



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130408348-3348-01]

RIN 0648-BD17

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 2 and Specifications

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 2 to the Atlantic herring Fishery Management Plan and the 2013-2015 fishery specifications for the Atlantic herring fishery. Framework 2 would allow the New England Fishery Management Council to split annual catch limits seasonally for the four Atlantic herring management areas, and the carryover of unharvested catch, up to 10 percent for each area's annual catch limit. The specifications would set catch specifications for the herring fishery for the 2013-2015 fishing years and would establish seasonal splits for management areas 1A and 1B as recommended to NMFS by the New England Fishery Management Council.

DATES: Public comments must be received by [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents used by the New England Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465-0492. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

You may submit comments, identified by NOAA-NMFS-2013-0120, by any one of the following methods:

- _ Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0120, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments;
- _ Mail: Submit written comments to NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Framework 2 and 2013-2015 Herring Specifications;”
- _ Fax: (978) 281-9135, Attn: Carrie Nordeen.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A"

in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, (978) 281-9272, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) for herring appear at 50 CFR part 648, subpart K. The regulations at § 648.200 require the Council to recommend herring specifications for NMFS' review and proposal in the Federal Register, including the overfishing limit (OFL), acceptable biological catch (ABC), annual catch limit (ACL), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), U.S. at-sea processing (USAP), border transfer (BT), the sub-ACL for each management area, including seasonal periods as allowed by § 648.201(d) and modifications to sub-ACLs as allowed by § 648.201(f), and the amount to be set aside for the research set aside (RSA) (3 percent of the sub-ACL from any management area) for up to 3 years.

The proposed 2013-2015 herring specifications are based on the provisions currently in the Herring FMP, and provide the necessary elements to comply with the ACL and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action also includes measures proposed in Framework Adjustment 2 (Framework 2) to the FMP.

Framework 2 Measures

Framework 2 would allow seasonal splits of sub-ACLs for all herring management areas through the specifications process. The Herring FMP already authorizes seasonal splits of the Area 1A sub-ACL. The proposed sub-ACL splitting under Framework 2 would allow seasonal control of fishing effort and harvest in management areas by specifying the percent of the sub-ACL available for harvest. The FY 2013-2015 specifications propose the following:

Area 1A: 100 percent of the sub-ACL available for harvest during June-December (none of the sub-ACL would be available for harvest during January through May); and

Area 1B: 100 percent of the sub-ACL available for harvest during May-December (none of the sub-ACL would be available for harvest during January through April).

Framework 2 would also allow the carryover of unharvested catch, up to 10 percent for each sub-ACL, provided the stock-wide catch did not exceed the stock-wide ACL. This measure allows a sub-ACL increase for a management area, but it does not allow a corresponding increase to the stock-wide ACL. Overall harvest would therefore remain constrained by the stock-wide ACL. Consequently, the fleet would be required to forego harvest in one or more management areas in order to harvest the carryover available in an area. This measure would maintain the management uncertainty buffer between ABC and the stock-wide ACL, while giving the fleet some flexibility in choosing where to harvest the stock-wide ACL.

Under this measure, NMFS would allocate carryover in the second year after the applicable year ends. The interim year is necessary because the herring fishery can be active up to the end of December, and NMFS cannot finalize herring catch data until about 6 months after the end of the fishing year (FY). Therefore, NMFS would apply carryover from fishing year 2013 in FY 2015, for example.

2013-2015 Herring Specifications

The Gulf of Maine-Georges Bank herring stock complex is a transboundary stock that is found in both U.S. and Canadian waters. The 2012 Stock Assessment Review Committee of the 54th Northeast Regional Stock Assessment Workshop estimated the 2011 herring biomass at 517,930 mt (biomass supporting maximum sustainable yield (B_{MSY}) = 157,000 mt) and the 2011 fishing mortality rate (F) at 0.14 (F_{MSY} (0.27)). Because the herring stock complex is above $\frac{1}{2} B_{MSY}$ and the fishing mortality rate is below F_{MSY} , the stock is not overfished and overfishing is not occurring. This assessment increased natural mortality rates for 1996-2011 by 50 percent to resolve a retrospective pattern and ensure rates take into account estimated consumption of herring in the ecosystem.

