

(5) How the establishment of the experimental population may contribute to recovery of the UC spring-run Chinook salmon ESU as a whole;

(6) The extent to which the experimental population would be affected by current or future Federal, state, or private actions within or adjacent to the experimental population area;

(7) Current programs within the experimental population area that protect fish or aquatic habitats;

(8) Whether the experimental population would be essential to the continued existence of the UC spring-run Chinook salmon ESU. The information currently available indicates that the experimental population is likely to be “nonessential” for the reasons discussed above. We solicit information to support this conclusion as well as any information to the contrary;

(9) Any necessary management restrictions, protective measures, or other management measures that we have not considered;

(10) Monitoring or evaluation actions that may be needed to assess the success of the reintroduction;

(11) How, if the reintroduction were successful, the experimental population’s contribution to overall ESU viability might be assessed; and

(12) Names, expertise, and contact information for potential peer reviewers for this designation. We seek individuals with expertise in salmon biology, population ecology, and/or reintroductions of at-risk species.

We seek the above information as soon as possible but by no later than September 19, 2011.

References

The complete citations for the references used in this document, as well as the CTCR ESA 10(j) authorization request can be obtained by contacting us directly or via the Internet (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Dated: July 13, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket: 110627355–1354–01]

RIN 0648–BB08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 46

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 measures in Framework Adjustment (FW) 46 to the NE Multispecies Fishery Management Plan (FMP). FW 46 was developed and submitted to NMFS for approval by the New England Fishery Management Council (Council) to address haddock catch in the Atlantic herring fishery. The proposed rule would increase the haddock incidental catch cap allocated to the Atlantic midwater trawl herring fishery to 1 percent of the Georges Bank (GB) haddock Acceptable Biological Catch (ABC) and to 1 percent of the Gulf of Maine (GOM) haddock ABC. In addition, this action would modify the cap accountability measures (AMs) such that, upon attainment of the cap, the midwater trawl herring fleet could not catch or land herring in excess of the incidental catch limit (2,000 lb (907.2 kg)) in or from the appropriate haddock stock area. This action is intended to allow the herring fishery to fully utilize available herring quota, while providing incentives for the midwater trawl fishery to minimize haddock catch.

DATES: Comments must be received by August 3, 2011.

ADDRESSES: You may submit comments, identified by 0648–BB08, by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.
- *Fax:* (978) 281–9135, Attn: Melissa Vasquez.
- *Mail:* Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the

envelope, “Comments on the Proposed Rule for NE Multispecies Framework Adjustment 46.”

Instructions: All comments received are a part of the public record and will generally be posted to <http://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 (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of FW 46, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Analysis (IRFA) prepared by the Council are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The IRFA assessing the impacts of the proposed measures on small entities and describing steps taken to minimize any significant economic impact on such entities is summarized in the Classification section of this proposed rule. The FW 46 EA/RIR/IRFA are also accessible via the Internet at <http://www.nefmc.org/nemulti/index.html> or <http://www.nero.noaa.gov>. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at OIRA_Submission@omb.eop.gov, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Melissa Vasquez, Fishery Policy Analyst, phone: 978–281–9166, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The Council initiated FW 46 to revise the haddock incidental catch cap for the Atlantic herring fishery to allow for the full utilization of available herring quota, while providing incentives for the midwater trawl herring fishery to minimize haddock catch. FW 43 to the NE Multispecies FMP (71 FR 46871; August 15, 2006) established an exempted fishery in 2006 to allow for the incidental catch of NE multispecies

by the Atlantic herring fishery. Prior to FW 43, midwater trawl gear was considered exempted gear (gear not capable of catching NE multispecies). FW 43 adopted a cap on the amount of haddock that could be caught by the directed herring fishery of 0.2 percent of what was the combined Target Total Allowable Catch (TTAC) for GOM and GB haddock, at the time. The cap applied to all Category 1 Atlantic herring permits until Amendment 1 to the Atlantic Herring FMP (72 FR 11252; March 12, 2007) implemented a limited access program for the herring fishery in 2007, which clarified that the cap applied to vessels issued limited access Category A (All Areas) and B (Areas 2 and 3) herring permits. Amendment 16 to the FMP (75 FR 18262; April 9, 2010), which implemented Annual Catch Limits (ACL) and AMs in the FMP in 2010, defined the haddock catch cap as a separate sub-ACL (0.2 percent of the combined GOM and GB haddock ABCs) with its own AM, set biennially through the NE multispecies specification process and according to the NE multispecies fishing year (FY; May 1–April 30). Once the Regional Administrator has determined that the combined haddock cap has been reached, any vessel issued an Atlantic herring permit or fishing in the Federal portion of the GOM/GB Herring Exemption Area (defined at § 648.86(a)(3)(ii)(A)(1)) is prohibited from possessing more than an incidental trip limit of herring (2,000 lb (907 kg)) in this area. Under current regulations, only observed or reported haddock catch (from NMFS observers, law enforcement officials, dealer reports, and vessel reports) from vessels that have a limited access Category A and/or B Atlantic herring permit are applied to the cap.

Increased abundance of haddock on GB since the implementation of FW 43 has resulted in increased interactions of the herring fishery with haddock, particularly vessels fishing with midwater trawls. In FY 2010, a large portion of the incidental haddock catch cap was caught by early fall (81 percent), and the herring midwater trawl fleet voluntarily moved away from Atlantic Herring Management Area 3 (GB) to avoid fishing in areas with high haddock bycatch to help avert any potential for a closure of the directed herring fishery. As a result, some (59 percent) of the Atlantic Herring Management Area 3 TAC was left uncaught for the remainder of the FY.

In January 2011, the Council initiated FW 46 to address industry concerns that the haddock catch cap was becoming too constraining on the herring fishery,

particularly given the increased biomass of haddock on GB and the fact that the commercial groundfish fishery remains incapable of harvesting its own sub-ACL for these stocks. An early closure of the directed herring fishery could result in negative impacts to herring fishery participants and to the supply of herring bait to the lobster fishery. The Council was also concerned that reduced effort in Atlantic Herring Management Area 3 could lead to additional effort in Atlantic Herring Management Area 1 (GOM) in the summer and fall, putting additional fishing pressure on this component of the herring resource, and raising concerns about increased midwater trawl activity inshore. To address these concerns, FW 46 was initiated with the following goals: To maximize the chance for GB (Area 3) herring TAC to be caught; to provide incentives to fish offshore; to provide incentives for fish in a manner, at times, and in areas when and where haddock bycatch is none to low; and to reduce the impact of a haddock cap on the entire herring fishery.

