

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 01/04/2010

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 01/04/2010

ACTION REQUESTED: Revision of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 201001-0648-001
AGENCY ICR TRACKING NUMBER:
TITLE: Modification To Gulf Of Maine/Georges Bank Herring Letter Of Authorization
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0602
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 12/31/2012 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	138	12	0
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	138	12	0
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
CAI affidavit			50 CFR 648.80

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
MODIFICATION TO GULF OF MAINE/GEORGES BANK HERRING
LETTER OF AUTHORIZATION
OMB CONTROL NO. 0648-xxxx**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of Commerce (Secretary) has responsibility for the conservation and management of marine fishery resources off the coast of the U.S. The majority of this responsibility has been delegated to the Regional Fishery Management Councils and National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS). The New England Fishery Management Council (Council) develops management plans for fishery resources in New England.

The Council voted at the April 8, 2009, Council meeting, to request that the Regional Administrator modify the Herring Midwater Trawl Gulf of Maine/Georges Bank Letter of Authorization (LOA) to increase observer coverage of midwater trawl vessels fishing in Closed Area I to 100 percent; be prohibited from slipping codends (the practice of opening the codend of the net and releasing the catch before all of it is brought on board); and be required to pump aboard the vessel all fish caught, to allow sampling by the observer.

The final rule implementing Framework Adjustment 18 (FW 18) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (RIN 0648-AJ79, February 17, 1998, 63 FR 7727) authorized midwater trawl vessels to fish in the groundfish year-round closed areas with specific conditions regarding bycatch of regulated multispecies. The FW 18 implementing regulations (50 CFR 648.81(a)(2)(iii)), grant the Regional Administrator the authority to place restrictions and conditions in the LOA if it is determined that the bycatch of regulated multispecies in the groundfish closed areas exceeds or is likely to exceed one percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation. Recent analysis of at-sea observer data presented by NMFS at the April 8, 2009, Council meeting demonstrated that the bycatch of regulated multispecies in groundfish Closed Area I exceeded one percent of herring caught on at least two individual fishing trips between May 2004 and October 2008. Based on this information, the intent of the Council's motion is to collect additional information on bycatch by the midwater trawl directed herring fishery in Closed Area I to determine whether revisions should be made to the exemption allowing these vessels to fish in groundfish closed areas.

Therefore, NMFS proposes to implement the Council's recommendation by adding language to the existing LOA to prohibit midwater trawl vessels, with All Areas and/or Areas 2 and 3 limited access Atlantic herring permits, from fishing in Closed Area I without a NMFS-approved at-sea observer aboard. The LOA would also stipulate that such vessels, while operating in Closed Area I, would be prohibited, except under certain circumstances, from releasing fish from the net before all of the catch has been pumped aboard and made available to the observer for sampling.

NMFS recognizes that there are conditions, under which fish must be released from the codend without being sampled. Therefore, this provision is not intended to limit the discretion of the captain to regulate the stability of the vessel in adverse sea conditions and the operator would be permitted to dump fish if bringing them aboard the vessel could compromise the safety of the vessel or her crew. In addition, mechanical failure of the pump may preclude bringing some or all of a catch aboard the vessel. That part of the catch that could not be pumped aboard because of mechanical failure could be released. Mechanical or safety problems of sufficient magnitude to warrant slipping a codend would also result in termination of the fishing.

NMFS recognizes that species composition in the catch, specifically a high concentration of spiny dogfish, can cause the fish pump to clog, slowing the pump-out process and potentially damaging the rest of the catch. Therefore, NMFS proposes allowing fish to be released unsampled if spiny dogfish are determined to comprise more than 50 percent of the catch, by weight. Pumping operations would have to be started so that the observer could determine that the quantity of spiny dogfish in the catch is sufficient to make pumping the remainder of the catch nearly impossible. A vessel would not be required to end the trip following a slipped codend due to a high concentration of spiny dogfish.

If a codend is slipped, the vessel operator would be required to sign and submit an affidavit to NOAA's Office of Law Enforcement attesting to the specific reason for the release, a good faith estimate of both the total weight of fish caught, and the weight of fish released.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The information requested is used by several NMFS offices to monitor the bycatch in the Atlantic herring fishery. The intention of this action is to collect additional information on bycatch in the midwater trawl fishery. There is potential for vessels to slip a codend with high bycatch to avoid sampling by the NMFS observer. Such action would bias the bycatch information collected. The information collected through the affidavit will provide needed data regarding where and how often codends are slipped as well as how much fish is released. The signed affidavit will also serve as an aid to law enforcement and a disincentive for vessels to dump fish to avoid sampling by the observer.

Information collected through this information request would enable enforcement officials, including the United States Coast Guard (USCG), to monitor compliance with the provisions of the NE multispecies and Atlantic herring FMPs.

As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

This information is submitted in hard copy, delivered through the mail or in person. The need to obtain an original signature of the vessel operator on the affidavit necessitates paper format and prevents electronic formats from being viable means of exchange. No improved information collection technology has been identified to reduce this burden further. Every effort will be made in the future to use computer technology to reduce the public burden. The affidavit used to collect the information is available in a fillable format at NOAA's Northeast Regional Office (NERO) website (www.nero.noaa.gov).

4. Describe efforts to identify duplication.

Other than information needed to identify the vessel (i.e. vessel name, permit number), no information will be collected that is already collected through other means.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Only the minimum data to meet the requirements of the above data needs are requested from all participants. Since most of the respondents are small businesses, separate requirements based on the size of the business are not necessary.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Not conducting the collection of information as described could hinder NMFS enforcement of these proposed provisions and could prevent NMFS from accurately monitoring the bycatch in the Atlantic herring fishery.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The data collection is consistent with Office of Management and Budget (OMB) guidelines.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A proposed rule (Regulation Identifier Number (RIN) 0648-AX93) was published for public comment on September 4, 2009.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

Neither payments nor gifts are given to the respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

All data will be kept confidential as required by NOAA Administrative Order 216-100, Confidentiality of Fisheries Statistics, and will not be released for public use except in aggregate statistical form (and without identifying the source of data, i.e., vessel name, owner, etc.). Only authorized personnel have access to this information as necessary to monitor the amount of haddock bycatch in the herring fishery. The confidentiality information is not repeated in the applicable regulations.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

Herring Category A and B permit holders (46 vessels) who fish in Closed Area I would be required to submit an affidavit detailing the specific reason for a release and a good-faith estimate of the total weight of fish released when a codend is slipped. One form is required to be completed, signed and submitted to the agency to document the event.

During the 2008 fishing year, a total of 28 trips were taken by 10 vessels in Closed Area I, averaging approximately 3 trips per vessel. Based on this data from the previous fishing year and expanded to the total number of permit holders, a total of 138 responses (46 vessels x 3 trips) are anticipated to be collected annually. It is estimated that the public reporting for the affidavit would average 5 minutes per response. Using this estimated burden, a total of 11 hours (138 responses x 5 minutes / 60 minutes/response) is estimated to be the burden for participants in this data collection annually. These figures are summarized in Table 1.

