cod, to support recruitment.

A joint letter from CLF, NAS, Natural Resources Defense Council (NRDC), Pew, and Wild Oceans supports implementation of the inshore midwater trawl restricted area. The commenters explain the measure would reduce fishing pressure inshore, where predators need herring, and mitigate negative socioeconomic impacts of high-volume herring removals on other user groups. The commenters believe the inshore midwater trawl restricted area will have biological, ecological, and economic benefits and that it is consistent with the Magnuson-Stevens Act and National Standards.

The New England Purse Seiner's Alliance (NEPSA) supports the inshore midwater trawl restricted area because it believes the existing prohibition on midwater trawling in Area 1A during the summer helps protect herring and allows for a robust tuna fishery. NEPSA also asserts the prohibition clearly addresses the goals, objectives, and problem statement for the amendment and is consistent with the Magnuson-Stevens Act.

The Commonwealth of Massachusetts supports the inshore midwater trawl restricted area because it minimizes possible detrimental biological impacts on predators and associated socioeconomic impacts on other user groups that rely on herring as forage. It also supports using the overlap of midwater trawl activity and other user groups as the best available science to support prohibiting inshore midwater trawling.

The Nature Conservancy (TNC) commented that localized depletion, or taking fish faster than they can be replaced in a given area, is a significant



biological concern for the herring resource, the predatory fish and birds that rely on herring as food, and other user groups that depend on the local availability of herring to support their business. TNC recognizes there is limited information linking localized depletion to the midwater trawl fishery, but it supports the Council's precautionary approach to address localized depletion and notes the inshore midwater trawl restricted area encompasses times and areas with a high degree of overlap between the midwater trawl fishery and other user groups.

While Lund's Fisheries generally opposes the inshore midwater trawl restricted area, it supports allowing midwater trawl RSA compensation fishing within the inshore midwater trawl restricted area to support fishery access to herring and mackerel.

*Response:* We acknowledge the commenters support for the inshore midwater trawl restricted area and concur that the measure is intended to ensure herring is available to minimize detrimental biological impacts on predators of herring and associated socioeconomic impacts on other user groups.

*Comment 3:* Several commenters support the inshore midwater trawl restricted area, but would prefer that the midwater trawl restricted area extend further offshore, either 25 (46 km) or 50 (93 km) nautical miles offshore, especially on Stellwagen Bank.

*Response:* We can only approve, disapprove, or partially approve Council-recommended measures; we cannot modify the inshore midwater trawl restricted area to extend further offshore. The Council considered alternatives that would have extended the midwater trawl restricted area further offshore but recommended a smaller inshore midwater trawl restricted area, so that the costs associated with the measure are commensurate with the benefits.

*Comment 4:* Some members of the herring industry assert the inshore midwater trawl restricted area is not consistent with the Magnuson-Stevens Act and applicable law for the following reasons:

- It will prevent the herring and mackerel fisheries from achieving OY on a short-term and continuing basis and will not result in a net benefit to the Nation (National Standard 1);
- The best available science does not indicate localized depletion, nor does it find a difference in fishery removals by midwater trawl vessels compared to purse seine vessels, and this measure makes no attempt to align the restricted

area with associated analyses and is an illegitimate political compromise (National Standard 2);

- The allocation of fishing grounds is not fair or equitable and does not promote conservation (National Standard 4);
- It will impose economic inefficiencies on midwater trawl vessels, including longer, more expensive fishing trips, and no measure may have economic allocation as its sole purpose (National Standard 5);
- The benefits of restricting midwater trawling inshore do not outweigh the costs (National Standard 7);
- Restricting midwater trawling in inshore waters had no conservation benefit and does not minimize economic impacts (National Standard 8);
- Moving midwater trawl vessels offshore makes fishing trips potentially less safe (National Standard 10);
- Prohibiting midwater trawling inshore is arbitrary and capricious; and
- The amendment does not include a fishery impact statement or cumulative effects assessment.

*Response:* We disagree with these comments. The Council's development of the amendment considered the best available science to determine how best to achieve OY in this fishery, given this fishery's multiple commercial, recreational, and ecological interests. The inshore midwater trawl restricted area fairly and equitably allocates fishing opportunities to a wide variety of fishing industry participants in a manner that reasonably promotes conservation. The Council's consideration included a robust analysis and consideration of economic impacts on fishing communities, including recreational fishing, an efficient use of resources, and attempts to minimize costs and unnecessary duplication. Further, the Council weighed the costs and benefits of this measure on the various user groups and considered the effect of the measure on the safety of the fisheries participants.

The herring fishery is capable of achieving OY, both in the short term and on a continuing basis, with inshore harvest from purse seine and bottom trawl vessels and offshore harvest from midwater trawl vessels, consistent with National Standard 1. In the short term, herring catch limits are expected to remain very low (less than 10,000 mt), as the stock is experiencing historically low recruitment. If herring are available, the fishery has the capacity and opportunity to harvest the entire OY. In the longer term, the fishery will likely adapt to be able to harvest an increased OY, provided vessels are able to locate

herring. While recent herring catches have largely come from within the inshore midwater trawl restricted area, midwater trawl vessels have historically caught the majority of their harvest offshore. Any inability to harvest the OY is more likely related to herring's reduced abundance, rather than the lack of inshore midwater trawling curtailing the fishery's capacity to harvest herring. Regarding the mackerel fishery, we do not expect the inshore midwater trawl restricted area to prevent the mackerel fishery from achieving OY because only 14 percent (925 mt) of recent mackerel midwater trawl landings (2007–2015) were harvested from within the restricted area.