Proposed Measures

The measures proposed by FW 46 are described below. The proposed regulations implementing measures in FW 46 were deemed by the Council to be consistent with FW 46, and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Act through a June 17, 2011, letter from the Council Chairman to the Regional Administrator.

Incidental Catch Cap for Midwater Trawl Vessels

FW 46 proposes to revise the current overall haddock incidental catch cap of 0.2 percent, such that vessels with a Federal Atlantic herring permit of any category using midwater trawl gear (both single and paired midwater trawl vessels) would be subject to a stock-specific cap on haddock catch that is equal to 1 percent of the GOM haddock ABC and 1 percent of the GB haddock ABC. The current combined incidental catch cap for the GOM and GB haddock stock areas would be divided into two separate caps to better account for differences in these two stocks and to eliminate the possibility that catches of one stock could trigger the closure of both stock areas. These incidental haddock catch caps would be allocated according to the procedures established by Amendment 16 for the setting of ACLs and sub-ACLs for various components of the NE multispecies fishery, and the cap calculation method revised by FW 44 to the FMP (see Appendix III to FW 44, available on the

Council's Web site). Thus, 1 percent of the GOM haddock ABC would be deducted from the sub-ABC allocated to commercial fisheries (which includes the Federal commercial groundfish fishery, state waters fishery, the Atlantic herring fishery, and the other commercial sub-component) and allocated to the herring midwater trawl fishery, after a further reduction for management uncertainty, as a GOM haddock sub-ACL. Similarly, 1 percent of the GB haddock ABC available to U.S. fishermen would be allocated to the herring midwater trawl fishery, after a further reduction for management uncertainty, as a GB haddock sub-ACL. This 1-percent allocation for each of the two haddock stocks was determined to be sufficient to allow the prosecution of the herring midwater trawl fishery without adversely affecting groundfish. Analysis in FW 46 suggests that this proposed value would be robust to changes in GB haddock stock size, such that a future action would not be needed to adjust the cap if GB haddock stock size declines. Estimates of total haddock catch by the herring midwater trawl fishery in recent years have been well below 1 percent of the TTAC or ACL, indicating that the increased haddock catch cap would likely, at least in the short term, allow the full GB herring TAC to be utilized.

Because FW 46 would increase the portion of the haddock sub-ABCs allocated to the herring midwater trawl fishery to 1 percent of each stock (from 0.2 percent of both stocks combined), the ACE available to sectors would decline, as would the amount of the ACL available to common pool groundfish fishing vessels. The decline is slightly greater than the change in the herring fishery allocation because of the way the incidental catch caps for each stock would be calculated. In the case of GB haddock, the commercial groundfish sub-ACL would decline by 0.84 percent, while for GOM haddock the decline would be 1.1 percent. However, because FW 46 proposes small allocations to the herring fishery, and haddock catches by the commercial groundfish fisheries remain well below the sub-ACL for these stocks, the sub-ACL reduction is expected to have no measurable economic impacts to groundfish vessels.

Unlike the current provision where haddock catches by all limited access Category A and B vessels fishing in Atlantic Herring Management Areas 1A, 1B, 2, and 3 (GOM, GB, and Southern New England (SNE)) count against the cap, FW 46 proposes that only the haddock catches from vessels issued a Federal Atlantic herring permit and

fishing with midwater trawl gear in Atlantic Herring Management Areas 1A, 1B, and/or 3 (GOM and GB), would apply against the incidental haddock catch caps. This action would limit the cap and its restrictions to midwater trawl vessels fishing in this reduced area (GOM and GB, but not SNE), because analysis prepared in the development of FW 46 showed that haddock bycatch is largely an issue for these vessels in these areas. Thus, limiting the cap to herring midwater trawl vessels would address haddock catch issues, while eliminating unnecessary restrictions on other segments of the herring fishery that have historically not had much interaction with haddock (i.e., vessels fishing with purse seine, otter trawl, pots, or other gear).

Under FW 46, haddock catch reported by observers on observed herring trips using midwater trawl gear in Herring Management Areas 1A, 1B, and/or 3 would be extrapolated to estimate total haddock catch by the herring midwater trawl fleet in these herring areas, for purposes of monitoring the attainment of each stock-specific cap. The reliance on only haddock catches derived from reports from dealers, vessels, and law enforcement officials for monitoring the attainment of the cap, as currently required, would be eliminated. The method of accounting for haddock catch proposed under FW 46 would thus be less sensitive to changes in observer coverage than the current monitoring method, and would mean that any AMs triggered would be based on estimates of total catch for the entire midwater trawl fleet, rather than only documented catch for a portion of the fleet. Thus, extrapolating observed haddock catches in this way would better account for total haddock catch by the herring fishery.

FW 46 proposes that NMFS would develop the extrapolation methodology and post it on the Northeast Regional Office Web site (see **ADDRESSES**), and that NMFS would monitor and post catches of haddock by the herring fishery at least monthly on its Web site. If the proposed measures are approved, NMFS intends to apply the cumulative methodology currently in use to extrapolate catches of butterfish in the *Loligo* squid fishery and to estimate discards by sector vessels in the groundfish fishery, to extrapolate haddock catches by the herring midwater trawl fishery. This method derives a ratio of the kept catch (or discards) of the species in question to the total weight of all species kept on observed trips (total kept), based on all observed trips as of a certain date

(cumulative sums of landings or discards and total kept of all species). The ratio is then expanded to a total catch estimate by applying the ratio to the total kept of all species from all trips by the applicable component of the fishery. For example, an observed haddock catch rate would be derived from the ratio of all haddock catch to all species kept on observed herring midwater trawl trips in Herring Management Areas 1A, 1B, and 3, and applied to the total weight of all species kept from all midwater trawl trips in these same areas, to determine an estimate of total haddock catch by the herring GOM and GB midwater trawl fleet. Further details of the extrapolation methodology to be used would be published on the Northeast Regional Office Web site when finalized.