On March 9, 2012, U.S. District Court for the District of Columbia (Court) found that the environmental assessment for Amendment 4 to the FMP did not analyze a reasonable range of alternatives for an ABC control rule or AMs. On August 2, 2012, the Court ordered NMFS to recommend to the Council that the Council consider an adequate range of alternatives for AMs and an ABC control rule based on the best available science for setting ABC control rules for herring and other forage fish. The final rule for Amendment 4 stated that, if a new ABC control rule could be developed following the 2012 herring stock assessment, it would be developed in the 2013-2015 specifications. Additionally, the current herring regulations authorize the modification of existing AMs through the specification process. Therefore, in an August 31, 2012, letter to the Council, NMFS strongly recommended that the Council analyze a range of alternatives for an ABC control rule that consider Atlantic herring's role as forage and AMs as part of the 2013-2015 herring specifications.

On September 12, 2012, the Council's Scientific and Statistical Committee (SSC) considered various approaches for an ABC control rule. The SSC considered the ABC approaches examined by the Herring Plan Development Team (PDT), discussed other possible approaches, and agreed to support both PDT approaches as alternatives for ABC and the ABC control rule for 2013-2015 as the most appropriate for management at this time. The first approach sets ABC for all 3 years based on 75 percent F_{MSY} . The second approach sets ABC at the same level for all 3 years, which has a no greater than 50-percent probability of exceeding F_{MSY} in 2015. The SSC concluded that these two approaches for setting ABC are nearly equivalent from a biological perspective, as they are expected to produce similar spawning stock biomass values for the herring stock in 2015. The SSC also determined that the two control rules would likely meet ecosystem-based targets for a forage species because they incorporated a major advance in accounting for natural mortality in the herring stock, which takes into account herring's role as forage in the ecosystem. The Council's Herring Oversight Committee met on September 20, 2012, to discuss the SSC's ABC and control rule recommendations, and to develop additional herring specifications (e.g., ACL, OY, RSA) based on that advice.

At its September 26, 2012, meeting, the Council considered the SSC's recommendations for an ABC control rule. Based on advice from its scientific advisors, the SSC, the Council selected the "constant catch" ABC control rule as its preferred alternative. This rule provides consistency and potential stability to fishing industry operations and an opportunity for providing a steady supply of catch to the market. At the same time, it maintains a low probability of overfishing or the stock being overfished.

Following the Council meeting, Earth Justice (representing the plaintiffs in the litigation

on Amendment 4) sent a letter to the Council commenting that the Council's consideration of ABC control rules is not consistent with the Court order to evaluate an ABC control rule for forage fish. Earth Justice provided two additional forage fish ABC control rules for the Council to consider: One based on the Lenfest Forage Fish Report; and the other used by the Pacific Fishery Management Council for coastal pelagic species. As a result, the Herring PDT reviewed these two additional forage fish ABC control rules at its October 18, 2012, meeting and recommended to the Council that: 1) These two additional ABC control rules may not be appropriate for herring; and 2) the SSC should evaluate the applicability of these control rules for herring at its November 19, 2012, meeting, both for the 2013-2015 specifications and for long-term management.

The Council also requested that the SSC evaluate the two additional ABC control rules recommended by Earth Justice. In considering the Lenfest and Pacific Council control rules in preparation for the SSC review, the Herring PDT expressed concern about adopting either of these control rules in the 2013-2015 specifications package, as either would represent a significant change in management strategy, which may not be consistent with the Council's management regime or the underlying stock assessment advice, and that adopting such a rule would require consideration of a number of factors not appropriate to the specifications process (i.e., such a potentially significant deviation from the current management regime would be better considered in a Council amendment to the FMP). The SSC carefully considered the additional two control rules it was asked to review, and concluded that forage fish control rules based on the Lenfest and Pacific Council models would yield short-term biomass projections for 2013-2015 that are very similar to their previous ABC control rule recommendations (i.e., 75