The Magnuson-Stevens Act defines OY as the amount of fish that provides the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities. It also prescribes OY on the basis of the fishery's MSY, as reduced by relevant economic, social, or ecological factors. The Herring FMP's OY definition further requires, "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 Atlantic herring as one of many forage species of fish, marine mammals, and birds in the Northeast Region." Relevant to the economic and social factors that apply to herring management are the impacts on the fisheries for predator fisheries (e.g., groundfish, bluefin tuna, striped bass) and on ecotourism (e.g., whale watching). Consistent with National Standard 1, the inshore midwater trawl restricted area helps limit concentrated removals of herring in inshore areas to acknowledge the importance of herring as forage in the ecosystem, support the businesses that depend on predators of herring, and provide the greatest overall benefit to the Nation.

The inshore midwater trawl restricted area was developed in response to the amendment's problem statement and is designed to help minimize user group conflict between midwater trawl vessels and other user groups. The Council's consideration of localized depletion ultimately included user group conflict to address stakeholders' concerns with localized depletion issues. The Council evaluated the impact of user group conflict and competing interests for how herring should be used. Consistent with National Standards 2 and 4, the inshore midwater trawl restricted area allocates fishing opportunities to a wide variety

of user groups in a manner that promotes the conservation of herring for predators and is based on the best available science. The FEIS summarizes what is known about the role of herring as forage in the ecosystem, includes maps describing the footprint of the herring fishery as well as key predator fisheries, and analyzes the overlap between these fisheries to identify seasons and areas with the potential for user group conflict. The FEIS suggests the greatest amount of overlap between user groups occurs inshore throughout the year. Because midwater trawl vessels are more capable of fishing offshore than other user groups, the Council recommended prohibiting them from inshore waters to help ensure herring are available inshore for other users groups and predators of herring. The inshore midwater trawl restricted area has biological benefits if moving the midwater trawl fleet 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. For these reasons, the FEIS describes the inshore midwater trawl restricted area as a fair compromise that balances the competing needs of user groups.

This measure is likely to negatively impact the midwater trawl fleet, with potentially increased trip costs and, if less herring is available offshore, lower annual catches. The FEIS considers that some midwater trawl vessels may purchase new gear (e.g., purse sein or bottom trawl) in order to access inshore areas, while others may opt to fish offshore, with potentially higher operational costs, and/or pursue other fisheries to make up for any lost herring revenue. The FEIS also estimates that this measure has the potential to reduce costs, such as searching and fishing time, for other fisheries and ecotourism companies that rely on herring predators, if it improves the inshore availability of herring. Therefore, consistent with National Standards 5, 7, 8, and 10, the benefits to other user groups, such as potentially reduced trips costs, higher annual catches, and improved safety, outweigh the costs to the midwater trawl vessels. While benefits to other user groups are difficult to specifically quantify until new measures are in place and data on their effects become available, we expect economic benefits would extend to the fishing communities that support these user groups as they will likely benefit from increased access to herring. Further, we expect that negative economic impacts on midwater trawl

vessels can be minimized if vessels are able to increase their harvest of herring offshore. The Council considered other alternatives to minimize user group conflict, including prohibiting midwater trawling inshore of 25 nautical miles (46 km) and 50 nautical miles (93 km), but recommended a shallower midwater trawl restricted area instead as a way to more fairly and equitably balance the costs and benefits of the measure. To help mitigate the economic impact of the inshore midwater trawl restricted area and provide access for the mackerel fishery, the Council also recommended that RSA compensation fishing trips be exempt from the inshore prohibition on midwater trawling.

The inshore midwater trawl restricted area is not arbitrary and capricious. It is consistent with the problem statement developed by the Council to describe user group conflict and the objectives of the Herring FMP, including providing for full utilization of the OY and, to the extent practicable, controlled opportunities for participants in other New England and Mid-Atlantic fisheries. Because information to quantify the impact of midwater trawling on other user groups is limited, the FEIS analyzed the degree of overlap between the midwater trawl fleet and other user groups, consistent with National Standard 2. While overlap with the midwater trawl fishery 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. Additionally, the amendment's FEIS serves as the fishery impact statement, as it analyzes the conservation, economic, and social impacts of the management measures in Sections 4.1–4.8 in the FEIS, and the cumulative effects assessment is included in Section 4.9 of the FEIS.

*Comment 5:* Some commenters contend that user group conflict was excluded from Amendment 8 scoping and, therefore, it is not acceptable for user group conflict to be the basis for implementing an exclusion zone.

*Response:* 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 indicated that localized depletion should be defined to also include the user group conflicts that result from localized depletion and that the 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. Defining the nature of localized depletion and identifying its impacts so that the Council could best address localized depletion was precisely the type of information sought by the supplemental NOI expanding the scope of Amendment 8.