As noted in FW 46, if approved, the proposed measures would be implemented in-season during the 2011 Northeast multispecies (May 1, 2011–April 30, 2012) and herring (January 1, 2011–December 31, 2011) fishing years. Given that the haddock cap for the midwater trawl herring fishery is monitored based on the groundfish fishing year, upon implementation, NMFS would use observer data and other available data from applicable herring trips to extrapolate haddock catches by the herring fishery since the start of FY 2011 (beginning May 1, 2011) and apply it to the increased stock-specific haddock caps. Retroactively applying the measures in this way would ensure the consistent monitoring of the haddock caps and treatment of haddock catches by the midwater trawl herring fishery throughout FY 2011. As a result, the FY 2011 GOM and GB haddock sub-ACLs for the commercial groundfish fishery (sectors and common pool) would be adjusted in-season, consistent with the proposed modification to the allocation of these stocks' sub-ABCs.

The current regulations require vessels with a Category A and/or B Atlantic herring permit to land all haddock brought on deck or pumped into the hold, for the purpose of monitoring this catch while prohibiting the sale of such fish. Up to 100 lb (45 kg) total of other regulated NE multispecies (§ 648.86(k)) may also be landed per trip, but may not be sold for human consumption. These possession restrictions for Category A and B herring vessels would not be eliminated by FW 46, so Category A and B herring vessels on a declared herring trip would still be required to land all haddock, regardless of gear used or area fished. Maintaining this landing requirement for Category A and B vessels facilitates the monitoring

of the “other sub-components” portion of the GOM and GB haddock ACLs, to which such haddock catches would apply. In addition, FW 46 proposes to expand the possession restrictions to allow a vessel issued any Federal Atlantic herring permit but fishing any part of a trip with midwater trawl gear in Herring Management Areas 1A, 1B, or 3, to possess and land haddock in addition to 100 lb (45 kg) of other NE multispecies, consistent with the revised scope of the cap. As with the current requirements, such vessels would be required to land all haddock, but would be prohibited from selling it for human consumption. Additionally, NMFS is revising the regulations at § 648.86(k) to clarify that the 100 lb (45 kg) NE multispecies possession limit is meant to apply to NE multispecies other than haddock.

Currently, all vessels issued an Atlantic herring permit are prohibited from possessing or landing herring in excess of the incidental limit in the entire GOM/GB Herring Exemption Area, once the combined GOM/GB haddock cap is reached. FW 46 would revise this broad AM by establishing a stock-specific AM area (the Herring GOM Haddock AM Area and the Herring GB Haddock AM Area) upon attainment of the respective incidental haddock catch caps and by making the AM apply to only herring vessels using midwater trawl gear in the GOM and GB. FW 46 proposes that when the Regional Administrator has determined that the haddock incidental catch cap for a specific haddock stock has been caught, all vessels issued a herring permit and using midwater trawl gear would be prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area (see Tables 1 and 2). Additionally, the haddock possession/landing limit for the applicable AM Area would be reduced to 0 lb (0 kg) for herring midwater trawl vessels and all Category A and B vessels. For example, if the GOM haddock catch cap was reached, the herring possession limit would be reduced to incidental catch levels (2,000 lb (907 kg)) in the Herring GOM Haddock AM Area (see Table 1) for any vessel issued a herring permit and fishing any part of a trip with midwater trawl gear. In addition, midwater trawl vessels and Category A and B vessels would not be able to possess/land any haddock, but would still be able to land up to 100 lb (45 kg) of other NE multispecies, from the applicable AM area. However, in this example, such midwater trawl vessels would still be

able to retain herring, up to the possession/landing limits, if any, appropriate to their herring permit category, in or from areas of 1A, 1B, or 3 that do not overlap with the Herring GOM Haddock AM Area. Herring vessels that fished both inside and outside of an AM Area on a given trip would be required to comply with the most restrictive measures. The intent of this measure is to make the haddock catch caps less constraining on the herring fishery by accounting for differences between the haddock stocks, and by limiting the AMs to the herring midwater trawl fleet, which has historically been primarily responsible for haddock catches in the herring fishery. The reduced haddock possession/landing limit would not apply to herring vessels that also hold a NE multispecies permit when they are on a declared NE multispecies trip.

TABLE 1—PROPOSED HERRING GOM HADDOCK AM AREA

| Point | N. latitude | W. longitude |
|--------------------|-------------|--------------|
| HGA1 | (1) | 69°20' |
| HGA 43°40' | | 69°20' |
| HGA3 43°40' | | 69°00' |
| HGA4 43°20' | | 69°00' |
| HGA5 43°20' | | 67°40' |
| HGA6 (2) | | 67°40' |
| HGA7 42°53.1' | | 67°44.4' |
| HGA8 (2) | | 67°40' |
| HGA9 42°20' | | 67°40' |
| HGA10 .. 42°20' | | 70°00' |
| HGA11 .. (3) | | 70°00' |

¹ The intersection of the Maine coastline and 69°20' W. long.

² The intersection of the U.S./Canada maritime boundary and 67°40' W. long.

³ The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00' W. long.

TABLE 2—PROPOSED HERRING GB HADDOCK AM AREA

| Point | N. latitude | W. longitude |
|-----------|-------------|--------------|
| HBA1 | 42°20' | 70°00' |
| HBA2 | 42°20' | (1) |
| HBA3 | 40°30' | (1) |
| HBA4 | 40°30' | 66°40' |
| HBA5 | 39°50' | 66°40' |
| HBA6 | 39°50' | 68°50' |
| HBA7 | (2) | 68°50' |
| HBA8 | 41°00' | (3) |
| HBA9 | 41°00' | 69°30' |
| HBA10 .. | 41°10' | 69°30' |
| HBA11 .. | 41°10' | 69°50' |
| HBA12 .. | 41°20' | 69°50' |
| HBA13 .. | 41°20' | (4) |
| HBA14 .. | (5) | 70°00' |
| HBA15 .. | (6) | 70°00' |
| HBA16 .. | (7) | 70°00' |

¹ The intersection of the U.S./Canada maritime boundary and 42°20' N. lat.

² The intersection of the boundary of Closed Area I and 68°50' W. long.

³ The intersection of the boundary of Closed Area I and 41°00' N. lat.

⁴ The intersection of the east-facing shoreline of Nantucket, MA, and 41°20' N. lat.

⁵ The intersection of the north-facing shoreline of Nantucket, MA, and 70°00' W. long.