Table 1. Burden Hours and Cost

Collection	Number of Entities	Items per Entity	Total Number of Items	Response Time	Total Burden (Hours)	Cost (\$) to Government	Recordkeeping/ Reporting Cost (\$) to Public
CAI Affidavit	46	3 trips	138	5 minutes	11	\$0	\$75

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

This information collection does not require respondents to purchase new or additional equipment or services. Most computers, telephones and/or facsimile machines utilized by the respondents would have already been purchased as part of customary and usual business practices, thus start up costs associated with these programs are negligible. The estimates of the total annual cost burden to respondents resulting from this collection are summarized in Table 1.

The vessel operator would be required to complete, sign, and mail an affidavit to NMFS. Additionally, vessel owners may wish to make a copy of this completed form for their own records. The total cost for mailing the affidavit to NMFS amounts to \$61 in postage costs (138 responses x \$0.44 postage). Additionally, copying costs associated with this provision would total approximately \$14 (138 responses x 1 page copied/participant x \$0.10/copy). Together, the total cost for record keeping totals \$75 (\$61 + \$14).

14. Provide estimates of annualized cost to the Federal government.

The Federal government would incur no costs associated with this collection.

15. Explain the reasons for any program changes or adjustments.

This is a new program.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Results from this collection may be used in scientific, management, technical or general informational publications such as Fisheries of the United States which follows prescribed statistical tabulations and summary table formats. Data are available to the general public on request in summary form only; data are available to NMFS employees in detailed form on a need-to-know basis only.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

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(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

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(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

16 U.S.C. 1853
MSA § 303

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

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(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

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(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

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(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

97-453, 99-659, 101-627, 102-251, 104-297

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

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(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

- (A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);
- (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and
- (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

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(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

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(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations;

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MSA § 303

(7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research;

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(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic]¹⁵ prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

¹⁵ So in original.

P.L. 109-479, sec. 104(b), MSA § 303 note

16 U.S.C. 1853 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

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SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
 - (ii) the cultural and social framework relevant to the fishery;
 - (iii) economic barriers to access to fishery;
 - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
 - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
 - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

¹⁷ So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

16 U.S.C. 1853a
MSA § 303A

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

16 U.S.C. 1853a note, 1854
MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note

16 U.S.C. 1853a note

APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 303 note

EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

104-297

SEC. 402. INFORMATION COLLECTION

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

109-479

(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

16 U.S.C. 1881a-1881b
MSA §§ 402-403

(d) **CONTRACTING AUTHORITY.**—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) **RESOURCE ASSESSMENTS.**—

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry--

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

104-297

SEC. 403. OBSERVERS

16 U.S.C. 1881b

(a) **GUIDELINES FOR CARRYING OBSERVERS.**—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

Title 50: Wildlife and Fisheries
PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES
Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries

§ 648.81 NE multispecies closed areas and measures to protect EFH.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (i) of this section:

Closed Area I

Point	N. lat.	W. long.
CI1	41°30'	69°23'
CI2	40°45'	68°45'
CI3	40°45'	68°30'
CI4	41°30'	68°30'
CI1	41°30'	69°23'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies;

(ii) Fishing with or using pelagic longline gear or pelagic hook-and-line gear, or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies;

(iii) Fishing with pelagic midwater trawl gear, consistent with §648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated NE multispecies and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas;

(iv) Fishing with tuna purse seine gear, provided that there is no retention of NE multispecies, and provided there is no other gear on board gear capable of catching NE multispecies. If the Regional Administrator determines through credible information, that tuna purse seine vessels are adversely affecting habitat or NE multispecies stocks, the Regional Administrator may, through notice action, consistent with the Administrative Procedure Act, prohibit individual purse seine vessels or all purse seine vessels from the area; or

(v) Fishing in a SAP, in accordance with the provisions of §648.85(b).

(vi) Fishing for scallops within the Closed Area I Access Area defined in §648.59(b)(3) during the season specified in §648.59(b)(4), and pursuant to the provisions specified in §648.60.

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

Closed Area II

Point	N. lat.	W. long.
CI11	41°00'	67°20'
CI12	41°00'	66°35.8'
G5	41°18.6'	66°24.8' ¹
CI13	42°22'	67°20' ¹
CI11	41°00'	67°20' ¹

¹The U.S.-Canada Maritime Boundary.

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gears as described in paragraphs (a)(2)(i) through (iii), and (a)(2)(v) of this section;

(ii) Fishing with tuna purse seine gear outside of the portion of CA II known as the Habitat Area of Particular Concern, as described in paragraph (h)(1)(v) of this section;

(iii) Fishing in the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program as specified at §648.85(b)(3)(ii) or (b)(8)(ii), respectively; or

(iv) Transiting the area, provided the vessel's fishing gear is stowed in accordance with the provisions of §648.23(b); and

(A) The operator has determined, and a preponderance of available evidence indicates, that there is a compelling safety reason; or

(B) The vessel has declared into the Eastern U.S./Canada Area as specified in §648.85(a)(3)(ii) and is transiting CA II in accordance with the provisions of §648.85(a)(3)(vii).

(C) The vessel has declared into the Eastern U.S./Canada Area as specified in §648.85(a)(3)(viii) and is transiting CA II in accordance with the provisions of §648.85(a)(3)(vii).

(v) Fishing for scallops within the Closed Area II Access Area defined in §648.59(c)(3), during the season specified in §648.59(c)(4), and pursuant to the provisions specified in §648.60.

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (i) of this section:

Nantucket Lightship Closed Area

Point	N. lat.	W. long.
G10	40°50'	69°00'
CN1	40°20'	69°00'
CN2	40°20'	70°20'
CN3	40°50'	70°20'
G10	40°50'	69°00'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with gears as described in paragraph (a)(2) of this section; or

(ii) Classified as charter, party or recreational vessel, provided that:

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Administrator on board, which is valid from the date of issuance through a minimum duration of 7 days;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(D) The vessel does not fish outside the Nantucket Lightship Closed Area during the period specified by the letter of authorization; or

(iii) Fishing with or using dredge gear designed and used to take surfclams or ocean quahogs, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies.

(iv) Fishing for scallops within the Nantucket Lightship Access Area defined in §648.59(d)(3), during the season specified in §648.59(d)(4), and pursuant to the provisions specified in §648.60.

(d) *Cashes Ledge Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d)(2) and (i) of this section (a chart depicting this area is available from the Regional Administrator upon request):

Cashes Ledge Closure Area

Point	N. lat.	W. long.
CL1	43°07'	69°02'
CL2	42°49.5'	68°46'
CL3	42°46.5'	68°50.5'
CL4	42°43.5'	68°58.5'
CL5	42°42.5'	69°17.5'
CL6	42°49.5'	69°26'
CL1	43°07'	69°02'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (d)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section.

(e) *Western GOM Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Western GOM Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (e)(2) and (i) of this section:

Western GOM Closure Area¹

Point	N. lat.	W. long.
WGM1	42°15'	70°15'
WGM2	42°15'	69°55'
WGM3	43°15'	69°55'
WGM4	43°15'	70°15'
WGM1	42°15'	70°15'

¹A chart depicting this area is available from the Regional Administrator upon request.

(2) Unless otherwise restricted under paragraph (h) of this section, paragraph (e)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section consistent with the requirements specified under §648.80(a)(5).

