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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

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: Availability of proposed fishery management plan amendment; request for comments.

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

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

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2019-0078, by any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst,
phone: (978) 281-9272 or email: *Carrie.Nordeen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

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

On February 26, 2015 (80 FR 10458), the New England Fishery Management Council (Council) published a notice of intent (NOI) to prepare an EIS for Amendment 8 to consider long-term harvest strategies for herring, including an ABC control rule that addresses the biological and ecological requirements of the herring resource. The importance of herring as a forage species was underscored by the Council's specified intent to consider a wide range of

ABC control rule alternatives, including those that explicitly account for herring's role in the ecosystem. The Council held scoping meetings during March and April of 2015 to solicit comments on ABC control rule alternatives.

The Council developed alternatives for a herring ABC control rule using a Management Strategy Evaluation (MSE). MSE is a decision-making tool that uses computer modeling to compare the performance of alternatives (management strategies) under various management scenarios to achieve multiple, competing objectives. The Council held two public workshops to generate stakeholder input to help identify objectives for the MSE analysis. Results of the MSE informed the range of ABC control rule alternatives and impact analysis of those alternatives in Amendment 8.

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

competing interests for how herring should be utilized, and it identified this consideration of the localized depletion issue as user group conflict. Minimizing user group conflict became an important Council consideration in Amendment 8 and, in part, the basis for its recommended measures in the amendment.

On May 11, 2018 (83 FR 22060), the Environmental Protection Agency announced the public comment period for the Amendment 8 draft environmental impact statement (DEIS). The 45-day public comment period extended until June 25, 2018. During that time, the Council held public hearings on the DEIS in Rockland and Portland, Maine; Gloucester and Chatham, Massachusetts; Narragansett, Rhode Island; Philadelphia, Pennsylvania; and via webinar. The Council adopted Amendment 8 on September 25, 2018, and submitted the amendment to us for review in 2019.

Proposed Measures

Amendment 8 would establish a long-term ABC control rule for herring. Under the proposed control rule, when biomass is at or above 50 percent of the biomass associated with maximum sustainable yield (B_{MSY}) or its proxy, ABC is the catch associated with a maximum fishing mortality (F) of 80 percent of F_{MSY} or its proxy. When biomass falls below 50 percent of B_{MSY} or its proxy, F declines linearly to 0 at 10 percent of B_{MSY} or its proxy. The control rule would set ABC for a three-year period but would allow ABC to vary year-to-year in response to projected changes in biomass. The control rule could be revised via a framework adjustment if a quantitative assessment is not available, if projections are producing ABCs that are not justified or consistent with available information, or if the stock requires a rebuilding program.

The proposed control rule is intended to explicitly account for herring as forage in the

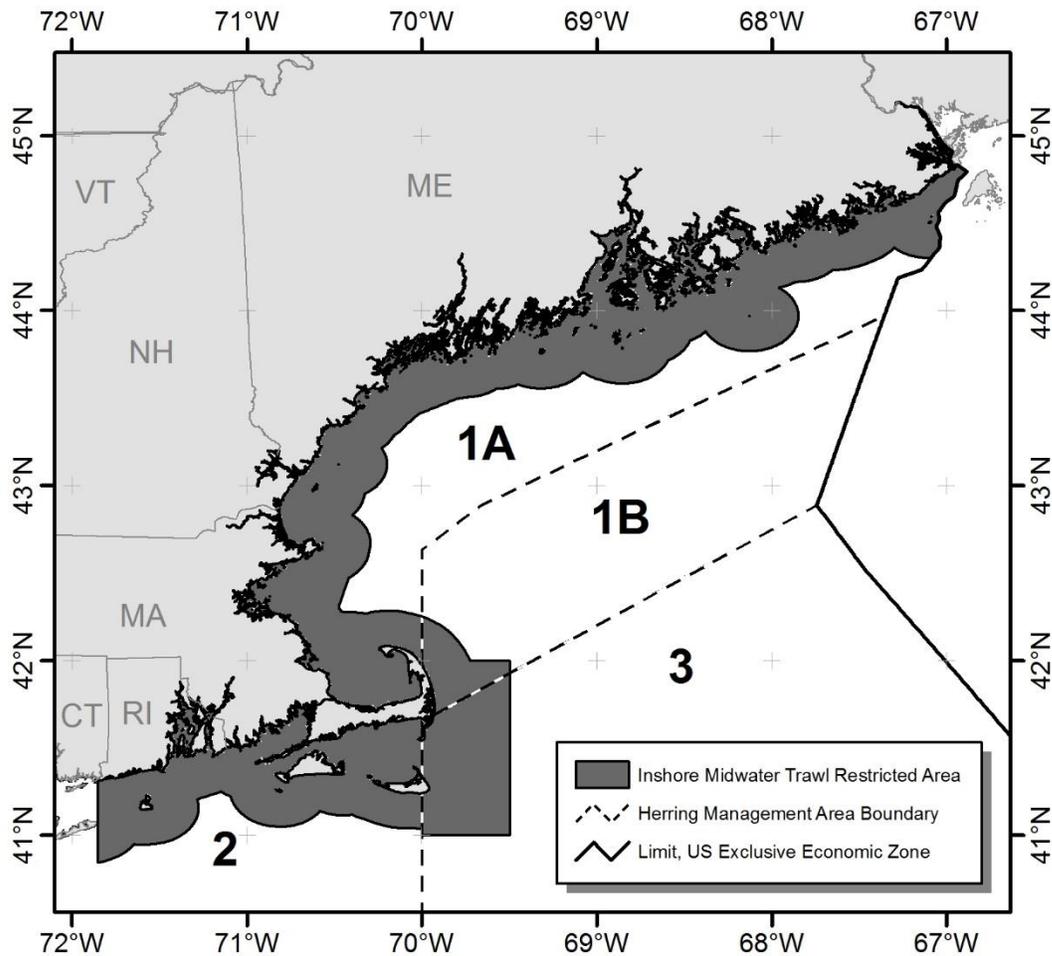
ecosystem by limiting F to 80 percent of F_{MSY} when biomass is high and setting it at zero when biomass is low. It is also intended to generate an ABC consistent with specific criteria identified by the Council, including low variation in yield, low probability of the stock becoming overfished, low probability of a fishery shutdown, and catch limits set at a relatively high proportion of MSY. The Council anticipates that short-term negative economic impacts on participants in the herring or lobster fisheries, resulting from a reduced herring harvest in response to low herring biomass, may become a long-term economic benefit for industry participants, especially if the proposed control rule results in low variation in yield, low probability of a fishery shutdown, and low probability of overfishing. Relative to other control rules considered by the Council, the proposed control rule is designed to more effectively balance the goal and objectives of the Herring FMP, including managing the fishery at long-term sustainable levels, taking forage for predators into account to support the ocean ecosystem, and providing a biologically sustainable harvest as a source of revenue for fishing communities and bait for the lobster fishery.

