



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-BE50

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Region Standardized Bycatch Reporting Methodology Omnibus Amendment

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

ACTION: Notice of availability of proposed fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic and New England Fishery Management Councils have submitted an Omnibus Amendment to the Fishery Management Plans of the Northeastern U.S. to establish a Standardized Bycatch Reporting Methodology, incorporating a draft Environmental Assessment and preliminary Regulatory Impact Review, for review and approval by the Secretary of Commerce, and is requesting comments from the public. The Standardized Bycatch Reporting Methodology Omnibus Amendment would establish a standardized bycatch reporting methodology for all 13 Fishery Management Plans in the region, as required under the Magnuson-Stevens Fishery Conservation and Management Act. The proposed measures include: Bycatch reporting and monitoring mechanisms; analytical techniques and allocation of at-sea fisheries observers; a standardized bycatch reporting methodology performance standard; a review and reporting process; framework adjustment and

annual specifications provisions; a prioritization process; and provisions for industry-funded observers and observer set-aside programs.

DATES: Comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0114, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0114, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on SBRM Amendment.”

Instructions: All comments received are part of the public record and will generally be posted to www.regulations.gov without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment, and of the draft Environmental Assessment and preliminary Regulatory Impact Review (EA/RIR), are available from the Mid-Atlantic Fishery Management Council, 800 North

State Street, Suite 201, Dover, DE 19901; and from the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR is also accessible via the Internet at: www.greateratlantic.fisheries.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978-281-9341.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any Fishery Management Plan (FMP) amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish notification in the Federal Register that the amendment is available for public review and comment. If approved by NMFS, this amendment would establish a comprehensive SBRM that applies to all FMPs developed by the Mid-Atlantic and New England Councils. The amendment would also effect an administrative change to the regulations on framework adjustments.

Background

Section 303(a)(11) of the Magnuson-Stevens Act requires that all FMPs “establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.” In 2004, several conservation organizations challenged the approval of two major FMP amendments in the Region. In ruling on these suits, the U.S. District Court for the District of Columbia found that the FMPs did not clearly establish a SBRM as required by the Magnuson-Stevens Act and remanded the amendments back to the agency to fully develop and establish the required SBRM. In particular, the Court found that the amendments: (1) Failed to fully evaluate reporting methodologies to assess bycatch; (2) did not mandate a SBRM; and (3) failed to

respond to potentially important scientific evidence. In response, the Councils worked closely with NMFS to develop, adopt, and implement an omnibus FMP amendment that established a SBRM for all 13 FMPs in the region.

The final rule to implement the SBRM Omnibus Amendment was published in the Federal Register on January 28, 2008 (73 FR 4736). Following implementation of the SBRM amendment, a conservation organization challenged the legality of the action (Oceana v. Locke). The U.S. District Court initially found in favor of the Government on all counts. However, that ruling was appealed by the plaintiffs, and in 2011 the U.S. Court of Appeals issued an opinion that found fault with one element of the amendment--the prioritization process. The Court of Appeals ordered the amendment be vacated and remanded to the agency for further proceedings. The Court of Appeals' decision found that the prioritization process "grants the Fisheries Service substantial discretion both to invoke and to make allocations according to a non-standardized procedure," and, therefore, did not "establish" a standardized methodology as required under the Magnuson-Stevens Act. On December 29, 2011, NMFS published a rule in the Federal Register (76 FR 81844) removing all regulations implemented by the January 28, 2008, SBRM final rule.

The Councils, in coordination with NMFS, initiated a revised SBRM amendment to build upon the substantial work previously completed to develop the SBRM and to address the limited deficiencies identified by the Court. This amendment covers 13 FMPs, 40 managed species, and 14 types of fishing gear. The purpose of the amendment is to: Explain the methods and processes by which bycatch is currently monitored and assessed for fisheries in the region; determine whether these methods and processes need to be modified and/or supplemented; establish standards of precision for bycatch estimation for these fisheries; and, thereby, document the SBRM established for all fisheries managed through the FMPs of the Northeastern U.S. The

amendment also addresses the Appellate Court’s concern over NMFS’s “substantial discretion both to invoke and to make allocations according to a non-standardized procedure” cited in the Oceana v. Locke decision.

The Omnibus SBRM Amendment would establish an SBRM comprised of seven elements: (1) The methods by which data and information on discards are collected and obtained; (2) the methods by which the data obtained through the mechanisms identified in element 1 are analyzed and utilized to determine the appropriate allocation of at-sea observers; (3) a performance measure by which the effectiveness of the SBRM can be measured, tracked, and utilized to effectively allocate the appropriate number of observer sea days; (4) a process to provide the Councils with periodic reports on discards occurring in fisheries they manage and on the effectiveness of the SBRM; (5) a measure to enable the Councils to make changes to the SBRM through framework adjustments and/or annual specification packages rather than full FMP amendments; (6) a non-discretionary method to determine the available funding for at-sea observers and a formulaic process for prioritizing at-sea observer coverage allocations to match available funding; and (7) to implement consistent, cross-cutting observer service provider approval and certification procedures and to enable the Councils to implement either a requirement for industry-funded observers or an observer set-aside program through a framework adjustment rather than an FMP amendment.

We are soliciting public comments on the SBRM Omnibus Amendment and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement the revised SBRM Omnibus Amendment will be published in the Federal Register for additional public comment, following NMFS’s evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public

comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of the SBRM Amendment to be considered in the approval/disapproval decision on the amendment. All comments received by [insert date 60 days after date of publication in the FEDERAL REGISTER], whether specifically directed to the SBRM Amendment or the proposed rule will be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received by close of business on the last day of the comment period. Comments received after that date will not be considered in the decision to approve or disapprove the revised SBRM Omnibus Amendment, including those postmarked or otherwise transmitted by the last day of the comment period.

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

Dated: December 9, 2014

Emily H. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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