⁶ The intersection of the south-facing shoreline of Cape Cod, MA, and 70°00' W. long.

⁷ The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00' W. long.

FW 46 also proposes an overage reduction as an additional AM, should a haddock incidental catch cap be exceeded by the herring midwater trawl fishery in a given fishing year. Once the total catch of haddock by herring midwater trawl vessels for a fishing year is determined, any overage of the herring midwater trawl fishery GOM or GB haddock sub-ACLs would result in reduction of the corresponding sub-ACL in the following fishing year. For example, if final accounting of the FY 2011 total haddock midwater trawl catch in the GOM haddock stock area indicated that the GOM haddock incidental catch cap had been exceeded by 5 mt, the FY 2012 GOM haddock sub-ACL for the herring midwater trawl fishery would be reduced by 5 mt to account for the overage that occurred during FY 2011. FW 46 proposes that any overage reductions to the midwater trawl haddock sub-ACLs would be announced by NMFS, consistent with APA requirements, in the **Federal Register** prior to the start of the groundfish fishing year (May 1).

In order to facilitate the extrapolation of observed haddock catch to unobserved herring midwater trawl trips, FW 46 proposes that all vessels issued a herring permit and fishing with midwater trawl gear in Herring Management Areas 1A, 1B, or 3, report gear and total kept catch by modified haddock stock area (portions of the haddock stock areas that overlap with these herring areas), via whatever ACL monitoring method is developed for the herring fishery. Based on this, NMFS proposes to require vessels with limited access herring permits (Category A, B, and C permits) using midwater trawl gear to report total kept catch by modified haddock stock area through daily Vessel Monitoring System (VMS) catch reports, as is currently proposed through a regulatory amendment to the Atlantic Herring FMP. A proposed rule published June 15, 2011 (76 FR 34947), would require limited access herring vessels (including vessels with herring limited access incidental permits) to submit daily catch reports through VMS to report herring catch by herring management area, in order to enable accurate and timely monitoring of herring ACLs and Area TACs. NMFS also proposes to require limited access

herring vessels fishing with midwater trawl gear in Herring Management Areas 1A, 1B, or 3 to report total weight kept of all species (including herring, mackerel, groundfish, and any other fish kept) by modified haddock stock area in these daily reports. Limited access herring midwater trawl vessels would not be required to report gear used through VMS catch reports at this time, as NMFS has determined that it would not be necessary for the timely monitoring of the proposed haddock incidental catch caps and, therefore, would be an unnecessary reporting burden. Although the proposed reporting rule for the herring fishery proposes to monitor catch by open access incidental herring permits (Category D) through weekly Interactive Voice Response (IVR) reports, it would also increase the frequency of VTR submissions by all herring permitted vessels to require that they be submitted weekly. This action proposes no additional reporting requirements for open access herring permit holders at this time, given that weekly VTR submissions would be sufficient to monitor this small component of the herring fishery. However, should the proposed herring fishery reporting rule be revised or not be implemented as a final rule, limited access and open access herring midwater trawl vessels would be monitored via the current monitoring method in place for the herring fishery: Weekly IVR reports by limited access vessels, weekly IVR reports by open access vessels that catch 2,000 lb (907 kg) or more of Atlantic herring on a trip, and VTRs submitted monthly.

The Council has initiated development of Amendment 5 to the Atlantic Herring FMP, which considers several alternatives that address interactions between the herring fishery and the groundfish fishery, and others that are targeted at improving catch monitoring. If approved, Amendment 5 would likely modify monitoring and reporting requirements for the herring fishery, including those that NMFS proposes to use to monitor the proposed haddock incidental catch caps. Therefore, the Regional Administrator reserves the right to revise reporting requirements implemented through this proposed rule, if it is determined that fishing behavior has, or may be expected to change, and revisions are necessary to allow for the effective monitoring of the proposed haddock incidental catch caps.

FW 43 established a requirement that a vessel issued a Category A or B herring permit must notify NMFS of its intent to take a trip, at least 72 hr prior to

beginning a declared herring trip fishing with midwater trawl or purse seine gear, into Herring Management Areas 1A, 1B, 2, and/or 3, to facilitate the deployment of observers. A final rule published November 2, 2009 (74 FR 56562) also added the requirement that such vessels declare whether the vessel intends to fish any part of a trip in NE multispecies Closed Area I (CA I). FW 46 would not eliminate this requirement for Category A and B vessels, but proposes to expand the scope of this requirement to be account for the modified scope of the haddock incidental catch caps. Thus, Category A and B vessels, intending to use midwater trawl or purse seine gear on a declared herring trip, and any vessel issued a Category C and/or D herring permit and intending to fish or fishing any part of a trip with midwater trawl gear in Herring Management Areas 1A, 1B, or 3, would be required to notify the NMFS Northeast Fishery Observer Program (NEFOP) at least 72 hr prior to beginning a trip, including whether or not it intends to fish any part of a trip in CA 1. Expanding this requirement would facilitate the consistent monitoring and collection of data from all midwater trawl vessels subject to the caps.

Under current regulations, a vessel issued a Category A or B herring permit and using midwater trawl or purse seine gear on a declared herring trip is required to notify the NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line, or at least 6 hr prior to landing, if fishing inside the VMS demarcation line. FW 43 instituted this requirement to facilitate the enforcement of the haddock incidental catch cap, by allowing enforcement officials sufficient notice of landing to enable them to observe offloading or sample catch. FW 46 proposes to expand this pre-landing hail to all vessels issued a herring permit (limited access and open access) that fished any part of a trip with midwater trawl gear in Herring Management Areas 1A, 1B, and/or 3, to be consistent with the expanded scope of the haddock incidental catch cap and possession restrictions. Based on this, NMFS proposes that vessels issued a Category A or B permit, and on a declared herring trip fishing with midwater trawl or purse seine gear, and vessels issued a Category C that fish any part of a trip with midwater trawl gear in Herring Management Areas 1A, 1B, and/or 3, would be required to submit a pre-landing hail via VMS. NMFS does not propose to require open access herring