percent of FMSY and constant catch control rules) (see Appendix II of the EA for the specifications). The SSC concluded that the 75-percent and constant catch control rules that it had already recommended to the Council are consistent with the intent of control rules recommended by Earth Justice in that they acknowledge that herring is an important forage species, take that into account, and allow for sufficient biomass through 2015 to support ecosystem considerations, including herring's forage role in the ecosystem. The SSC also noted that there are substantial differences between the two control rules and that considerably more analysis would be necessary to support applying forage fish control rules like the Lenfest and Pacific Council approaches to Atlantic herring in the future. The SSC concluded that it did not have sufficient information to evaluate the performance of the additional control rules for issues including predator-prey models, the relationship between MSY and changing natural mortality rates due to changes in consumption, and unintended consequences of treating forage species differently than other managed species. As a result, the SSC recommended to the Council that control rules for forage species such as the Lenfest and Pacific pelagics control rules should receive further evaluation prior to any potential implementation as a long-term strategy for managing herring. Based on the SSC's recommendations, the Council determined that the 75-percent and constant catch control rules adequately account for herring's role as forage (and would yield similar results to short-term application of specific forage fish control rules) and that consideration of other approaches for the long term will require additional analyses of the appropriate multiple reference points, and should be evaluated in a full Council amendment to the FMP. Section 2.2.9.1 "Additional Alternatives for ABC Control Rule" in the EA fully explains the Council's rationale for considering and rejecting these forage fish control rule

alternatives as part of the specifications. NMFS agrees that the Council's proposed control rule for this action, which is based on the SSC's scientific advice, is the most appropriate approach at this time. NMFS also agrees with the Council's conclusions that the Council should further consider a more specific forage fish control rule, including a consideration of the implications of forage control rules on other components of the ecosystem and on the biological reference points for herring. NMFS further will urge the Council to consider this in the context of an amendment to the FMP to potentially be used when developing the 2016-2018 specifications.

The 2013-2015 specifications also address the Court order relative to AMs for the herring fishery. Due to some recent challenges monitoring the herring fishery, NMFS provided specific AM recommendations to the Council in a letter dated January 23, 2013. Herring catch exceeded one or more management area sub-ACLs in 2010 and 2011, and preliminary data indicate that 2012 catch exceeded three management area sub-ACLs, as well as the stock-wide ACL. This reflects a difficulty in monitoring this high volume fishery, in which the fleet catches and lands large volumes of fish in a very short period of time. NMFS currently monitors herring catch using a combination of daily electronic vessel reports, weekly vessel trip reports, and weekly dealer reports. Data errors in catch reports, late reporting, or non-compliance have been a challenge to monitor the fishery in real-time.

As a result, in a letter dated January 23, 2013, NMFS recommended that the Council revise its management area closure measure to be more precautionary (close the directed fishery when 92 percent, rather than 95 percent, of the area's sub-ACL is projected to be harvested) and adopt a measure that would close the directed fishery in all management areas when 92 percent of the stock-wide ACL is projected to be harvested. Additionally, the letter recommended that

the Council maintain the current pound-for-pound overage deduction measure (allowing for an interim year to verify and finalize catch data) and that it not revise the overage deduction measure so that it would only require overage deductions when catch exceeded 105 percent of a management area sub-ACL.

The Council considered a range of AM alternatives for the herring fishery to help prevent ACL overages and account for overages when they do occur. The Council recommended revising the existing management area closure measure by lowering the directed herring fishery (landings >2,000 lb) closure trigger in a management area from 95 percent to 92 percent of the area’s sub-ACL. The Council also recommended establishing a new AM that would close the entire directed herring fishery when 95 percent of the stock-wide ACL is harvested. Both of these measures would help prevent sub-ACL and stock-wide ACL overages that the fishery has experienced in 2010, 2011, and possibly 2012. Lastly, after considering a range of less precautionary overage deduction measures, the Council recommended maintaining the current overage deduction measure. This measure allows for an interim year to verify and finalize herring catch data before deducting overages from the sub-ACL and/or stock-wide ACL where the overage occurred, consistent with the proposed carryover provision.

At its January 29, 2013, meeting, the Council recommended the 2013-2015 specifications for the herring fishery. NMFS proposes to implement the herring specifications as recommended by the Council, as detailed in Table 1 below. For 2013-2015, the Council may annually review these specifications and recommend adjustments if necessary.