(f) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas I through V, as described in paragraphs (f)(1)(i) through (v) of this section, for the times specified in paragraphs (f)(1)(i) through (v) of this section, except as specified in paragraphs (f)(2) and (i) of this section. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

Rolling Closure Area I

[March 1–March 31]

Point	N. lat.	W. long.
GM3	42°00'	(¹)
GM5	42°00'	68°30'
GM6	42°30'	68°30'
GM23	42°30'	70°00'

¹Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II*. From April 1 through April 30, the restrictions specified in this paragraph (f)(1)(ii) apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

Rolling Closure Area II

[April 1–April 30]

Point	N. Lat.	W. Long.
GM1	42°00'	(¹)
GM2	42°00'	(²)
GM3	42°00'	(³)
GM5	42°00'	68°30'
GM13	43°00'	68°30'
GM10	43°00'	(⁴)

¹Massachusetts shoreline.

²Cape Cod shoreline on Cape Cod Bay.

³Cape Cod shoreline on the Atlantic Ocean.

⁴New Hampshire shoreline.

(iii) *Rolling Closure Area III*. From May 1 through May 31, the restrictions specified in paragraph (f)(1) of this section apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

Rolling Closure Area III

[May 1–May 31]

Point	N. Lat.	W. Long.
GM1	42°00'	(¹)
GM2	42°00'	(²)
GM3	42°00'	(³)
GM4	42°00'	70°00'
GM23	42°30'	70°00'
GM6	42°30'	68°30'
GM14	43°30'	68°30'
GM18	43°30'	(⁴)

¹Massachusetts shoreline.

²Cape Cod shoreline on Cape Cod Bay.

³Cape Cod shoreline on the Atlantic Ocean.

⁴Maine shoreline.

(iv) *Rolling Closure Area IV*. From June 1 through June 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

Rolling Closure Area IV

[June 1–June 30]

Point	N. lat.	W. long.
GM9	42°30'	(¹)
GM23	42°30'	70°00'
GM17	43°30'	70°00'
GM19	43°30'	67°32' or (²)
GM20	44°00'	67°21' or (²)
GM21	44°00'	69°00'

GM22	(³)	69°00'
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¹Massachusetts shoreline.

²U.S.-Canada maritime boundary.

³Maine shoreline.

(v) *Rolling Closure Area V*. From October 1 through November 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

Rolling Closure Area V

[October 1–November 30]

Point	N. lat.	W. long.
GM1	42°00'	(¹)
GM2	42°00'	(²)
GM3	42°00'	(³)
GM4	42°00'	70°00'
GM8	42°30'	70°00'
GM9	42°30'	(¹)

¹Massachusetts shoreline.

²Cape Cod shoreline on Cape Cod Bay.

³Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (f)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (a)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing under charter/party or recreational regulations, provided that:

(A) For vessels fishing under charter/party regulations in a Rolling Closure Area described under paragraph (f)(1) of this section, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater; for vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western GOM Area Closure, as described under paragraph (d) and (e) of this section, respectively, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment until the end of the fishing year;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught;

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid;

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in §648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip; or

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in §648.80(a)(15), and in the GOM Rolling Closure Area V, as specified in paragraph (f)(1)(v) of this section.

(g) *GB Seasonal Closure Area*. (1) From May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the GB Seasonal Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (g)(2) and (i) of this section:

Georges Bank Seasonal Closure Area

[May 1–May 31]

Point	N. lat.	W. long.
GB1	42°00'	(¹)
GB2	42°00'	68°30'
GB3	42°20'	68°30'
GB4	42°20'	67°20'
GB5	41°30'	67°20'
CI1	41°30'	69°23'
CI2	40°45'	68°45'
CI3	40°45'	68°30'
GB6	40°30'	68°30'
GB7	40°30'	69°00'
G10	40°50'	69°00'
GB8	40°50'	69°30'

GB9	41°00'	69°30'
GB10	41°00'	70°00'
G12	(¹)	70° 00'

¹Northward to its intersection with the shoreline of mainland MA.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or to fishing vessels:

(i) That meet the criteria in paragraphs (f)(2)(i) or (ii) of this section;

(ii) That are fishing as charter/party or recreational vessels;

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS, and provided that the vessel complies with the NE multispecies possession restrictions for scallop vessels specified at §648.80(h); or when lawfully fishing in the Scallop Dredge Fishery Exemption Areas, as described in paragraphs (a)(11) and (18) of this section.

(h) *Essential Fish Habitat Closure Areas.* (1) In addition to the restrictions under paragraphs (a) through (e) of this section, no fishing vessel or person on a fishing vessel with bottom tending mobile gear on board the vessel may enter, fish in, or be in the EFH Closure Areas described in paragraphs (h)(1)(i) through (vi) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Western GOM Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Western GOM Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

Western GOM Habitat Closure Area

Point	N. lat.	W. long.
WGM4	43°15'	70°15'
WGM1	42°15'	70°15'
WGM5	42°15'	70°00'
WGM6	43°15'	70°00'
WGM4	43°15'	70°15'

(ii) *Cashes Ledge Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area defined by straight lines connecting the following points in the order stated:

Cashes Ledge Habitat Closure Area

Point	N. lat.	W. long.
CLH1	43°01'	69°03'
CLH2	43°01'	68°52'
CLH3	42°45'	68°52'
CLH4	42°45'	69°03'
CLH1	43°01'	69°03'

(iii) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

Jeffrey's Bank Habitat Closure Area

Point	N. lat.	W. long.
JB1	43°40'	68°50'
JB2	43°40'	68°40'
JB3	43°20'	68°40'
JB4	43°20'	68°50'
JB1	43°40'	68°50'

(iv) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bound by straight lines connecting the following points in the order stated:

Closed Area I—North Habitat Closure Area

Point	N. lat.	W. long.
CI1	41°30'	69°23'
CI4	41°30'	68°30'
CIH1	41°26'	68°30'
CIH2	41°04'	69°01'
CI1	41°30'	69°23'

Closed Area I—South Habitat Closure Area

Point	N. lat.	W. long.
CIH3	40°55'	68°53'
CIH4	40°58'	68°30'
CI3	40°45'	68°30'
CI2	40°45'	68°45'
CIH3	40°55'	68°53'

(v) *Closed Area II Habitat Closure Area*. The restrictions specified in this paragraph (h)(1) apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bound by straight lines connecting the following points in the order stated:

Closed Area II Habitat Closure Area

Point	N. Lat.	W. Long.
CIH1	42°10'	67°20'
CIH2	42°10'	67°9.3'
CIH3	42°00'	67°0.5'
CIH4	42°00'	67°10'
CIH5	41°50'	67°10'
CIH6	41°50'	67°20'
CIH1	42°10'	67°20'

(vi) *Nantucket Lightship Habitat Closure Area*. The restrictions specified in paragraph (h)(1) of this section apply to the Nantucket Lightship Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

Nantucket Lightship Habitat Closed Area

Point	N. lat.	W. long.
NLH1	41°10'	70°00'
NLH2	41°10'	69°50'
NLH3	40°50'	69°30'
NLH4	40°20'	69°30'
NLH5	40°20'	70°00'
NLH1	41°10'	70°00'

(2) [Reserved]

(i) *Transiting*. A vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area, and the EFH Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, unless otherwise restricted, provided that its gear is stowed in accordance with the provisions of §648.23(b). A vessel may transit CA II, as defined in paragraph (b)(2) of this section, in accordance with paragraph (b)(2)(iv) of this section.