permit holders (Category D) to submit pre-landing hails at this time, because this small portion of the herring fishery accounts for very little of the Atlantic herring landings (0.5 percent in FY 2010) and rarely uses midwater trawl gear in applicable Areas (Category A vessels accounted for all landings by midwater trawl gear in FY 2008–2010). Therefore, NMFS believes that requiring pre-landing hails of Category D vessels would be an unnecessary reporting burden at this time. Federally permitted herring dealers and processors (including at-sea processors) that cull or separate out non-herring catch in the course of normal operations are currently required to separate out and retain all haddock offloaded from vessels that have a Category A or B herring permit, regardless of gear used. In addition, such haddock may not be sold for any purpose and must be retained for at least 12 hours on land to allow inspection by enforcement officials. Under FW 46, this requirement would be expanded so that any Federally permitted herring dealer or processor that culls or separates catch would be required to separate out and retain for the 12-hr period all haddock offloaded from vessels issued any Federal herring permit that fished in Herring Areas 1A, 1B, and/or 3 with midwater trawl gear and vessels issued a Category A and/or B permit, regardless of gear used or area fished. This requirement would facilitate enforcement of the prohibition on sale of such culled haddock. The final rule revising monitoring requirements for midwater trawl vessels fishing in CA I (74 FR 56562; November 2, 2009), prohibited vessels issued a Category A or B herring permit from fishing in CA I with midwater trawl gear without an observer. This measure was implemented to ensure 100-percent observer coverage of midwater trawl vessels fishing in CA I. That same rule also implemented the requirement that no vessel issued a Category A or B herring permit and fishing with midwater trawl gear in CA I may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer. However, under specific circumstances, fish that have not been pumped aboard the vessel may be released from the codend without being sampled if the vessel operator finds that: Pumping the catch could compromise the safety of the vessel; mechanical failure precludes

bringing some or all of a catch aboard the vessel; or spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch. If a net is released for any of these three reasons, the vessel operator must complete and sign a CA I Midwater Trawl Released Codend Affidavit detailing where, when, and why the net was released as well as a good-faith estimated of both the total weight of fish caught in that tow and the weight of the fish released (if the tow had been partially pumped). The completed affidavit must be submitted to NMFS within 48 hr of the completion of the trip, and the vessels must exit CA I for the remainder of the trip.

The CA I restrictions for midwater trawl vessels are currently applicable to Category A and B herring permit holders because these are the permitted vessels subject to the haddock incidental catch cap and possession restrictions established under FW 43. However, given that FW 46 has revised the scope of the incidental catch cap and expanded the NE multispecies possession restrictions to vessels that hold any Federal herring permit category that use midwater trawl gear, this rule proposes that the CA I requirements be revised to apply to any vessel issued a herring permit that fishes with midwater trawl gear in CA I. This measure is necessary to maintain consistency and reduce complication in the regulations regarding the monitoring of haddock bycatch for the incidental catch cap inside and outside CA I.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

This proposed rule does not contain policies with Federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA, which includes this section of the preamble to this rule and analyses contained in FW 46 and its accompanying EA/RIR/IRFA, describes the economic impact this proposed rule, if adopted, would have on small

entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble.

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

Regulated entities include businesses owning vessels engaged in the Atlantic herring and NE multispecies fisheries. These measures would affect regulated entities engaged in commercial fishing for herring. Because the proposed measures reduce the available GOM and GB haddock ABC for the groundfish fishery, vessels permitted in this fishery are potentially regulated by this action. However, because only approximately 17 percent of the haddock GOM and GB ABCs was landed in FY 2010 (and similar under-capture of available quota is expected in FY 2011–2012), it is not expected that NE multispecies permitted vessels would be affected by this action in the near-term. The size standard for commercial fishing entities (NAICS code 114111) is \$4 million in sales. Although multiple vessels may be owned by a single owner, available tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for purposes of analysis, each permitted vessel is treated as a single entity. During calendar year 2010, 90 vessels were issued a limited access herring permit. In 2008 and 2009, each year one vessel exceeded \$4 million in gross sales, while in 2010 two vessels exceeded that number. In calendar year 2010 there were 84 small commercial fishing entities that were both regulated and potentially affected by the proposed action.

Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action

The economic impacts of the proposed action on affected regulated small entities are positive. The proposed action would have no short-term measurable economic impacts to vessels participating in the groundfish fishery, because it proposes small allocations of haddock to the herring fishery that would have no effect on current groundfish revenues, based on most recent fishing activities, and only minor effects on possible future revenues, as these small allocations are unlikely to constrain the groundfish fishery or allow the herring fishery to displace groundfish effort. The proposed action is likely to have a positive impact on vessels participating in the Atlantic

herring fishery, as it greatly reduces the possibility that a haddock catch cap would result in AMs that restrict the fishery to incidental catch limits throughout a large portion of the GOM and GB. Based on observed levels of haddock bycatch in the herring fishery and recent reductions in herring fishing effort (through greatly reduced ACLs in 2010), a 1-percent haddock catch cap is unlikely to be reached in the short-term, but provides a backstop and establishes a mechanism to estimate fleet-wide bycatch on a real-time basis. The proposed action separates the GOM and GB haddock stocks and related catch, thereby reducing the overall impact of a fishery closure, if one were to occur. It also eliminates impacts on purse seine vessels by restricting the cap and the AM to midwater trawl vessels only. Because the proposed action makes it more likely that the haddock catch cap will not constrain herring fishing beyond levels anticipated in the Atlantic Herring FMP, this action will not result in a decline in revenue for the herring fishery and may increase fishing opportunities for the herring mid-water trawl fleet for several months relative to baseline conditions. Opportunities to prosecute the offshore fishery (Area 3, GB) and fully utilize the herring optimum yield should be higher under the proposed action than under baseline conditions. The precise magnitude of the positive impact is uncertain, though the offshore areas (Areas 2 and 3) of the herring fishery generated approximately \$17 million in gross herring revenues in calendar year 2009, and the revenues from fishing trips expected to be unconstrained due to the proposed action represent a relatively small fraction of that total.

The proposed action and alternatives are described in detail in Framework 46, which includes an EA, RIR, and IRFA (see **ADDRESSES**).