Table 1 Proposed Specifications

Proposed Atlantic Herring Specifications (mt) for 2013-2015	
	2013 - 169,000

Overfishing Limit	2014 - 136,000 2015 - 114,000
Allowable Biological Catch	114,000
Optimum Yield/Annual Catch Limit	107,800
Domestic Annual Harvest	107,800
Border Transfer	4,000
Domestic Annual Processing	103,800
U.S. At-Sea Processing	0
Area 1A Sub-ACL	31,200
Area 1B Sub-ACL	4,600
Area 2 Sub-ACL	30,000
Area 3 Sub-ACL	42,000
Fixed Gear Set-Aside	295
Research Set-Aside	3 percent of each sub-ACL

Consistent with the SSC's advice, the Council recommended changing the OFL from 127,000 mt in 2012 to 169,000 mt in 2013, 136,000 mt in 2014, and 114,000 mt in 2015, and increasing the herring ABC from 106,000 mt in 2010-2012, to a constant level of 114,000 mt for 2013-2015. The Council believes that the buffer between OFL and ABC is reflective of scientific uncertainty. Reductions for additional sources of scientific uncertainty (e.g., biomass projections, recruitment, forage/natural mortality) were not recommended. OY may not exceed OFL and may be reduced by social, economic, or ecological factors. The Council did not recommend any additional buffers for 2013-2015, so OY is set equal to ACL. Herring regulations (§ 648.200(b)(3)) specify that the ACL is less than or equal to ABC minus expected catch in the New Brunswick weir fishery and the uncertainty around discard estimates of herring caught in Federal and state waters. The Council recommended a 6,200-mt deduction for New Brunswick weir catch based on recent performance in that fishery. Because state-only catch and herring discards are tracked against the ACL, the Council did not recommend any additional buffer between ABC and ACL to account for the uncertainty around discard estimates.

Regulations at § 648.201(f) state that if NMFS determines that the New Brunswick weir fishery landed less than 9,000 mt through October 15, NMFS shall allocate an additional 3,000 mt to the Area 1A sub-ACL in November. Because the Council recommended, and this action proposes, a much smaller deduction for New Brunswick weir catch (6,200 mt) for 2013-2015 than in past years, the previous requirement to allocate additional harvest to Area 1A if catch in the New Brunswick weir fishery is less than 9,000 mt is not appropriate for 2013-2015. Therefore, this action would remove that requirement.

BT is a processing allocation available to Canadian transport vessels and dealers. The MSA provides for the issuance of permits to Canadian vessels transporting U.S. harvested herring to Canada for sardine processing. The Council recommended the specification for BT be 4,000 mt. The amount specified for BT has equaled 4,000 mt since 2000. As there continues to be Canadian interest in transporting herring for sardine processing, the specification for BT remains unchanged.

The Herring FMP specifies that DAH will be set less than or equal to OY and be comprised of DAP and BT. Consistent with the proposed specifications for OY, the Council recommended that DAH be 107,800 mt for 2013-2015. DAH should reflect the actual and potential harvesting capacity of the U.S. herring fleet. Since 2001, total landings in the U.S. fishery have decreased, averaging 93,792 mt over the time series. Herring landings from the most recent 5-year period (2007-2011) averaged 86,373 mt. DAP is the amount of U.S. harvest that is processed domestically, as well as herring that is sold fresh (i.e., bait). DAP is calculated by subtracting BT from DAH. Using this formula, the Council recommended that DAP be 103,800 mt. NMFS concurs that the U.S. herring fishery has the capacity to harvest and process

the DAH and DAP recommended by the Council, so it proposes that DAH be set at 107,800 mt and DAP be set at 103,800 mt for 2013-2015.

A portion of DAP may be specified for the at-sea processing of herring in Federal waters. When determining the USAP specification, the Council considers availability of shore-side processing, status of the resource, and opportunities for vessels to participate in the herring fishery. During the 2007-2009 fishing years, the Council maintained a USAP specification of 20,000 mt (Areas 2/3 only) based on information received about a new at-sea processing vessel that intended to utilize a substantial amount of the USAP specification. At that time, landings from Areas 2 and 3 – where USAP is authorized – were considerably lower than allocated sub-ACLs (formerly TACs) for each of the past several years. Moreover, the specification of 20,000 mt for USAP did not restrict either the operation or the expansion of the shoreside processing facilities during the 2007-2009 fishing years. However, this operation never materialized, and none of the USAP specification was used during the 2007-2009 fishing years. Consequently, the Council set USAP at zero for the 2010-2012 fishing years. The Council has not received any information that would suggest changing this specification for FYs 2013-2015.