*Comment 6:* Commenters oppose the inshore midwater trawl restricted area because of its inherent effect on the allocation of herring between user groups and believe:

- Fisheries regulations should not be popularity contests based on feelings and perceived user conflict instead of evidence and facts;
- Ocean access belongs to all and gear exclusions should not be based on prioritizing some user groups over others;
- Restricting inshore midwater trawling sets a precedent for excluding trawling in other areas, and may lead to exclusion zones in the squid fishery;
- Prohibiting inshore midwater trawling will increase bycatch and impacts to habitat, especially on herring spawning areas, should midwater trawl vessels switch to bottom trawl gear; and
- Removals by purse seine gear are similar in intensity to removals by midwater trawl gear, as both gear types target and harvest large schools of herring.

*Response:* Many of the Council's actions entail catch allocations between user groups. The National Standard Guidelines recognize that allocations of fishing privileges include assignment of ocean areas to different gear users that must comply with National Standard 4. The Council's prohibition on inshore midwater trawling complies with National Standard 4's requirement to be fair and equitable and reasonably calculated to promote conservation. The decision was based on fishing effort and socioeconomic data. Rather than being the result of its popularity with stakeholders as some claim, it balances the needs of user groups and is expected to also provide conservation benefits for

inshore areas due to herring's important role in the ecosystem as forage. The Council focused on midwater trawl vessels because of their potential for high-volume catches, and they are relatively more mobile and capable of fishing in offshore areas than vessels using other gear types. While purse seine vessels are capable of high-volume catches, midwater trawl vessels have historically harvested more than 65 percent of the annual catch limit. The FEIS concludes that the inshore midwater trawl restricted area is expected to only have a neutral to low negative impact on habitat. Any effort shift from bottom trawl to midwater trawl gear is not expected to significantly impact habitat because of the existing seasonal and area restrictions on using small-mesh bottom trawl gear within the inshore restricted area and the previous determination that the herring fishery has only minimal and temporary impacts on essential fish habitat. We understand the commenters dislike the measure, but their concerns do not demonstrate the measure is inconsistent with applicable law.

*Comment 7:* Some commenters are concerned about the economic impact of the inshore midwater trawl restricted area on the herring, mackerel, and lobster fisheries, specifically because:

- Herring migrate through inshore waters and the midwater trawl fleet needs flexibility to be able to harvest herring where it is available;
- Losing midwater trawl access to inshore areas will have negative economic impacts on fishing vessels, the businesses and communities that support them, and availability and price of bait for the lobster fishery;
- The restricted area includes mackerel fishing grounds and vessels rely on higher value mackerel to supplement herring revenue;
- Amendment estimates a 30-percent reduction in revenue, but because the majority of herring and mackerel are caught in inshore waters, it would be more like a 70-percent reduction in revenue; and
- Nearly all recent midwater trawl catches have come from the inshore restricted area and vessels will not be able to recoup lost revenue offshore because environmental conditions in Area 3 have not been suitable for catching herring.

*Response:* The amendment's FEIS includes an economic analysis of the potential impacts of prohibiting inshore midwater trawling. Based on data showing that midwater trawl vessels historically harvested the majority of their catch offshore of the inshore

midwater trawl restricted area, the FEIS estimates 30 percent of midwater trawl revenue came from within the inshore restricted area. While economic impacts on the herring, mackerel, and lobster fisheries are expected to be low negative to negative, the impacts on predator fisheries and ecotourism are described as uncertain to low positive. Negative economic impacts may be minimized if midwater trawlers can harvest herring and mackerel offshore and the lobster fishery can use alternatives to herring for bait, such as menhaden, redfish, and skates. In the short term, the availability of herring to the fishery may be affected by the historically low recruitment and overfished stock status. But longer term, as the stock rebuilds, the Council expects midwater trawl vessels may once again be able to harvest the majority of their catch offshore.

*Comment 8:* Some commenters caution that the inshore midwater trawl restricted area, covering a large area and effective year-round, is inconsistent with the problem identified in the amendment and ignores the user group overlap analysis. They also express concern that the amendment's FEIS does not acknowledge that the measure is a herring allocation among fleets, incorrectly identifies the inshore midwater trawl restricted area as a compromise between competing interests, and does not reasonably consider the impacts of an effort shift if midwater trawl vessels begin using bottom trawl gear.

*Response:* We disagree. As previously described, the inshore midwater trawl restricted area allocates fishing opportunities to a wide variety of user groups in a manner that promotes the conservation of herring for predators and is based on the best available science on the overlap between user groups. The FEIS acknowledges the inshore midwater trawl restricted area is an allocation of fishing opportunities between different user groups. Because the Council designed the measures to help limit concentrated removals of herring in inshore areas to allow for herring as forage in the ecosystem and support businesses that depend on predators of herring, the FEIS correctly describes the measure as a fair compromise that balances the competing needs of user groups. The FEIS recognizes the potential for an effort shift from midwater to bottom trawl gear, and acknowledges that biological benefits and socioeconomic benefits to other user groups may be minimized if midwater trawl vessels continue to fish inshore with bottom trawl gear. Whether midwater trawl vessels convert to bottom trawl gear will

likely depend on several factors, such as the cost of converting, market demands, and the availability of herring offshore. In Area 1A, herring is only available for harvest June through December and is more frequently caught using purse seine gear than bottom trawl gear. Additionally, the states of Maine, New Hampshire, and Massachusetts implement weekly landings limits that may deter a midwater trawl vessel from converting to bottom trawl gear to fish in Area 1A. Given time and area restrictions on using small-mesh bottom trawl gear in Management Areas 1B and 3, the FEIS states that herring vessels are unlikely to substantially expand the use of bottom trawl gear in those areas, with the exception that they may try to access the western portion of the Raised Footrope Exemption Area from September to December.