(j) *Restricted Gear Area I*. (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 120		
69	40°07.9' N.	68°36.0' W.
70	40°07.2' N.	68°38.4' W.
71	40°06.9' N.	68°46.5' W.
73	40°08.1' N.	68°51.0' W.
74	40°05.7' N.	68°52.4' W.
75	40°03.6' N.	68°57.2' W.
76	40°03.65' N.	69°00.0' W.
77	40°04.35' N.	69°00.5' W.
78	40°05.2' N.	69°00.5' W.
79	40°05.3' N.	69°01.1' W.
80	40°08.9' N.	69°01.75' W.
81	40°11.0' N.	69°03.8' W.
82	40°11.6' N.	69°05.4' W.
83	40°10.25' N.	69°04.4' W.

84	40°09.75' N.	69°04.15' W.
85	40°08.45' N.	69°03.6' W.
86	40°05.65' N.	69°03.55' W.
87	40°04.1' N.	69°03.9' W.
88	40°02.65' N.	69°05.6' W.
89	40°02.00' N.	69°08.35' W.
90	40°02.65' N.	69°11.15' W.
91	40°00.05' N.	69°14.6' W.
92	39°57.8' N.	69°20.35' W.
93	39°56.65' N.	69°24.4' W.
94	39°56.1' N.	69°26.35' W.
95	39°56.55' N.	69°34.1' W.
96	39°57.85' N.	69°35.5' W.
97	40°00.65' N.	69°36.5' W.
98	40°00.9' N.	69°37.3' W.
99	39°59.15' N.	69°37.3' W.
100	39°58.8' N.	69°38.45' W.
102	39°56.2' N.	69°40.2' W.
103	39°55.75' N.	69°41.4' W.
104	39°56.7' N.	69°53.6' W.
105	39°57.55' N.	69°54.05' W.
106	39°57.4' N.	69°55.9' W.
107	39°56.9' N.	69°57.45' W.
108	39°58.25' N.	70°03.0' W.
110	39°59.2' N.	70°04.9' W.
111	40°00.7' N.	70°08.7' W.
112	40°03.75' N.	70°10.15' W.
115	40°05.2' N.	70°10.9' W.
116	40°02.45' N.	70°14.1' W.
119	40°02.75' N.	70°16.1' W.
to 181		
Offshore Boundary		
to 69		
120	40°06.4' N.	68°35.8' W.
121	40°05.25' N.	68°39.3' W.
122	40°05.4' N.	68°44.5' W.
123	40°06.0' N.	68°46.5' W.
124	40°07.4' N.	68°49.6' W.
125	40°05.55' N.	68°49.8' W.
126	40°03.9' N.	68°51.7' W.
127	40°02.25' N.	68°55.4' W.
128	40°02.6' N.	69°00.0' W.
129	40°02.75' N.	69°00.75' W.
130	40°04.2' N.	69°01.75' W.
131	40°06.15' N.	69°01.95' W.
132	40°07.25' N.	69°02.0' W.
133	40°08.5' N.	69°02.25' W.
134	40°09.2' N.	69°02.95' W.
135	40°09.75' N.	69°03.3' W.
136	40°09.55' N.	69°03.85' W.
137	40°08.4' N.	69°03.4' W.

138	40°07.2' N.	69°03.3' W.
139	40°06.0' N.	69°03.1' W.
140	40°05.4' N.	69°03.05' W.
141	40°04.8' N.	69°03.05' W.
142	40°03.55' N.	69°03.55' W.
143	40°01.9' N.	69°03.95' W.
144	40°01.0' N.	69°04.4' W.
146	39°59.9' N.	69°06.25' W.
147	40°00.6' N.	69°10.05' W.
148	39°59.25' N.	69°11.15' W.
149	39°57.45' N.	69°16.05' W.
150	39°56.1' N.	69°20.1' W.
151	39°54.6' N.	69°25.65' W.
152	39°54.65' N.	69°26.9' W.
153	39°54.8' W.	69°30.95' W.
154	39°54.35' N.	69°33.4' W.
155	39°55.0' N.	69°34.9' W.
156	39°56.55' N.	69°36.0' W.
157	39°57.95' N.	69°36.45' W.
158	39°58.75' N.	69°36.3' W.
159	39°58.8' N.	69°36.95' W.
160	39°57.95' N.	69°38.1' W.
161	39°54.5' N.	69°38.25' W.
162	39°53.6' N.	69°46.5' W.
163	39°54.7' N.	69°50.0' W.
164	39°55.25' N.	69°51.4' W.
165	39°55.2' N.	69°53.1' W.
166	39°54.85' N.	69°53.9' W.
167	39°55.7' N.	69°54.9' W.
168	39°56.15' N.	69°55.35' W.
169	39°56.05' N.	69°56.25' W.
170	39°55.3' N.	69°57.1' W.
171	39°54.8' N.	69°58.6' W.
172	39°56.05' N.	70°00.65' W.
173	39°55.3' N.	70°02.95' W.
174	39°56.9' N.	70°11.3' W.
175	39°58.9' N.	70°11.5' W.
176	39°59.6' N.	70°11.1' W.
177	40°01.35' N.	70°11.2' W.
178	40°02.6' N.	70°12.0' W.
179	40°00.4' N.	70°12.3' W.
180	39°59.75' N.	70°13.05' W.
181	39°59.3' N.	70°14.0' W.
to 119		

(2) *Restricted Period*—(i) *Mobile gear*. From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish or be in Restricted Gear Area I, unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area, provided that its gear is stowed in accordance with the provisions of §648.23(b).

(ii) *Lobster pot gear*. From June 16 through September 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area I.

(k) *Restricted Gear Area II.* (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 1		
49	40°02.75' N.	70°16.1' W.
50	40°00.7' N.	70°18.6' W.
51	39°59.8' N.	70°21.75' W.
52	39°59.75' N.	70°25.5' W.
53	40°03.85' N.	70°28.75' W.
54	40°00.55' N.	70°32.1' W.
55	39°59.15' N.	70°34.45' W.
56	39°58.9' N.	70°38.65' W.
57	40°00.1' N.	70°45.1' W.
58	40°00.5' N.	70°57.6' W.
59	40°02.0' N.	71°01.3' W.
60	39°59.3' N.	71°18.4' W.
61	40°00.7' N.	71°19.8' W.
62	39°57.5' N.	71°20.6' W.
63	39°53.1' N.	71°36.1' W.
64	39°52.6' N.	71°40.35' W.
65	39°53.1' N.	71°42.7' W.
66	39°46.95' N.	71°49.0' W.
67	39°41.15' N.	71°57.1' W.
68	39°35.45' N.	72°02.0' W.
69	39°32.65' N.	72°06.1' W.
70	39°29.75' N.	72°09.8' W.
to 48		
Offshore Boundary		
to 49		
1	39°59.3' N.	70°14.0' W.
2	39°58.85' N.	70°15.2' W.
3	39°59.3' N.	70°18.4' W.
4	39°58.1' N.	70°19.4' W.
5	39°57.0' N.	70°19.85' W.
6	39°57.55' N.	70°21.25' W.
7	39°57.5' N.	70°22.8' W.
8	39°57.1' N.	70°25.4' W.
9	39°57.65' N.	70°27.05' W.
10	39°58.58' N.	70°27.7' W.
11	40°00.65' N.	70°28.8' W.
12	40°02.2' N.	70°29.15' W.
13	40°01.0' N.	70°30.2' W.
14	39°58.58' N.	70°31.85' W.
15	39°57.05' N.	70°34.35' W.
16	39°56.42' N.	70°36.8' W.
21	39°58.15' N.	70°48.0' W.
24	39°58.3' N.	70°51.1' W.