The Council recommended and NMFS is proposing a 3-percent herring research set-aside (RSA) for all management areas for fishing years 2014-2015. The research set-aside was established in Amendment 1 (0-3 percent for any management area). The herring RSA set-aside is removed from each sub-ACL prior to allocating the remaining sub-ACL to the fishery. If a proposal is approved, but a final award is not made by NMFS, or if NMFS determines that the allocated RSA cannot be utilized by a project, NMFS shall reallocate the unallocated or unused amount of the RSA to the respective sub-ACL, in accordance with the APA, provided that the

additional catch can be available for harvest before the end of the fishing year for which that RSA is specified. Any unallocated or unused RSA would be re-allocated to the sub-ACL and made available to the fleet before the end of the fishing year in accordance with the APA, provided that the RSA can be available for harvest before the end of the fishing year for which the RSA is specified.

Herring regulations (§ 648.201(g)) specify that up to 500 mt of the Area 1A sub-ACL shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44° 36.2 N. Lat. and 67°16.8 W. Long. This set-aside shall be available for harvest by the fixed gear within the specified area until November 1 of each year; any unused portion of the allocation will be restored to the Area 1A sub-ACL after November 1. During 2010-2012, the fixed gear set-aside was specified at 295 mt. Because the proposed Area 1A sub-ACL for 2013-2015 is not substantially different from the Area 1A sub-ACL in 2012, the Council recommended that the fixed gear set-aside remain the same. Therefore, the Council recommended, and NMFS is proposing, that the fixed gear set-aside be set at 295 mt for 2013-2015.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has preliminarily determined that this proposed rule is consistent with the Atlantic Herring FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows.

Statement of Objective and Need

This action proposes management measures and 2013-2015 specifications for the herring fishery. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

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

Based on 2012 permit data, the number of potential fishing vessels in each permit category in the herring fishery are as follows: 40 for Category A (limited access, All Areas); 4 for Category B (limited access, Areas 2 and 3); 45 for Category C (limited access, incidental); and 1,984 for Category D (open access). Using ownership data and this permit information, 61 entities were analyzed relative to the impacts on small entities when the Council made its recommendations on this action. Three entities, owning vessels with Category A permits, were considered large entities, as defined in section 601 of the RFA, based on the small business size standards in effect when the Council made its recommendations on this action.

The Office of Advocacy at the Small Business Administration (SBA) suggests two criteria to consider in determining the significance of regulatory impacts: Disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of "small entity"), not the difference between segments of small entities. The changes in profits, costs, and net revenues

due to Framework 2/Specifications are not expected to be disproportional for small versus large entities, as the proposed action will affect all entities, large and small, in a similar manner. As a result, this action would have proportionally similar impacts on revenues and profits of each vessel and each multi-vessel owner compared both to status quo (i.e., FY 2012) and no action levels. Therefore, this action is not expected to have disproportionate impacts or place a substantial number of small entities at a competitive disadvantage relative to large entities.

Subsequent to Council action related to this proposed rule, SBA revised its small business size standards for several industries in a final rule effective July 22, 2013 (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from \$4.0 to \$19.0 million, Shellfish Fishing from \$4.0 to \$5.0 million, and Other Marine Fishing from \$4.0 to \$7.0 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. In preparing this IRFA, NMFS reviewed permit, landings, and ownership data, NMFS discovered an error in tabulating revenues and entities for 2012 and corrects the numbers in this proposed rule.

NMFS has now identified 70 entities (compared to 61 in the original analysis) that held at least one limited access herring permit (category A, B, or C) in 2012. Many of these entities were active in both finfish fishing and shellfish fishing industries. In order to make a determination of size, fishing entities are first classified as participants in either the Finfish Fishing or Shellfish Fishing industry. If an entity derives more than 50 percent of its gross revenues from shellfish fishing, the \$5.0 million standard for total revenues is applied. If an entity derives more than 50 percent of its gross revenues from finfish fishing, the \$19.0 million standard for total revenues is applied. Based on the revised criteria, there are 7 large shellfish

fishing entities to which the proposed rule would apply. There are 63 small entities to which the proposed rule would apply.

Of the 63 small entities, 39 reported no revenue from herring during 2012. For the twenty-four 24 small entities that were active in the herring fishery, median gross revenues were approximately \$872,000 and median revenues from the herring fishery were approximately \$219,000. There is large variation in the importance of herring fishing for these small entities. Eight of these 24 active small entities derive less than 5 percent of their total fishing revenue from herring. Seven of these 24 active small entities derive more than 95 percent of their total fishing revenue from herring.