*Comment 9:* Some commenters assert the amendment does not consider the impact of restricting fishing inshore in combination with the loss of fishing grounds due to future offshore wind development.

*Response:* During the development of Amendment 8, there were no offshore wind projects in place or construction and operation plans (COPs) made public for any of the herring management areas. While COPs for South Fork Wind Farm were made public in June 2018, the COPs for Vineyard Wind and Bay State Wind were made public in October 2018 and March 2019, respectively, after the Council adopted final measures in Amendment 8 at its September 2018 meeting. The FEIS qualitatively considers the impacts of offshore wind projects, along with environmental and other non-fishing related activities, as part of the cumulative effects assessment (Section 4.9). It concludes that the direct and indirect effects of the management measures in Amendment 8 considered in combination with all other actions (*i.e.*, past, present, and reasonably foreseeable future actions), should yield non-significant low positive impacts on human communities. Without wind projects being in place or COPs made public, quantitatively evaluating the impacts of offshore wind projects in combination with measures considered in Amendment 8 would have been too speculative.

#### *ABC Control Rule*

*Comment 10:* Commenters support implementation of the ABC control rule because they believe it will:

- Balance the goals and objectives of the Herring FMP, including long-term, biologically-sustainable harvest,

accounting for forage, and sustainable source of fishing revenue;

- Better account for forage at times of high biomass while continuing to safeguard the herring fishery during times of lower biomass;

- Provide forage for fish, marine mammals, and seabirds;

- Better align with ecosystem-based management;

- Support ecosystem health and the economies of coastal communities;

- Help reduce inconsistent and unpredictable fishing to ensure a steady supply of bait for the lobster fishery; and

- Help ensure the long-term viability of herring, its fishery, and the predators that rely on herring.

The joint letter from CLF, NAS, NRDC, Pew, and Wild Oceans explained that, initially, they advocated for a more conservative ABC control rule to maintain a forage base for economically valuable predator fisheries and the marine ecosystem. However, recognizing the economic implications of the 2018 herring stock assessment, indicating that herring biomass and recruitment were low, they now support the Council-recommended ABC control rule to provide valuable forage for fish, marine mammals, and seabirds, while allowing fishing opportunities and long-term benefits for the herring and lobster fisheries. They believe the control rule is consistent with the Herring FMP, Magnuson-Stevens Act, National Standard 1 guidelines for managing forage fish, and the best available science.

The TNC supports the ABC control rule given that the 2018 herring stock assessment concluded herring biomass is declining, stock recruitment is at a historic low, and the probability of the stock becoming overfished is high. It acknowledges that the ABC control rule may result in negative short-term economic impacts for participants in the herring and lobster fisheries, but believes it will provide long-term benefits for the marine ecosystem and the fisheries that depend on herring.

*Response:* We concur with the commenters' support for the ABC control rule.

*Comment 11:* Members of the herring industry stress that the need for a control rule is flawed because the 2018 stock assessment assumes no link between SSB and recruitment. They explain that recruitment in the herring fishery is environmentally driven and variable, that the recent experience of below average recruitment is unusual, and that small herring seen both inshore and offshore are part of a recruitment

event independent of a new control rule.

*Response:* The Council recommended a new ABC control rule because it determined that the previous ABC control rule did not sufficiently provide for the role of herring in the ecosystem, especially when biomass is reduced and there is uncertainty in the assessment. While the assessment accounts for natural mortality, it is more risk averse to use an ABC control rule that reserves a portion of the catch for predators in the event estimates of biomass are uncertain. The inability of the 2018 stock assessment to quantitatively estimate the relationship between SSB and recruitment does not mean that the relationship does not exist. The FEIS acknowledges that environmental factors likely have a larger influence on herring recruitment and abundance trends than fishing, but concluded that reducing fishing pressure, when there is substantial uncertainty, is expected to prevent overfishing and optimize yield for the fishery in the long term.

*Comment 12:* Some members of the herring industry expressed concern with the management strategy evaluation (MSE) used to develop the ABC control rule, including the following:

- The MSE was rushed, stakeholder engagement and modeling were limited in scope and not used to their full potential, especially modeling of the spatial distribution of herring and predator/prey interactions;

- The analysis did not consider abundance, availability, or nutritional value of alternative prey species, nor did it consider the impact of herring abundance on the abundance of alternative prey species;

- The Council had no understanding of how this control rule would result in real-world specifications; and

- The analysis did not incorporate rebuilding measures that would be required if the stock is overfished, so the benefits of the more conservative control rules are illusory.

*Response:* The Council developed alternatives for a herring ABC control rule using an 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.