Economic Impacts of Alternatives to the Proposed Action

Two other alternatives to the proposed action were considered. The first represents a no action alternative that would maintain the haddock catch cap for the herring fishery at 0.2 percent of the combined GOM and GB haddock ABC, and thus would have no economic impact on regulated small entities compared to the status quo. The second proposed alternative would incorporate the catch of haddock in the Atlantic herring fishery into the sub-ACL for other sub-components of the haddock fisheries, with options for AMs that would have implemented the proposed action as a backstop. Therefore, the second alternative to the proposed

action would have fundamentally identical economic impacts on regulated small entities as the proposed action. With respect to expected impacts on vessels participating in the NE multispecies fishery, similar to the proposed action, less than 20 percent of the GB haddock ACL is being harvested and small allocations to the herring fishery (in the case of the latter option, an unspecified amount, but less than 4 percent) would have no effect on current revenues and only minor effects on possible future revenues. In the GOM, there is not as much of the ACL that has not been caught but the differences between the alternatives are still minor. Concerns have been raised that the proposed action and the second alternative to the proposed action might result in more midwater trawl activity on GB, displacing groundfish fishing activity, but an initial analysis indicates this has not been the effect in previous years and that is not likely to change in the near future. With respect to the herring fishery, the second alternative to the proposed action would, similar to the proposed action, substantially reduce the risk that the directed herring fishery would be closed and increase the likelihood that the available herring yield will be harvested.

During the development of FW 46, four other alternatives were considered, but ultimately rejected by the Council and the Groundfish Oversight Committee because they were difficult to implement and monitor, could not be implemented through a framework adjustment, and/or did not meet the stated objectives of the framework. Detailed descriptions of all the alternatives considered are available in the FW 46 EA (see **ADDRESSES**).

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

The proposed action contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement will be submitted to OMB for approval. The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

The proposed action would expand some reporting requirements implemented through FW 43 to monitor the current herring fishery haddock incidental catch cap, to include additional herring permit categories. Limited access herring permit holders fishing with midwater trawl gear in Herring Management Areas 1A, 1B, and/or 3 would be required to report total kept catch by haddock stock area via

daily VMS catch reports. The proposed Atlantic herring regulatory amendment has proposed daily VMS catch reporting by limited access herring vessels for quota monitoring purposes, and the burden to the public of those catch report submissions has been analyzed in that regulatory amendment (76 FR 34947; June 15, 2011). This action would modify that proposed report to add two additional fields and thereby increase the cost per submission for limited access vessels that fish with midwater trawl gear in the GOM or on GB. Based on historic participation in the herring midwater trawl fishery, this change is expect to increase the total annual burden to the public for herring VMS catch reporting by \$160 to \$2,482, or \$26 per entity. This action would also expand the requirements for Category A and B vessels to notify the Northeast Fishery Observer by phone of their intent to take a trip, and to submit a pre-landing hail to enforcement via VMS, to additional permit categories when fishing with midwater trawl gear in the GOM or on GB. However, no Category C or D vessels have reported landing herring or mackerel using midwater trawl gear in the GOM or GB. Thus, based on historic participation in the herring midwater trawl fishery, this action would not be expected to change the reporting burden associated with these requirements. In addition, applying the requirement to submit a CA I Midwater Trawl Codend Release Affidavit to additional permit categories is not expected to change the reporting burden associated with this affidavit, based on historic participation in the CA I herring fishery.

Public reporting burden for these requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 11, 2011.

Samuel D. Rauch III,

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

For the reasons stated 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 § 648.10, add paragraph (l) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(l) *Area-specific reporting requirements for limited access Atlantic herring vessels fishing in Atlantic Herring Management Areas 1A, 1B, and 3—(1) Reporting requirements for vessel operators.* The owner or operator of any vessel issued a limited access herring permit that fishes any part of a tow with midwater trawl gear (including midwater pair-trawl gear) in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (f)(3), must report the estimated total amount of all species retained (in pounds, landed weight) from each of the GOM and GB modified haddock stock areas as defined in paragraph (l)(2) of this section, via the required reporting method specified for Atlantic herring owners or operators at § 648.7(b)(2)(i), unless otherwise specified by § 648.201.

(2) *GOM and GB Modified Haddock Stock Areas.* For the sole purpose of the area-specific reporting requirements in paragraph (l)(2) of this section, the GOM and GB Modified Haddock Stock Areas are defined in paragraphs (l)(2)(i) and (l)(2)(ii) of this section. Copies of a map depicting these areas are available from the Regional Administrator upon request.

(i) *GOM Modified Haddock Stock Area.* The GOM Modified Haddock Stock Area is bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

GOM MODIFIED HADDOCK STOCK AREA

| Point | N. latitude | W. longitude |
|----------|-------------|--------------|
| GMH1 ... | (1) | (1) |
| GMH2 ... | 42°20' | (2) |
| GMH4 ... | 42°20' | 70°00' |
| GMH4 ... | (3) | 70°00' |

¹The intersection of the shoreline and the U.S.-Canada maritime boundary.
²The intersection of 42°20' N. lat. and the US/Canada maritime boundary
³The intersection of the Cape Cod, MA, coastline and 70°00' W. long.

(ii) *GB Modified Haddock Stock Area.* The GB Modified Haddock Stock Area is bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

GB MODIFIED HADDOCK STOCK AREA

| Point | N. latitude | W. longitude |
|----------|-------------|--------------|
| GBM1 ... | (1) | 70°00' |
| GBM2 ... | 42°20' | 70°00' |
| GBM3 ... | 42°20' | (2) |
| GBM4 ... | 40°30' | (2) |
| GBM5 ... | 40°30' | 66°40' |
| GBM6 ... | 39°50' | 66°40' |
| GBM7 ... | 39°50' | 70°00' |
| GBM8 ... | (3) | 70°00' |

¹ The intersection of the North-facing shoreline of Cape Cod, MA and 70° 00' W. long.
² The U.S.-Canada maritime boundary as it intersects with the EEZ.
³ The intersection of the South-facing shoreline of Cape Cod, MA and 70°0' W. long.

* * * * *

3. In § 648.14, revise paragraphs (k)(1)(i)(D), (r)(1)(vi)(A), (B), and (C), (r)(1)(vii)(E), (r)(1)(viii)(B), and (r)(2)(i) through (r)(2)(v), and add paragraphs (r)(1)(vi)(E) and (F) to read as follows:

§ 648.14 Prohibitions.