25	39°58.1' N.	70°52.25' W.
26	39°58.05' N.	70°53.55' W.
27	39°58.4' N.	70°59.6' W.
28	39°59.8' N.	71°01.05' W.
29	39°58.2' N.	71°05.85' W.
30	39°57.45' N.	71°12.15' W.
31	39°57.2' N.	71°15.0' W.
32	39°56.3' N.	71°18.95' W.
33	39°51.4' N.	71°36.1' W.
34	39°51.75' N.	71°41.5' W.
35	39°50.05' N.	71°42.5' W.
36	39°50.0' N.	71°45.0' W.
37	39°48.95' N.	71°46.05' W.
38	39°46.6' N.	71°46.1' W.
39	39°43.5' N.	71°49.4' W.
40	39°41.3' N.	71°55.0' W.
41	39°39.0' N.	71°55.6' W.
42	39°36.72' N.	71°58.25' W.
43	39°35.15' N.	71°58.55' W.
44	39°34.5' N.	72°00.75' W.
45	39°32.2' N.	72°02.25' W.
46	39°32.15' N.	72°04.1' W.
47	39°28.5' N.	72°06.5' W.
48	39°29.0' N.	72°09.25' W.
to 70		

(2) *Restricted period* —(i) *Mobile gear*. From November 27 through June 15, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area II, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and stowed in accordance with the provisions of §648.23(b).

(ii) *Lobster pot gear*. From June 16 through November 26, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area II.

(l) *Restricted Gear Area III*. (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182	40°05.6' N.	70°17.7' W.
183	40°06.5' N.	70°40.05' W.
184	40°11.05' N.	70°45.8' W.
185	40°12.75' N.	70°55.05' W.
186	40°10.7' N.	71°10.25' W.
187	39°57.9' N.	71°28.7' W.
188	39°55.6' N.	71°41.2' W.
189	39°55.85' N.	71°45.0' W.
190	39°53.75' N.	71°52.25' W.
191	39°47.2' N.	72°01.6' W.
192	39°33.65' N.	72°15.0' W.
to 70		
Offshore Boundary		
to 182		
49	40°02.75' N.	70°16.1' W.
50	40°00.7' N.	70°18.6' W.

51	39°59.8' N.	70°21.75' W.
52	39°59.75' N.	70°25.5' W.
53	40°03.85' N.	70°28.75' W.
54	40°00.55' N.	70°32.1' W.
55	39°59.15' N.	70°34.45' W.
56	39°58.9' N.	70°38.65' W.
57	40°00.1' N.	70°45.1' W.
58	40°00.5' N.	70°57.6' W.
59	40°02.0' N.	71°01.3' W.
60	39°59.3' N.	71°18.4' W.
61	40°00.7' N.	71°19.8' W.
62	39°57.5' N.	71°20.6' W.
63	39°53.1' N.	71°36.1' W.
64	39°52.6' N.	71°40.35' W.
65	39°53.1' N.	71°42.7' W.
66	39°46.95' N.	71°49.0' W.
67	39°41.15' N.	71°57.1' W.
68	39°35.45' N.	72°02.0' W.
69	39°32.65' N.	72°06.1' W.
70	39°29.75' N.	72°09.8' W.
to 192		

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through November 26, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area III, unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of §648.23(b).

(ii) *Lobster pot gear*. From January 1 through April 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area III.

(m) *Restricted Gear Area IV*. (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60' N.	68°40.60' W.
194	40°11.60' N.	68°53.00' W.
195	40°14.00' N.	69°04.70' W.
196	40°14.30' N.	69°05.80' W.
197	40°05.50' N.	69°09.00' W.
198	39°57.30' N.	69°25.10' W.
199	40°00.40' N.	69°35.20' W.
200	40°01.70' N.	69°35.40' W.
201	40°01.70' N.	69°37.40' W.
202	40°00.50' N.	69°38.80' W.
203	40°01.30' N.	69°45.00' W.
204	40°02.10' N.	69°45.00' W.
205	40°07.60' N.	70°04.50' W.
206	40°07.80' N.	70°09.20' W.
to 119		
Offshore Boundary		
69	40°07.90' N.	68°36.00' W.
70	40°07.20' N.	68°38.40' W.
71	40°06.90' N.	68°46.50' W.
72	40°08.70' N.	68°49.60' W.
73	40°08.10' N.	68°51.00' W.

74	40°05.70' N.	68°52.40' W.
75	40°03.60' N.	68°57.20' W.
76	40°03.65' N.	69°00.00' W.
77	40°04.35' N.	69°00.50' W.
78	40°05.20' N.	69°00.50' W.
79	40°05.30' N.	69°01.10' W.
80	40°08.90' N.	69°01.75' W.
81	40°11.00' N.	69°03.80' W.
82	40°11.60' N.	69°05.40' W.
83	40°10.25' N.	69°04.40' W.
84	40°09.75' N.	69°04.15' W.
85	40°08.45' N.	69°03.60' W.
86	40°05.65' N.	69°03.55' W.
87	40°04.10' N.	69°03.90' W.
88	40°02.65' N.	69°05.60' W.
89	40°02.00' N.	69°08.35' W.
90	40°02.65' N.	69°11.15' W.
91	40°00.05' N.	69°14.60' W.
92	39°57.8' N.	69°20.35' W.
93	39°56.75' N.	69°24.40' W.
94	39°56.50' N.	69°26.35' W.
95	39°56.80' N.	69°34.10' W.
96	39°57.85' N.	69°35.05' W.
97	40°00.65' N.	69°36.50' W.
98	40°00.90' N.	69°37.30' W.
99	39°59.15' N.	69°37.30' W.
100	39°58.80' N.	69°38.45' W.
102	39°56.20' N.	69°40.20' W.
103	39°55.75' N.	69°41.40' W.
104	39°56.70' N.	69°53.60' W.
105	39°57.55' N.	69°54.05' W.
106	39°57.40' N.	69°55.90' W.
107	39°56.90' N.	69°57.45' W.
108	39°58.25' N.	70°03.00' W.
110	39°59.20' N.	70°04.90' W.
111	40°00.70' N.	70°08.70' W.
112	40°03.75' N.	70°10.15' W.
115	40°05.20' N.	70°10.90' W.
116	40°02.45' N.	70°14.1' W.
119	40°02.75' N.	70°16.1' W.
to 206		

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through September 30, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard may fish or be in Restricted Gear Area IV, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of §648.23(b).