Development of the control rule with an MSE was, despite unavoidable data gaps and modeling limitations, based on the best scientific information available. To ensure the MSE was sufficient for identifying and analyzing a range of ABC control rules, the Council arranged for an external peer review of the MSE. The reviewers recognized that a tremendous amount of work was completed in a rigorous manner under the time and resource constraints of the MSE. While the models were constrained by the availability of data, the reviewers agreed the three models used in the MSE were appropriate for evaluating ABC control rules in the context of herring's role as forage in the ecosystem. The model used for herring included scenarios where herring productivity was high, as well as low, to explicitly enable the Council to evaluate the impact of ABC control rules on real-world specifications given fluctuations in herring biomass. The commenters are correct that the model used for herring did not include rebuilding measures. However, rebuilding measures are not required to be effective until 2 years after a stock has been declared overfished. There are potential conservation benefits associated with conservative control rules, especially like the Council-recommended control rule that sets herring catch at zero when biomass is low, until rebuilding measures become effective. Overall, the reviewers concluded that the data, methods, and results of the MSE were sufficient for identifying and analyzing a range of ABC control rule alternatives and that the MSE represents the best available science for evaluating the performance of herring control rules and their potential impact on key predators.

*Comment 13:* Commenters oppose implementation of the ABC control rule because they believe:

- It is too precautionary, as evident by its 2-percent chance of overfishing in

2019 when only a 50-percent or less chance of overfishing is required under the Magnuson-Stevens Act;

- It is not appropriate for herring because it double counts predator needs and adds an additional forage buffer of at least 15 percent;

- It is not capable of explicitly accounting for herring's role as forage because many predators are generalists and consume a variety of prey species;
- Setting catch to zero when biomass is low does not account for herring as forage because herring's role as forage does not diminish as biomass diminishes;

- It would not have prevented the current situation of low herring biomass and recruitment, but it does ensure the economic impact of low herring biomass is more negative than necessary; and
- It lacks "exceptional circumstances" protocol to address scenarios with low biomass, especially when it would prohibit fishing.

*Response:* We disagree with these comments. The control rule was developed by the Council to reflect its harvest policy for herring and provide for a long-term sustainable herring fishery. It moderately reduces fishing mortality (80 percent of the rate that supports MSY reduced from 90 percent) when biomass is high, eliminates catch in response to low biomass (10 percent or less of the  $B_{MSY}$ ), and takes into account herring's role as forage for predators. As described previously, an external peer review found the results of the MSE were sufficient for identifying and analyzing a range of ABC control rule alternatives and that the MSE represents the best available science for evaluating the performance of herring control rules and their potential impact on key predators. Similar to the inshore midwater trawl restricted area, the ABC control rule also considers impacts across user groups. The control rule modestly reduces the amount of catch available to the herring and lobster fisheries to support herring as forage for other user groups. Instead of an "exceptional circumstances" protocol to allow for fishing when biomass is very low, the Council recommended that catch be set at zero to help rebuild biomass and ensure herring is available to predators. The control rule is intended to produce a low variation in yield, low probability of a herring fishery shutdown, and low probability of overfishing. As a result, the Council anticipates that short-term negative economic impacts on participants in the herring, mackerel, or lobster fisheries resulting from a reduced herring harvest may become a long-term economic benefit for them and other user groups.

*Comment 14:* Some members of the herring industry argue for the continued use of the status quo control rule because it balances scientific uncertainty with stability for the fishery. They also caution the new control rule is not consistent with the Magnuson-Stevens Act because the FEIS did not indicate any benefit to predators, so the economic costs of the control rule outweigh the benefits.

*Response:* Currently, there is no ABC control rule for the Herring FMP. Interim control rules have been applied in the past, but the harvest policy has been temporary and the Council has considered different ABC options with each specifications action. The commenters' conclusion that the FEIS does not indicate any benefit to predators is incorrect. The FEIS holds that the Council-recommended ABC control rule is expected to have positive biological impacts on the herring stock and low positive biological impacts on herring predators. While the commenters are correct that the FEIS estimates minimal differences in short-term impacts on predator species across ABC control rule alternatives, the ability of the MSE's modeling to detect differences in predator metrics (*i.e.*, common tern productivity, bluefin tuna weight, spiny dogfish biomass) and marine mammals was limited by the amount and scale of available predator data. The FEIS notes that, in general, more herring left unfished in the ecosystem could have positive impacts on herring predators, despite that relatively small differences in overall ABC may not have measurable differences in overall impacts on herring predators because many predators are opportunistic. Additionally, the FEIS explains that using ABC control rules that reduce fishing mortality at lower biomass levels would have more long-term positive benefits on predators, compared to control rules that allow higher fishing mortalities (*status quo*).

In addition to providing for herring's role as forage in the ecosystem, the control rule is also intended to provide for a sustained participation of fishing communities that depend on herring. Information about the importance of herring to affected fishery-related businesses and communities was included in the FEIS. The FEIS describes preventing overfishing and optimizing yield as expected long-term impacts of establishing an ABC control rule. It also concludes that these impacts are expected to benefit herring fishery-related business, herring fishing communities, and other communities that depend on predators of herring (*e.g.*, other commercial fisheries,

recreational fisheries, ecotourism). In the short term, the FEIS explains there will likely be negative impacts on herring vessels, since catch levels would likely be greatly reduced until herring biomass and recruitment increase. But, it acknowledges negative short-term economic impacts are expected under all the control rule alternatives, including *status quo*, based on low projected herring biomass for the next several years. Therefore, because the potential benefits, biological as well as socioeconomic, are commensurate with potential costs, we determined the ABC control rule is consistent with the Magnuson-Stevens Act.

### Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the National Marine Fisheries Service (NMFS) Assistant Administrator has determined that this final rule is consistent with Amendment 8 to the Herring FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

NMFS is also implementing regulations in this rule that are necessary to carry out any fishery management plan or amendment pursuant to section 305(d) of 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.

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

This final rule is not an E.O. 13771 regulatory action because this action is not significant under E.O. 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

The Council prepared an FEIS for Amendment 8 to the Herring FMP. We filed the FEIS with the Environmental Protection Agency on August 12, 2019. A notice of availability for the FEIS was published in the **Federal Register** on August 16, 2019 (84 FR 41988). The FEIS describes the impacts of the measures on the environment. This amendment establishes a herring ABC control rule and prohibits the use of midwater trawl gear in inshore waters from Canada to Connecticut. The biological impact of the ABC control rule on the herring resource is expected to be positive. However, other factors, such as environmental conditions, may have an even greater influence on herring biomass and could affect the stock regardless of the control rule. Short-term revenue reductions are expected as a result of the ABC control

rule likely resulting in negative economic impacts on the herring fishery, with ripple effects on the communities involved in the Atlantic mackerel and lobster fisheries. These negative economic impacts are expected to be exacerbated by the low herring biomass and recruitment identified in the 2020 stock assessment. In the long term, fishing under a control rule that ensures continued, sustainable harvest of the herring resource is expected to benefit the herring fishery and its communities, as well as indirectly benefiting fisheries that rely on herring as forage in the ecosystem. The biological impacts of prohibiting midwater trawling in inshore areas on the herring resource are expected to be neutral to low positive if the measure prevents the fishery from harvesting the annual catch limit (ACL) or reduces fishing pressure on the inshore stock component. However, in the short term, the ACL is expected to be low, so the fishery is expected to be able to harvest the ACL. The biological impacts of prohibiting trawling on non-target and protected species are somewhat uncertain due to unknown effort shifts. Midwater trawl effort may move offshore or some vessels may decide to change gear type in order to continue fishing inshore. The socioeconomic impacts are expected to be negative for the midwater trawl fleet and associated fishing communities. The gear prohibition is estimated to impact about 30 percent of total revenue for midwater water trawl vessels. Some of this revenue may be recovered by fishing in offshore areas, but trips costs will be higher. The socioeconomic impacts of the gear prohibition on predator fisheries and ecotourism industries are expected to be potentially low positive. This ecosystem is complex and the linkages between herring and predators are complex: Having less fishing pressure in one area may not necessarily mean there are positive impacts on a predator that spends time in that area, as well as other areas. Potential negative impacts associated with user conflicts in these areas are expected to be lower. However, some effort will shift so there could be increased conflicts in other areas and seasons that do not exist now. In approving Amendment 8 on November 19, 2019, NMFS issued a

Record of Decision (ROD) identifying the selected alternative. A copy of the ROD is available from NMFS (see **FOR FURTHER INFORMATION CONTACT**).

We prepared a final regulatory flexibility analysis (FRFA) in support of this action. The FRFA incorporates the initial RFA (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments, and a summary of the analyses completed in support of this action. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA and a copy of the EIS/RIR/IRFA are available upon request (see **ADDRESSES**) or via the internet at: <http://www.nefmc.org>.

*A Statement of the Significant Issues Raised by the Public in Response to the IRFA, a Statement of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments*

We received 268 comment letters on the NOA and proposed rule. Those comments, and our responses, are contained in the Comments and Responses section of this final rule and are not repeated here. Comments 1, 2, 4, 7, 9, 13, and 14 discussed the economic impacts of the measures, but did not directly comment on the IRFA. All revisions and clarifications to the proposed rule, as well as the rationale for those revisions, are described in Revisions and Additional Clarifications to the Proposed Rule section of this final rule and are not repeated here.

*Description and Estimate of the Number of Small Entities to Which the 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 affects 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. Unlike open-access Category E herring permit holders, Category D permit holding firms harvest only a small fraction of herring and do not typically use midwater trawl gear so they are minimally affected by the regulations. Category E permit holding firms, however, are affected by the regulations because they have a higher possession limit (20,000 lb (9,072 kg) versus 6,600 lb (2,994 kg)) and are more likely to use midwater trawl gear.

As of June 1, 2018, there were 862 firms (852 small) that held at least 1 herring permit. There were 126 (123 small) firms that were active in the herring fishery (i.e., having landed herring in 2017) and held at least 1 herring permit. There were 101 (94 small) firms that held at least 1 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

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

Firm size	Firms	Gear	Gross receipts	Herring receipts
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 the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes*

Recognizing the potential economic impact of this amendment, the Council recommended measures that achieved the amendment goals while minimizing negative economic impacts on fishery participants.