* * * * *

- (k) * * *
- (1) * * *
- (i) * * *

(D) Any haddock, and up to 100 lb of other regulated NE multispecies other than haddock, were harvested by a vessel issued an All Areas Limited Access Herring Permit and/or an Area 2 and 3 Limited Access Herring Permit on a declared herring trip regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear, pursuant to the requirements specified at § 648.80(d) and (e), and such fish are not sold for human consumption.

* * * * *

- (r) * * *
- (1) * * *
- (vi) * * *

(A) For the purposes of observer deployment, fail to notify NMFS at least 72 hr prior to departing on a declared herring trip with a vessel issued an All Areas Limited Access Herring Permit and/or an Area 2 and 3 Limited Access Herring Permit and fishing with midwater trawl or purse seine gear, or on a trip with a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that is fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), pursuant to the requirements specified at § 648.80(d) and (e).

(B) Possess, land, transfer, receive, sell, purchase, trade, or barter; or attempt to transfer, receive, sell, purchase, trade, or barter, or sell more than 2,000 lb (907 kg) of Atlantic

herring per trip taken from the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(1), by a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, after the haddock cap for the area(s) has been reached pursuant to § 648.86(a)(3), unless all herring possessed or landed by the vessel was caught outside the applicable Accountability Measure Area(s).

(C) Transit the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(1), with a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, when the 2,000-lb (907.2-kg) limit specified in § 648.86(a)(3)(ii)(A)(1) is in place for the area being transited, in possession of more than 2,000 lb (907.2 kg) of herring, unless all herring on board was caught outside of the applicable Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, and all fishing gear is stowed and not available for immediate use, as required by § 648.23(b).

* * * * *

(E) Possess or land haddock taken from the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(1), by a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, after the haddock cap for the area(s) has been reached pursuant to § 648.86(a)(3), unless all haddock possessed or landed by the vessel was caught outside the applicable Accountability Measure Area(s).

(F) Transit the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(1), with a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, when the 0-lb (0-kg) haddock possession limit specified in § 648.86(a)(3)(ii)(A)(1) is in place for the area being transited, in possession of haddock, unless all haddock on board was caught outside of the applicable Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, and all fishing gear is stowed and not available for immediate use, as required by § 648.23(b).

(vii) * * *
* * * * *

(E) Discard haddock at sea that has been brought on deck, or pumped into the hold, of a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or on a trip with a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear, pursuant to the requirements specified at § 648.80(d) and (e).

* * * * *
(viii) * * *
* * * * *

(B) Fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS at least 6 hr prior to landing herring at the end of a declared herring trip, if a vessel has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit and is fishing with either midwater trawl or purse seine gear, or a Limited Access Incidental Catch Herring Permit and is fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3).

(2) * * *
(i) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated NE multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, white hake, and Atlantic wolffish); or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated NE multispecies for human consumption; if the regulated NE multispecies are landed by a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear pursuant to § 648.80(d).

(ii) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out, and retain, for at least 12 hr, all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(iii) Sell, purchase, receive, trade, barter, or transfer; or attempt to sell,

purchase, receive, trade, barter, or transfer; to another person, any haddock or other regulated NE multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, white hake, and Atlantic wolffish) separated out from a herring catch offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(iv) While operating as an at-sea herring processor, fail to comply with requirements to separate out and retain all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(v) Fish with midwater trawl gear in Closed Area I, as specified at § 648.81(a), without a NMFS approved observer onboard, if the vessel has been issued an Atlantic herring permit.

* * * * *

4. In § 648.15, revise paragraphs (d)(1) and (e) to read as follows:

§ 648.15 Facilitation of enforcement.

* * * * *

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d). Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hrs for dealers and processors on land, and for 12 hrs after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the

vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Authorized officers must be given access to inspect the haddock.

* * * * *

(e) *Retention of haddock by herring vessels using midwater trawl gear.* Vessels issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip regardless of gear or area fished, and vessels issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may not discard any haddock that has been brought on the deck or pumped into the hold.

5. In § 648.80, revise paragraphs (d)(4) through (d)(6), (d)(7)(i) and (d)(7)(ii) introductory text, and (e)(4) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *
(4) The vessel does not fish for, possess or land NE multispecies, except that vessels issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit and fishing on a declared herring trip regardless of gear or area fished, and vessels issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to paragraph (d) of this section, may possess and land haddock and other regulated multispecies consistent with the catch caps and possession restrictions specified in § 648.86(a)(3) and (k). Such haddock or other regulated NE multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated NE multispecies that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Vessels issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip regardless of gear or area fished, and vessels issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to

paragraph (d) of this section, may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), must provide notice of the following information to NMFS at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment: Vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and whether the vessel intends to engage in fishing in Closed Area I, as defined in § 648.81(a), at any point in the trip; and

(6) A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip with midwater trawl gear, or a vessel issued a Limited Access Incidental Catch Herring Permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

(7) *Fishing in Closed Area I.* (i) No vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear, may fish, possess or land fish in or from, Closed Area I unless it has declared first its intent to fish in Closed Area I as required by paragraph (d)(5) of this section, and is carrying onboard a NMFS-approved observer.

(ii) No vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in Closed Area I, may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer (e.g., an Atlantic herring at-sea processing vessel or an Atlantic herring carrier vessel), or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by

the observer, except in the following circumstances:

* * * * *

(e) * * *
(4) The vessel does not fish for, possess, or land NE multispecies, except that vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip may possess and land haddock or other regulated species consistent with possession restrictions specified in § 648.86(a)(3) and (k), respectively. Such haddock or other regulated multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated species that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Vessels issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may not discard haddock that has been brought on the deck or pumped into the hold;

* * * * *

6. In § 648.85, revise paragraph (d) to read as follows:

§ 648.85 Special management programs.

* * * * *

(d) *Haddock incidental catch allowance for some Atlantic herring vessels.* The haddock incidental catch allowance for all vessels that have a Federal Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), is 1 percent of each of the ABCs for GOM haddock and GB haddock (U.S. catch only) specified according to § 648.90(a)(4) for a particular NE multispecies fishing year. Such haddock catch will be determined as specified in § 648.86(a)(3)(ii).

* * * * *

7. In § 648.86, revise paragraphs (a)(3)(i), (a)(3)(ii)(A)(1) and (2), and (k), and add paragraphs (a)(3)(ii)(A)(3) and (4) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *
(3) * * *

(i) *Incidental catch allowance for some Atlantic herring vessels.* Vessels issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3

Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, and vessels issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may possess and land haddock, subject to the requirements specified in § 648.80(d) and (e).