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

Amendment 8 would also prohibit the use of midwater trawl gear inshore of 12 nautical miles (22 km) from the U.S./Canada border to the Rhode Island/Connecticut border and inshore

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

Figure 1. Proposed Inshore Midwater Trawl Restricted Area.



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

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

The Herring FMP specifies that herring research set-aside (RSA) can equal up to three percent of the sub-annual catch limit for a herring management area. RSA compensation fishing using midwater trawl gear would be permitted within the inshore midwater trawl restricted area. The Council recommended permitting RSA compensation fishing within the inshore midwater trawl restricted area to help ensure the RSA would be harvested and those funds would be available to support the projects awarded RSA. Vessels engaged in herring RSA compensation fishing typically operate as authorized by an exempted fishing permit (EFP) so they can request exemptions from certain regulations that would otherwise restrict herring harvest. While vessels would be permitted to use midwater trawl gear within the inshore midwater trawl restricted area while RSA compensation fishing, it does not mean that compensations trips would be without restrictions. Terms and conditions of the EFP must be consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), other applicable law, and Herring FMP. Additionally, we would consider whether additional terms and conditions would

be required for EFPs to ensure RSA compensation trips do not exacerbate the overlap between midwater trawl vessels and other user groups.

Amendment 8 would allow the inshore midwater trawl restricted area or new closures to address localized depletion and/or user group conflict to be modified or implemented via framework adjustment. The list of framework provisions at § 648.206 already includes closed areas; this amendment would add the inshore midwater trawl restricted area to that list.

The Council's recommendation to prohibit midwater trawling in inshore areas is an allocation decision intended to balance the needs of user groups and provide conservation benefits. Consistent with objectives in the Herring FMP, the proposed measure is intended to facilitate an efficient, fair, and equitable accommodation of social, economic, and ecological factors associated with achieving OY, in part by providing, to the extent practicable, controlled opportunities for participants in other New England and Mid-Atlantic fisheries. Because midwater trawl vessels historically harvested a larger percentage of herring than other gear types and are able to fish offshore, the Council recommended prohibiting them from inshore waters to help ensure herring was available inshore for other user groups and predators of herring. The proposed inshore midwater trawl restricted area is designed to be reasonably large enough to address the overlap between midwater trawl vessels and other user groups and, ultimately, user group conflict in inshore waters. This proposed measure is likely to negatively impact the midwater trawl fleet, with potentially increased trip costs and lower annual catches, but the Council believes that, on balance, the benefits to other user groups, such as potentially reduced trips costs, higher annual catches, and improved safety, outweigh the costs to midwater trawl vessels. The proposed measure may also have biological benefits if moving midwater trawl

vessels offshore minimizes catch of river herring and shad, reduces fishing pressure on the inshore component of the herring stock, and helps ensure herring are available to predators. Herring is currently assessed as one stock, but it likely has stock components. Reducing fishing pressure inshore would benefit an inshore stock component. Analyses in Amendment 8 estimate that in recent years approximately 30 percent of the midwater trawl fleet's annualized revenue came from within the proposed inshore midwater trawl restricted area. Negative economic impacts on the midwater trawl fleet may be mitigated if the fleet is able to offset lost revenue from inshore areas with increased revenue from offshore areas. Herring catch limits are currently low, so the fishery has the capacity to harvest the OY. Recent midwater trawl landings (2007-2015) offshore of the proposed midwater trawl restricted area (36,903 mt) are much higher than the Council-recommended OY for 2020 and 2021 (11,621 mt). In the longer-term, the fishery will likely adapt to be able harvest an increased OY, provided vessels are able to locate herring.

Public Comment Instructions

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. The Council develops policy for its fisheries and we defer to the Council on policy decisions unless those policies are inconsistent with the Magnuson-Stevens Act or other applicable law. As such, we are seeking comment on whether measures in Amendment 8 are consistent with the Herring FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. Public comments on Amendment 8 and its

incorporated documents may be submitted through the end of the comment period stated in this notice of availability. A proposed rule to implement the amendment, including draft regulatory text, will be published in the **Federal Register** for public comment. Public comments on the proposed rule received by the end of the comment period provided in this notice of availability will 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 Amendment 8 or the proposed rule for this amendment, will be considered in the approval/disapproval decision on the Amendment 8. Comments received after that date will not be considered in the decision to approve or disapprove the amendment. To be considered, comments must be received by close of business on the last day of the comment period.

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

Dated: August 16, 2019.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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