Of all the ABC control rule alternatives considered by the Council,

the Council recommended the control rule that would provide the second highest level of catch. This control rule was developed by the Council to reflect its harvest policy for herring and provide for a long-term sustainable herring fishery. It moderately reduces fishing mortality (80 percent of the rate that supports maximum sustainable yield reduced from 90 percent) when biomass is high, eliminates catch in response to low biomass (10 percent or less of the biomass to support maximum sustainable yield), and takes into account herring's role as forage for predators. As described previously, an external peer review found the results of the MSE were sufficient for identifying and analyzing a range of ABC control rule alternatives and that the MSE represents the best available science for evaluating the performance of herring control rules and their potential impact on key predators. Similar to the inshore midwater trawl restricted area, the ABC control rule also considers impacts across user groups. The control rule

modestly reduces the amount of catch available to the herring and lobster fisheries to support herring as forage for other user groups. The Council anticipates that short-term negative economic impacts on participants in the herring, mackerel, or lobster fisheries resulting from a reduced herring harvest may become a long-term economic benefit for other user groups. Especially if the control rule performs as recommended by the Council, with a low variation in yield, low probability of a herring fishery shutdown, and low probability of overfishing.

The Council developed the inshore midwater trawl restricted area consistent with the amendment's problem statement and the FEIS's overlap analysis. The Council considered other alternatives to minimize user group conflict, including prohibiting midwater trawling inshore of 25 nautical miles (46 km) and 50 nautical miles (93 km), but recommended a shallower midwater trawl restricted area instead as a way to

more fairly and equitably balance the costs and benefits of the measure. Additionally, to help mitigate the economic impact of the inshore midwater trawl restricted area and provide access for the mackerel fishery, the Council also recommended that RSA compensation fishing trips would be exempt from the prohibition on inshore midwater trawling.

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 process, a fishery bulletin that serves as a small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (GARFO), and the fishery bulletin (*i.e.*, compliance guide) will be sent to all holders of permits for the herring fishery. The fishery bulletin and this final rule will be posted on the GARFO website.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 29, 2020.

**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 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 § 648.2, revise the definition for “Observer or monitor” and add the definition for “Slippage in the Atlantic herring fishery.”

**§ 648.2 Definitions.**

\* \* \* \* \*

*Observer or monitor* means any person certified by NMFS to collect operational fishing data, biological data, or economic data through direct observation and interaction with operators of commercial fishing vessels as part of NMFS’ Northeast Fisheries Observer Program. Observers or

monitors include NMFS-certified fisheries observers, at-sea monitors, portside samplers, and dockside monitors.

\* \* \* \* \*

*Slippage in the Atlantic herring fishery* means discarded catch from a vessel issued an Atlantic herring permit that is carrying a NMFS-certified observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by a NMFS-certified observer or monitor after the catch is on board. Slippage also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slippage includes releasing catch from a codend or seine prior to the completion of pumping the catch aboard and the release of catch from a codend or seine while the codend or seine is in the water. Fish that cannot be pumped and remain in the codend or seine at the end of pumping operations are not considered slippage. Discards that occur after the catch is brought on board and made available for sampling and inspection by a NMFS-certified observer or monitor are also not considered slippage.

\* \* \* \* \*

- 3. Amend § 648.11 by:
  - a. Revising paragraphs (h)(1), (4)(ii), (5)(ii)(C), (5)(iv)(A), (5)(vi), (5)(vii)(A), and (5)(vii)(G);
  - b. Revising paragraphs (i)(1), (2), (3)(ii), (4)(iii), and (5);
  - c. Revising paragraph (k)(4)(i); and
  - d. Revising paragraphs (m)(1)(v), (2)(iii)(C), and (4)(i).

**§ 648.11 Monitoring coverage.**

\* \* \* \* \*

(h) \* \* \* (1) *General.* An entity seeking to provide monitoring services, including services for IFM Programs described in paragraph (g) of this section, must apply for and obtain approval from NMFS following submission of a complete application. Monitoring services include providing NMFS-certified observers, monitors (at-sea monitors and portside samplers), and/or electronic monitoring. A list of approved monitoring service providers shall be distributed to vessel owners and shall be posted on the NMFS Fisheries Sampling Branch (FSB) website: <https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs>.

\* \* \* \* \*

- (4) \* \* \*
  - (ii) If NMFS approves the application, the monitoring service provider’s name

will be added to the list of approved monitoring service providers found on the NMFS/FSB website and in any outreach information to the industry. Approved monitoring service providers shall be notified in writing and provided with any information pertinent to its participation in the observer or monitor programs.

\* \* \* \* \*

- (5) \* \* \*
- (ii) \* \* \*

(C) The required observer or monitor equipment, in accordance with equipment requirements, prior to any deployment and/or prior to NMFS observer or monitor certification training; and

\* \* \* \* \*

(iv) \* \* \* (A) A candidate observer’s first several deployments and the resulting data shall be immediately edited and approved after each trip by NMFS/FSB prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

\* \* \* \* \*

(vi) *Observer and monitor training requirements.* A request for a NMFS/FSB Observer or Monitor Training class must be submitted to NMFS/FSB 45 calendar days in advance of the requested training. The following information must be submitted to NMFS/FSB at least 15 business days prior to the beginning of the proposed training: A list of observer or monitor candidates; candidate resumes, cover letters and academic transcripts; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate’s criminal convictions, if any. A medical report certified by a physician for each candidate is required 7 business days prior to the first day of training. CPR/First Aid certificates and a final list of training candidates with candidate contact information (email, phone, number, mailing address and emergency contact information) are due 7 business days prior to the first day of training. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/FSB minimum eligibility standards for observers or monitors as described on the National Observer Program website: <https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer>.