(ii) [Reserved]

[69 FR 22964, Apr. 27, 2004, as amended at 69 FR 35223, June 23, 2004; 69 FR 63480, Nov. 2, 2004; 69 FR 67798, Nov. 19, 2004; 70 FR 76426, Dec. 27, 2005; 71 FR 51784, Aug. 31, 2006; 72 FR 73279, Dec. 27, 2007]

Effective Date Note: At 74 FR 17054, Apr. 13, 2009, §648.81 was amended by suspending paragraph (b)(2)(iv)(B) and adding paragraph (b)(2)(iv)(C), effective May 1, 2009 through October 28, 2009.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Vehicle and brakes manufacturers typically do not qualify as small entities. Further, aside from the relatively small cost impacts noted above, the amendments will not affect costs or benefits beyond those addressed in the FEA for the ABS final rule. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws are affected.

4. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act of 1969. The agency has determined that implementation of this action will not have any significant effect on the quality of human environment. This final rule will result in no changes to motor vehicle or motor vehicle equipment production or disposal processes.

5. Executive Order 12778 (Civil Justice Reform)

This rulemaking will have no retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles produced for use in that State. The 49 U.S.C. 30161 sets forth a procedure for judicial review of rulemakings establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending FMVSS No. 121,

Air Brake Systems, in title 49 of the Code of Federal Regulations, Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.121 is amended by adding a new definition of "Effective Projected Luminous Lens Area" to S4; by revising S5.2.3.3(c)(1); and by adding S5.2.3.3(c)(3) to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S4. Definitions

* * * * *

Effective projected luminous lens area means that area of the projection on a plane perpendicular to the lamp axis of that portion of the light-emitting surface that directs light to the photometric test pattern, and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from small areas (1/2 degree radius around the test point).

* * * * *

S5.2.3.3 Antilock malfunction indicator

(c) Location requirements. (1) Each trailer that is not a trailer converter dolly shall be equipped with a lamp mounted on a permanent structure on the left side of the trailer as viewed from the rear, no closer than 150 mm (5.9 inches), and no farther than 600 mm (23.6 inches) from the red rear side marker lamp, when measured between the closest edge of the effective projected luminous lens area of each lamp.

* * * * *

(3) Each trailer that is not a trailer converter dolly and on which the malfunction indicator lamp cannot be placed within the location specified in S5.2.3.3(c)(1) shall be equipped with a lamp mounted on a permanent structure on the left side of the trailer as viewed from the rear, near the red rear side marker lamp or on the front face of the left rear fender of a trailer equipped with fenders.

* * * * *

Issued: February 5, 1998.

Ricardo Martinez, M.D.
Administrator.

[FR Doc. 98-3629 Filed 2-13-98; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970829217-8025-02; I.D. 081597E]

RIN 0648-AJ79

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 18

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 18 to the Northeast Multispecies Fishery Management Plan (FMP). Framework Adjustment 18 allows pelagic midwater trawling for herring and mackerel in Multispecies Closed Areas I and II, the Gulf of Maine (GOM) multispecies closure areas, and in the Nantucket Lightship Closed Area, under certain conditions. The intent of this rule is to provide greater economic opportunity for pelagic midwater trawl vessels to harvest herring and mackerel while maintaining the conservation benefits of the current multispecies management measures.

DATES: Effective February 17, 1998.

ADDRESSES: Copies of Amendment 7 to the FMP, its regulatory impact review (RIR), and the final regulatory flexibility analysis (FRFA) contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 18 documents are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, NMFS, Fishery Policy Analyst, 508-281-9279.

SUPPLEMENTARY INFORMATION:

Background

In 1994, at the request of the New England Fishery Management Council (Council), NMFS, by emergency action, closed three large areas of the Northeast multispecies fishery for the duration of the emergency to all fishing gear capable of catching multispecies (59 FR 63926, December 12, 1994, and amended at 60 FR 3102, January 13, 1995). These areas, known as Closed Areas I and II and the Nantucket Lightship Closed Area, cover approximately 4,800 square miles

(12432 sq. km.). In order to avoid a hiatus between the emergency action and the implementation of Amendment 7, the Council proposed and NMFS issued Framework Adjustment 9 (60 FR 19364, April 18, 1995) to implement the emergency measures on a permanent basis while Amendment 7 was being developed to address a long term objective of stock rebuilding. In 1996, Amendment 7 to the FMP continued the existing year-round closures and closed seasonally three additional large areas in the GOM (61 FR 27710, May 31, 1996). These areas currently remain closed to all gear capable of catching multispecies, including pelagic midwater trawls.

Recently, the Council was requested by industry participants to allow pelagic midwater trawling for herring and mackerel in the multispecies closed areas because these fisheries capture negligible amounts of regulated multispecies due to the spatial separation of pelagic and demersal species in the water column. Because of the low value of herring and mackerel, it is important to the industry that vessels have unimpeded access to these species throughout their migrations to ensure that the harvesting and/or processing capacity of the vessels is maximized. Large closed areas impede access and make fishing for herring and mackerel economically less feasible. These pelagic species are very important for commercial fishing vessels in New England that participate in joint ventures or in the directed domestic fishery. Due to the prohibition on fishing in closed areas and an increased reliance on closed areas for multispecies mortality reduction, it has become increasingly difficult to conduct these pelagic fishing operations.

Further details concerning justification for, and development of, Framework Adjustment 18 were provided in the preamble to the proposed rule (62 FR 49193, September 19, 1997).

This framework allows pelagic midwater trawling for herring and mackerel in Closed Areas I and II, the Nantucket Lightship Closed Area, and in the GOM Closed Areas (§ 648.81(a), (b), and (c)) under the following conditions: (1) Vessels must obtain and comply with a midwater trawl letter of authorization (LOA) (as currently required under § 648.80(d)(2) for the midwater trawl gear exemption) from the Administrator, Northeast Region, NMFS (Regional Administrator); (2) harvesting or processing vessels must carry observers, if required by NMFS (as currently required under the midwater trawl gear exemption), and (3) if the

Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies for the fishery or for any individual vessel exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, the Regional Administrator may place restrictions and/or conditions in the LOAs for any or all individual fishing operations, or, after consulting with the Council, the Regional Administrator may suspend or prohibit any or all midwater trawl activities in the closed areas.

Comments and Responses

Five comments were received concerning Framework Adjustment 18. Three of the comments were strongly supportive of the proposed rule and substantiate the finding in the Initial Regulatory Flexibility Act (IRFA) that this action will have a positive economic impact on small business entities. Two other comments were concerned about the potential bycatch of regulated multispecies and marine mammals.

Comment 1: A representative from a pelagic fishing company wrote in support of Framework Adjustment 18. The commenter stated that pelagic midwater trawl vessels have no bycatch of groundfish or marine mammals and disputed assertions to the contrary. To satisfy any perceived problems, the commenter stated that the pelagic trawl industry is willing to take observers, if requested to do so.

Response: Available herring and mackerel sea sampling data shows a minimal bycatch of regulated multispecies. NMFS will continue to collect sea sampling data and other information on these fisheries. This information will be essential for any future decision making purposes. A condition in the LOA necessary to participate in the pelagic midwater trawl fishery states that vessels must carry observers, if required by NMFS. On the basis of sea sampling data or other credible information for this fishery, if bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of the catch of herring and mackerel, by weight, the Regional Administrator may place restrictions or conditions on the required midwater trawl LOA or, in consultation with the Council, suspend all midwater trawl activities in any or all of the closed areas. These precautions should alleviate any real or perceived problems with bycatch in the closed areas.