- (ii) * * *
- (A) * * *

(1) When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock as specified in § 648.85(d), has been caught, all vessels issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, i.e., the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(2) and (3) of this section, are prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for all vessels that have a Federal Atlantic herring permit and are fishing with midwater trawl gear and all vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip. In making this determination, the Regional Administrator shall use haddock catches observed by NMFS-approved observers by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

(2) *Herring GOM Haddock Accountability Measure Area.* The Herring GOM Haddock AM Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

HERRING GOM HADDOCK
ACCOUNTABILITY MEASURE AREA

| Point | N. latitude | W. longitude |
|-----------|-------------|--------------|
| HGA1 | (1) | 69°20' |
| HGA | 43°40' | 69°20' |
| HGA3 | 43°40' | 69°00' |
| HGA4 | 43°20' | 69°00' |
| HGA5 | 43°20' | 67°40' |
| HGA6 | (2) | 67°40' |
| HGA7 | 42°53.1' | 67°44.4' |
| HGA8 | (2) | 67°40' |
| HGA9 | 42°20' | 67°40' |
| HGA10 .. | 42°20' | 70°00' |
| HGA11 .. | (3) | 70°00' |

¹ The intersection of the Maine coastline and 69°20' W. long.
² The intersection of the U.S./Canada maritime boundary and 67°40' W. long.
³ The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00' W. long.

(3) *The Herring GB Haddock Accountability Measure Area.* The Herring GB Haddock AM Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

HERRING GB HADDOCK
ACCOUNTABILITY MEASURE AREA

| Point | N. latitude | W. longitude |
|-----------|-------------|--------------|
| HBA1 | 42°20' | 70°00' |
| HBA2 | 42°20' | (1) |
| HBA3 | 40°30' | (1) |
| HBA4 | 40°30' | 66°40' |
| HBA5 | 39°50' | 66°40' |
| HBA6 | 39°50' | 68°50' |
| HBA7 | (2) | 68°50' |
| HBA8 | 41°00' | (3) |
| HBA9 | 41°00' | 69°30' |
| HBA10 .. | 41°10' | 69°30' |
| HBA11 .. | 41°10' | 69°50' |
| HBA12 .. | 41°20' | 69°50' |
| HBA13 .. | 41°20' | (4) |
| HBA14 .. | (5) | 70°00' |
| HBA15 .. | (6) | 70°00' |
| HBA16 .. | (7) | 70°00' |

¹ The intersection of the U.S./Canada maritime boundary and 42°20' N. lat.
² The intersection of the boundary of Closed Area I and 68°50' W. long.
³ The intersection of the boundary of Closed Area I and 41°00' N. lat.
⁴ The intersection of the east-facing shoreline of Nantucket, MA, and 41°20' N. lat.
⁵ The intersection of the north-facing shoreline of Nantucket, MA, and 70°00' W. long.
⁶ The intersection of the south-facing shoreline of Cape Cod, MA, and 70°00' W. long.
⁷ The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00' W. long.

(4) The haddock incidental catch caps specified are for the NE multispecies fishing year (May 1–April 30), which differs from the herring fishing year (January 1–December 31). If the haddock incidental catch allowance is attained by the herring midwater trawl fishery

for the GOM or GB, as specified in § 648.85(d), the 2,000-lb (907.2-kg) limit on herring possession in the applicable AM Area, as described in paragraph (a)(3)(ii)(A)(2) or (3) of this section, will be in effect until the end of the NE multispecies fishing year. For example, the 2011 haddock incidental catch cap is specified for the period May 1, 2011–April 30, 2012, and the 2012 haddock catch cap would be specified for the period May 1, 2012–April 30, 2013. If the catch of haddock by herring midwater trawl vessels reached the 2011 incidental catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2012), the 2,000-lb (907.2-kg) limit on possession of herring in the applicable AM Area would extend through April 30, 2012. Beginning May 1, 2012, the 2012 catch cap would go into effect.

* * * * *

(k) *Other regulated NE multispecies possession restrictions for some Atlantic herring vessels.* All vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit on a declared herring trip, regardless of area fished or gear used, and all vessels issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may possess and land haddock, and up to 100 lb (45 kg), combined, of other regulated NE multispecies, other than haddock, subject to the requirements specified in § 648.80(d) and (e). Such fish may not be sold for human consumption.

* * * * *

8. In § 648.90, revise paragraph (a)(4)(iii)(D), and add paragraph (a)(5)(iii) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

- (a) * * *
- (4) * * *
- (iii) * * *

(D) *Haddock catch by the Atlantic herring fishery.* One percent each of the GOM haddock and GB haddock ABC (U.S. share only) will be allocated to the Atlantic herring fishery, pursuant to the restrictions at §§ 648.85(d) and 648.86(a)(3), and pursuant to the process for specifying ABCs and ACLs described in paragraph (a)(4) of this section. An ACL based on this ABC will be determined using the process described in paragraph (a)(4)(i) of this section.

* * * * *

(5) * * *

(iii) *AMs if the incidental catch cap for the Atlantic herring fishery is exceeded.* At the end of the fishing year, NMFS shall evaluate Atlantic herring fishery catch using VTR, VMS, IVR, observer data, and any other available information to determine whether a haddock incidental catch cap has been exceeded based upon the cumulative catch of vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3. If the catch of haddock by all vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, exceeds the amount of the incidental catch cap specified in § 648.85(d) of this section, then the appropriate incidental catch cap shall be reduced by the overage on a pound-for-pound basis during the following fishing year. Any overage reductions shall be announced by the

Regional Administrator in the **Federal Register** prior to the start of the NE multispecies fishing year in which the overage would apply.

* * * * *

9. In § 648.201, revise paragraph (a)(2) to read as follows:

§ 648.201 AMs and harvest controls.

(a) * * *

(2) If NMFS determines that the GOM and/or GB incidental catch cap for haddock in § 648.85(d) has been caught, all vessels issued a Federal Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), shall be prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area. This prohibition shall apply unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the

vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the applicable AM Area. Upon determination that a haddock incidental catch cap has been reached, the haddock possession limit shall be reduced to 0 lb (0 kg) for all vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, and all vessels issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

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