(vii) \* \* \*

(A) *Deployment reports.* The monitoring service provider must report to NMFS/FSB when, where, to whom, and to what vessel an observer or monitor has been deployed, as soon as practicable, and according to



requirements outlined by NMFS. The deployment report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week. The monitoring service provider must ensure that the observer or monitor reports to NMFS the required electronic data, as described in the NMFS/FSB training. Electronic data submission protocols will be outlined in training and may include accessing government websites via personal computers/ devices or submitting data through government issued electronics. The monitoring service provider shall provide the raw (unedited) data collected by the observer or monitor to NMFS at the specified time per program.

\* \* \* \* \*

(G) *Status report.* The monitoring service provider must provide NMFS/FSB with an updated list of contact information for all observers or monitors that includes the identification number, name, mailing address, email address, phone numbers, homeports or fisheries/ trip types assigned, and must include whether or not the observer or monitor is "in service," indicating when the observer or monitor has requested leave and/or is not currently working for an industry-funded program. Any Federally contracted NMFS-certified observer not actively deployed on a vessel for 30 days will be placed on Leave of Absence (LOA) status (or as specified by NMFS/FSB according to most recent Information Technology Security Guidelines. Those Federally contracted NMFS-certified observers on LOA for 90 days or more will need to conduct an exit interview with NMFS/FSB and return any NMFS/FSB issued gear and Common Access Card (CAC), unless alternative arrangements are approved by NMFS/FSB. NMFS/FSB requires 2-week advance notification when a Federally contracted NMFS-certified observer is leaving the program so that an exit interview may be arranged and gear returned.

\* \* \* \* \*

(1) *Requirements.* To be certified, employees or sub-contractors operating as observers or monitors for monitoring service providers approved under paragraph (h) of this section. In addition, observers must meet NMFS National Minimum Eligibility Standards for observers specified at the National Observer Program website: <https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer>.

(2) *Observer or monitor training.* In order to be deployed on any fishing vessel, a candidate observer or monitor must have passed an appropriate

NMFS/FSB Observer Training course and must adhere to all NMFS/FSB program standards and policies. If a candidate fails training, the candidate and monitoring service provider shall be notified immediately by NMFS/FSB. Observer training may include an observer training trip, as part of the observer's training, aboard a fishing vessel with a trainer. Contact NMFS/FSB for the required number of program specific observer and monitor training certification trips for full certification following training.

(3) \* \* \*

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board fishing vessels, pursuant to standards established by NMFS. Such standards shall be provided to each approved monitoring service provider.

\* \* \* \* \*

(4) \* \* \*

(iii) Be physically and mentally capable of carrying out the responsibilities of a monitor on board fishing vessels, pursuant to standards established by NMFS. Such standards shall be provided to each approved monitoring service provider.

\* \* \* \* \*

(5) *Probation and decertification.* NMFS may review observer and monitor certifications and issue observer and monitor certification probation and/or decertification as described in NMFS policy.

\* \* \* \* \*

(k) \* \* \*

(4) \* \* \*

(i) An owner of a scallop vessel required to carry an observer under paragraph (k)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the NMFS/FSB from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/FSB website: <https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs>. The observer service provider may take up to 48 hr to arrange

for observer deployment for the specified scallop trip.

\* \* \* \* \*

(m) \* \* \*

(1) \* \* \*

(v) To provide the required IFM coverage aboard declared Atlantic herring trips, NMFS-certified observers and monitors must hold a high volume fisheries certification from NMFS/FSB.

(2) \* \* \*

(iii) \* \* \*

(C) For a waiver of IFM requirements on trip by a wing vessel as described in paragraph (m)(1)(ii)(E) of this section.

\* \* \* \* \*

(4) \* \* \*

(i) An owner of an Atlantic herring vessel required to have monitoring under paragraph (m)(3) of this section must arrange for monitoring by an individual certified through training classes operated by the NMFS/FSB and from a monitoring service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected for monitoring must contact a monitoring service provider prior to the beginning of the trip and the monitoring service provider will notify the vessel owner, operator, or manager whether monitoring is available. A list of approved monitoring service providers shall be posted on the NMFS/FSB website: <https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs>.

\* \* \* \* \*

■ 4. 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.

\* \* \* \* \*

■ 5. In § 648.200, revise paragraphs (b)(1), (2), and (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 (e.g.,  $F_{MSY}$  or proxy). Catch that exceeds this amount would result in overfishing. The stock is considered overfished if stock biomass is less than 1/2 the stock biomass associated with the MSY level or its proxy (e.g.,  $SSB_{MSY}$  or proxy). The stock is considered subject to overfishing if the fishing mortality rate exceeds the fishing mortality rate associated with the MSY level or its proxy (e.g.,  $F_{MSY}$  or proxy).

(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 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).

\* \* \* \* \*

■ 6. 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 US 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	12
IMT2 .....	42° 00.00' N	69° 43.474' W	23
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	45
IMT7 .....	40° 50.637' N	71° 51.00' W	56
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.

\* \* \* \* \*

■ 7. In § 648.206, revise paragraphs (b)(3), (b)(37) and (b)(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, 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.

\* \* \* \* \*

[FR Doc. 2020–29127 Filed 1–8–21; 8:45 am]

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