Comment 2: A representative from a commercial pelagic fishing association

submitted written comments supporting Framework Adjustment 18. The commenter stated that allowing midwater trawl vessels into the multispecies closed areas would facilitate the orderly development of the offshore herring fishery. The commenter wrote that, as the herring fishery management plan is developed, it will be essential to gather accurate scientific data and information to respond to any concerns regarding marine mammal interactions with pelagic trawl gear.

Response: NMFS concurs. This final rule could facilitate the orderly development of the industry and provide important additional information on fishery bycatch and pelagic species biology.

Comment 3: A representative from a commercial fishing association submitted written comments supporting Framework Adjustment 18, indicating that it will provide greater economic opportunity for pelagic midwater trawl vessels to harvest herring and mackerel and maintain the conservation benefits of current multispecies management measures.

Response: NMFS concurs. The intent of this framework is to allow pelagic midwater trawling in the multispecies closed areas only if it does not adversely impact current efforts to rebuild depleted groundfish stocks. The RIR/IRFA concluded that this action will have a positive economic impact on small businesses.

Comment 4: A representative of the commercial fishing industry submitted a written comment expressing concern about bycatch of regulated multispecies (specifically cod, haddock, and pollock) in the midwater trawl fishery, if these areas are reopened to pelagic midwater trawl gear. The commenter wrote that groundfish occasionally leave the sea bottom and may, therefore, be vulnerable to capture with midwater trawl gear. The commenter emphasized that this is why 100-percent observer coverage should be required in the midwater trawl fishery. The commenter also questioned the validity of the data provided on the cost of 100-percent observer coverage in relation to the economic value of the pelagic fishery. The commenter stated that the cost of observers would be minimal compared with the value of the herring and mackerel caught in the areas and with the value of assured protection to groundfish.

Response: The Council and NMFS have been aware of the concern with multispecies bycatch throughout the development of Framework Adjustment 18. An important factor in the decision to allow midwater trawling is the fact

that available herring and mackerel sea sampling data and mackerel weighout data do not show a bycatch of regulated multispecies. The data do indicate some bycatch of nonregulated multispecies (whiting) and scup. Monitoring of data will continue with the implementation of Framework Adjustment 18, and appropriate action will be taken if the bycatch of regulated multispecies exceeds 1 percent, by weight, of harvested herring and mackerel. Since many of the vessels operating in these fisheries will be reporting their landings under the mackerel and multispecies fishery management plans, data will be available. Safeguards have been included in the framework whereby the midwater trawl fishery in the closed area(s) can be restricted or closed if the bycatch of regulated multispecies for the fishery exceeds 1 percent, by weight, of harvested herring and mackerel by any or all vessels. This will ensure that bycatch of regulated multispecies is minimal. Furthermore, vessels participating in these fisheries are not allowed to retain regulated multispecies and, therefore, have no incentive to capture them.

The Council considered requiring 100-percent observer coverage or having observers present whenever fish are transferred from a harvesting vessel to the processor, but it rejected these alternatives due to prohibitive costs and limited observer availability. Observer costs were found in the IRFA prepared by the Council to range from 8 percent to as much as 148 percent of ex-vessel revenues. These costs would average 55 percent of gross revenues for ton-class 3 vessels, and 14 percent of gross revenues for ton-class 4 vessels based on available herring catch rate data. Therefore, for vessels that land pelagics ashore and for some freezer trawlers, it would be economically unfeasible to require observers. That is why the alternative to require mandatory observers was rejected.

Importantly, however, the framework does require vessels to obtain and comply with the midwater trawl LOA, as described in § 648.80(d)(2), to fish in the closed areas. A condition in the LOA states that vessels must carry observers, if required by NMFS. Also, observers are currently required on processing vessels participating in joint venture operations.

Comment 5: A representative of the commercial fishing industry submitted a written comment stating that this rule could result in increased interactions between pelagic midwater trawl gear and marine mammals, especially harbor porpoise. The frequency of interactions could increase because the GOM

closures coincide with periods of high harbor porpoise abundance, and the target species for both harbor porpoise and the midwater trawl fleet is herring. The commenter indicated that minimal sea sampling data is available upon which to base a final rule and expressed concern regarding compliance with the Marine Mammal Protection Act and the Endangered Species Act. Finally, it was stated that Framework Adjustment 18 should not compromise efforts already underway to rebuild groundfish and marine mammal stocks.

Response: NMFS appreciates the commenter's detailed discussion of the potential for bycatch of harbor porpoise and other marine mammals in the midwater herring and mackerel trawl fisheries and the need for observer coverage in these fisheries. The NMFS sea sampling program has collected information on marine mammal bycatch in foreign and domestic midwater trawl fisheries targeting mackerel in the Mid-Atlantic. Sample sizes for herring and mackerel midwater trawl trips in the GOM are small and provide limited information on marine mammal bycatch rates for these fisheries. Based upon the available data on midwater trawl fisheries, the 1996 marine mammal stock assessment report prepared by NMFS indicated that no takes of harbor porpoise have been documented in midwater trawl gear.

NMFS has the authority to place observers in the herring midwater trawl fishery for purposes of monitoring fish harvests as well as for monitoring any marine mammal and other endangered species bycatch.

An Endangered Species Act Section 7 consultation on this fishery resulted in a Biological Opinion issued on December 13, 1996. Since the conclusion of that consultation, Framework Adjustment 18 has been revised. Therefore, consultation on Framework Adjustment 18 was reinitiated. The new consultation concluded that impacts from fishing activities conducted under Framework Adjustment 18 will not change the basis for the December 13, 1996, determination that the overall operation of the multispecies fishery under the FMP, without modification, is likely to jeopardize the continued existence of the northern right whale may affect but is not likely to jeopardize the continued existence of other endangered or threatened species of whale, sea turtles, and fish under NMFS jurisdiction and will not result in adverse modification of critical habitat.

Changes in the Final Rule From the Proposed Rule

Some changes from the proposed rule were necessary to make Framework Adjustment 18 more succinct and to eliminate duplicative regulations. Other changes were made to more accurately reflect Council intent and to serve administrative purposes.

Section 648.80(d)(2) of the final rule requires vessels to have on board a midwater trawl LOA when fishing in the Gulf of Maine/Georges Bank (GOM/GB) and Stellwagen Bank/Jeffreys Ledge (SB/JL) Areas and the portion of the Nantucket Lightship Closed Area not within the GOM/GB and the SB/JL Areas. The proposed rule, while not substantively different, independently listed six other multispecies closed areas as being subject to the LOA requirement. Because these closed areas are subareas lying completely within the larger GOM/GB and SB/JL Areas, the final rule does not independently list them.

Section 648.80(d)(3) of the final rule allows vessels in the midwater trawl exemption in areas north of 42°20' N. lat. and in three specified multispecies closed areas to fish for, possess, or land only Atlantic herring, blueback herring, or mackerel. The proposed rule listed all seven of the multispecies closed areas. Because four of these multispecies closed areas are north of 42°20' N. lat., the final rule does not independently list them.