After considering the new information, and the new SBA size standards, NMFS does not believe that the new size standards affect the above conclusion that the proposed action would affect all entities, whether large or small, in a similar manner. NMFS solicits public comment on the analyses in light of the new size standards and revised permit and entity information.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

Proposed Actions

Framework Adjustment 2, by allowing sub-ACL carryover, would improve profitability by allowing the industry to maximize opportunities to fish when markets are favorable. The proposed 2013-2015 herring specifications, ABC, and the corresponding sub-ACLs would

increase for the upcoming 3 fishing years (106,00 mt to 114,000 mt), which could also increase profitability. The proposed AMs are expected to act as an incentive to avoid exceeding the ACL and are expected to have minimal impacts on profitability. The impacts of these measures are described below.

Seasonal Splits of Sub-ACLs

Relative to the status quo, the proposed measures, which allow for seasonal splits, may have costs to the herring industry. A seasonal split would delay harvest of herring and potentially reallocate herring effort from earlier in the season to later in the season. The purpose of this measure is to ensure that the herring sub-ACLs are not met or exceeded early in the fishing year. Prolonging the fishing season, or delaying fishing opportunities until late in the fishing year may be desirable in many cases. For example, because herring and mackerel are jointly caught at the end of the fishing year in Area 2, there may be an opportunity to increase catch by delaying some effort until later during the year to provide an opportunity to catch mackerel along with herring. Therefore, there may be benefits to fishing businesses that participate in both the herring and mackerel fishery if the Council chooses to adopt a seasonal split in Area 2, or other areas, in future actions.

The specifications for 2013-2015 implement the actual seasonal splits. The status quo for seasonal splits includes a seasonal split for Area 1A (0 percent for January–May and 100 percent for June-December), and no seasonal splits for the other areas. The proposed measures adds a seasonal split for Area 1B (0 percent January-April and 100 percent in May-December). This would delay fishing in Area 1B to allow for sufficient time for overage or carryover determinations so the industry may be better able to harvest within the sub-ACL. The proposed

Area 1B split may increase user-group conflicts, particularly between the midwater trawl herring vessels and recreational anglers who utilize Area 1B in June. With the exception of 2011 and 2012, Area 1B has been open year-round to the herring fishery (only in 2012 was it closed in June) without significant conflict with the recreational fishery. However, the proposed seasonal split may increase herring vessel activity in Area 1B in June.

An Area 2 split of 67 percent in January-February and 33 percent in March-December was considered, but not selected. The seasonal splitting proposed for Area 2 could ensure herring availability towards the end of the year. This could have positive economic benefits for fishing vessels that are jointly catching herring and mackerel at the end of the calendar year.

Carryover Provisions

Relative to the status quo, the proposed measures to allow for carryover of up to 10 percent of sub-ACL benefits the herring industry by increasing operational flexibility and efficiency. For all carryover options, there are slightly higher regulatory and monitoring costs for NMFS. The Council also considered three options for how to apply the proposed carryover, which have different potential economic impacts to affected entities. Under the Preferred Option (Option 1), there would be no corresponding increase in the total stockwide ACL. Under Option 2, an increase in the total stockwide ACL would be possible and the determination would be authorized by NMFS Regional Administrator. Under Option 3, the total stockwide ACL could increase but could not exceed ABC in any fishing year. All options would provide benefits to the herring industry in terms of increased operational flexibility, higher levels of catch in subsequent years, or both. There may be moderate increases in monitoring and reporting costs which would accrue to fishery managers (NMFS) associated with these options.

Impacts of OFL/ABC Alternatives

Relative to the status quo, the proposed specifications for setting the herring ABC and OFL for 2013-2015 will result in an increase in OFL and ABC. Increasing, then maintaining a stable OFL and ABC would provide net benefits to the herring industry in the short and long term, relative to the status quo. Moderately higher amounts of catch may result in slightly lower bait costs to the lobster industry. Alternative 3 for setting ABC for 2013-2015 would also increase the amount of available catch over the three year specifications period and thereby the potential net benefits to the herring industry in the short and long term, relative to the status quo. However, Alternative 3 would provide lower net benefits than Alternative 2 because it would not provide the industry with stable market expectations and improved ability for business planning.

Sub-ACL Options

Relative to the status quo, these specifications would provide 16,600 mt of additional yield each year in 2013-2015 relative to the yield available in 2012. Increasing a sub-ACL results in positive economic impacts, if the increase translates into increased catch. Increases in sub-ACLs that are not likely to be fully utilized will provide minimal, if any, economic benefits. The values of sub-ACLs under consideration in all options are within the range of recent sub-ACLs and catches. This suggests that the herring industry could approach full utilization of the sub-ACLs under any of the options. Relative to the status quo, all other alternatives are expected to provide similar benefits because they are primarily distributive in nature.

Impacts of Other Proposed 2013-2015 Fishery Specifications

No costs or benefits are expected for the specifications of management uncertainty, RSAs, Fixed Gear Set-Aside (FGSA), DAH, BT, or USAP relative to the status quo.

Accountability Measures

The proposed measures would close the directed fishery at 92 percent of the sub-ACL. Relative to the status quo of 95 percent of the sub-ACL, this alternative may limit fishing opportunities, which would be a cost to the industry. However, this measure may also ensure that sub-ACLs are not exceeded and deducted from future ACLs. The proposed measure would close the entire fishery at 95 percent of the total stockwide ACL; this differs from the status quo because there is currently no trigger to close the directed fishery in all areas based on a percentage of the total ACL. This may impose a small short-term cost on the herring industry relative to the status quo, but there are expected to be long-term benefits from reducing ACL overages. Moreover, the 92-percent trigger for the sub-ACLs in the management areas should minimize impacts associated with closures, especially when combined with carryover provisions that are proposed in Framework 2. The Council also evaluated an option that would close the entire fishery at 92 percent of the total stockwide ACL; this would also impose a small cost on the herring industry relative to the status quo, but presumably less closing the fishery at 95 percent of the catch.

Alternative 3 would have lower costs to the herring industry but may be less effective at achieving the conservation objectives of the Herring FMP. Under Alternative 4, the closure trigger would be affected by any previous overages. This would increase the management complexity for regulators and the industry because there could be different triggers for each management area.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 29, 2013

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

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.14, paragraph (r)(1)(vi)(G) is added to read as follows:

§ 648.14 Prohibitions.

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(r) * * *

(1) * * *

(vi) * * *

(G) Fish for, possess, or retain herring in any management area during a season that has zero percent of the herring sub-ACL allocated as specified in § 648.201(d).

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3. In § 648.201, paragraphs (a)(1), (d), and (f) are revised to read as follows:

§ 648.201 AMs and harvest controls.

(a) * * * (1) Herring sub-ACLs and ACL-- (i) Management area closure. If NMFS projects that catch will reach 92 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, or 92 percent of the Area 1A or Area 1B sub-ACL allocated to a seasonal period as set forth in paragraph (d) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 92 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip in the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(ii) Herring fishery closure. If NMFS projects that catch will reach 95 percent of the ACL before the end of the fishing year, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip in all herring management areas, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

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(d) Seasonal sub-ACL periods. The sub-ACL for each herring management area may be divided into seasonal periods by month. Seasonal sub-ACLs for herring management areas, including the specification of the seasonal periods, shall be set through the annual specification process described at § 648.200. The seasonal allocation of sub-ACLs are as follows:

(1) Area 1A: Zero percent available for harvest during January-May; 100 percent available for harvest during June-December.

(2) Area 1B: Zero percent available for harvest during January-April; 100 percent available for harvest during May-December.

(3) Area 2: 100 percent available for harvest during January-December.

(4) Area 3: 100 percent available for harvest during January-December.

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(f) Carryover. Subject to the conditions described in this paragraph (f), up to 10 percent of unharvested catch in a herring management area in a fishing year shall be carried over and added to the sub-ACL for that herring management area for the fishing year following total catch determination. For example, NMFS will determine total catch from 2013 during 2014, and will add carryover to the applicable sub-ACL(s) in 2015. All such carryover shall be based on the herring management area's initial sub-ACL allocation for the fishing year, not the sub-ACL as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring landed from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 500 mt of herring is added as carryover to a 5,000 mt sub-ACL, catch in that management area would be tracked against a total sub-ACL of 5,500 mt. NMFS shall add sub-ACL carryover only if the ACL, specified consistent with

§ 648.200(b)(3), for the fishing year in which there is unharvested herring, is not exceeded. The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified this paragraph (f).

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