In § 648.80(d), paragraph 5 is added which requires vessels fishing under the midwater trawl exemption to carry a NMFS-approved sea sampler/observer, if requested by the Regional Administrator. This provision is already in the midwater trawl LOA and is specifically mentioned in the Council framework document. Adding this provision makes the regulations consistent with the LOA and better reflects Council intent.

In § 648.81(a)(2)(iii), the final rule specifies that the Regional Administrator shall determine the percent bycatch of regulated multispecies on the basis of sea sampling data and other credible information for the fishery. This was implied in the proposed rule but required clarification. The change from the proposed rule was made to more clearly reflect Council intent and to facilitate the administration of the regulation. Information on which to make decisions will be available on a fishery-wide basis and not only on limited data basis from the closed areas. This is consistent with NMFS's objective to reopen the multispecies

closed areas to midwater trawl vessels in a cautious manner while ensuring that the bycatch of regulated multispecies is minimal.

Classification

The Regional Administrator, Northeast Region, NMFS, determined that Framework Adjustment 18 is consistent with the Magnuson-Stevens Act and other applicable law.

Because this rule relieves restrictions on a sector of the fishing industry by allowing fishing for mackerel and herring to occur in areas currently closed to such fishing, under 5 U.S.C. 553(d)(1) it is not subject to a 30-day delay in effective date.

This action is authorized by 50 CFR part 648 and has been determined not to be significant for purposes of E.O. 12866.

The Council prepared an IRFA that describes the impact this rule would have on small entities. This action would have a significant, but positive, impact on small business entities because it is expected to increase the annual gross revenues of a substantial number of small business entities by more than 5 percent. The IRFA concluded that this action could affect all of the approximately 35 pelagic midwater trawl vessels (which are small business entities) participating in the fisheries by allowing them to fish in areas currently closed to them, thereby increasing their annual gross revenues by more than 5 percent. Ten to twelve additional vessels could enter these fisheries in the next year. However, it is unlikely that more vessels will enter the fisheries because of the expense, which is estimated to range from \$75,000 to \$250,000 depending on the changes made, to convert conventional trawl vessels into competitive midwater trawls. Because of the conversion expenses, many vessels would be precluded from entering these fisheries.

This action could improve the economic competitiveness of all U.S. Atlantic herring and mackerel harvesting operations and preserve the enforceability and effectiveness of the multispecies closed areas. The IRFA indicated that it is difficult to predict the exact increase in annual gross revenues as a result of allowing fishing in the currently closed areas due to the unpredictability of herring and mackerel migrations, but overall annual ex-vessel revenues for the fleet may potentially rise from between \$255,684 to \$767,051, as compared to taking no action.

As mentioned earlier, the Council had considered requiring the 100-percent observer coverage or having observers present when fish was transferred from

the harvesting vessel to the processor, but rejected these alternatives because they were considered too costly for the fleet. No additional alternatives to minimize the economic impacts were considered by the Council because all the impacts are beneficial and need not be minimized. A copy of the IRFA analysis is available from the Council (see ADDRESSES). The FRFA incorporates the IRFA findings with the response to comments received, and addressed above, regarding the proposed rule. Framework Adjustment 18 is expected to increase the annual gross revenues of a substantial number of small business entities by more than 5 percent. Framework Adjustment 18 will have a significant, but positive, economic impact on a substantial number of small business entities.

This rule refers to a collection of information which is subject to the Paperwork Reduction Act and which has been approved under OMB control number 0648-0202.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 10, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. Section 648.80 is amended by revising paragraphs (d)(2) and (d)(3), and by adding paragraph (d)(5) to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(2) When fishing under this exemption in the GOM/GB and SB/JL Areas, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof.

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat. and in the areas described in Sec. 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in

all other areas south of 42°20' N. lat.; and

* * * * *

(5) The vessel must carry a NMFS-approved sea sampler/ observer, if requested by the Regional Administrator.

* * * * *

3. Section 648.81 is amended by adding paragraph (a)(2)(iii), and by revising paragraphs (a)(2)(ii), (b)(2) introductory text, (c)(2)(i), and (f)(2)(ii) to read as follows:

§ 648.81 Closed areas.

(a) * * *

(2) * * *

(ii) Fishing with or using pelagic hook or longline gear or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies; or

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated multispecies, and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas.

(b) * * *

(2) Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels fishing with gears as described in paragraph (a)(2) of this section, or that are transiting the area provided—

* * * * *

(c) * * *

(2) * * *

(i) Fishing with gears as described in paragraph (a)(2) of this section;

* * * * *

(f) * * *

(2) * * *

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in § 648.81(a)(2)(iii), and excluding pelagic gillnet gear capable of catching multispecies, except vessels may fish with a single pelagic gillnet, not longer than 300 ft (91.44 m.) and not greater

than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.62 cm), provided the net is attached to the boat, is fished in the upper two-thirds of the water column, and is marked with the owner's name and vessel identification number and provided there is no other gear on board capable of catching multispecies finfish; or

* * * * *

[FR Doc. 98-3791 Filed 2-10-98; 4:46 pm]

BILLING CODE 3510-22-F

(TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Florida, is amended by adding DTV channel 32 and removing DTV channel 38 at St. Petersburg.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-21388 Filed 9-3-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09-1963; MB Docket No. 09-160; RM-11558]

Television Broadcasting Services; Traverse City, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Barrington Traverse City License, LLC ("Barrington"), the licensee of station WPBN-TV, channel 7, Traverse City, Michigan. Barrington requests the substitution of digital channel 47 for digital channel 7 at Traverse City.

DATES: Comments must be filed on or before September 21, 2009, and reply comments on or before September 29, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Marnie K. Sarver, Esq., Wiley Rein, LLP, 1776 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:

David Brown, *david.brown@fcc.gov*, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09-160, adopted August 27, 2009, and released August 28, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Michigan, is amended by adding DTV channel 47 and removing DTV channel 7 at Traverse City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-21390 Filed 9-3-09; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907281181-91191-01]

RIN 0648-AX93

Fisheries of the Northeastern United States; Modification to the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Authorization Letter

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes modifications to the requirements for

midwater trawl vessels issued All Areas and/or Areas 2 and 3 Atlantic herring limited access permits fishing in Closed Area I (CA I). In order to fish in CA I, midwater trawl vessels with these permits would be required to carry a NMFS-approved observer and to bring the entire catch aboard the vessel, unless specific conditions are met, so that it is available to the observer for sampling. These proposed changes to the Gulf of Maine/Georges Bank (GOM/GB) Herring Midwater Trawl Gear Letter of Authorization (LOA) would be effective indefinitely, until changed by a subsequent action.

DATES: Written comments must be received no later than 5 p.m. local time on September 21, 2009.

ADDRESSES: You may submit comments, identified by 0648-AX93, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-rulemaking portal: <http://www.regulations.gov>.

- 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 01930-2276. Mark the outside of the envelope: "Modification to GOM/GB Midwater Trawl LOA."

- Fax: (978) 281-9135.

Instructions: All comments received are 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281-9341, fax (978) 281-9135.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Northeast Regional Office and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) voted at its April 8, 2009, Council meeting to request that the NMFS Northeast Regional Administrator modify the GOM/GB Herring Midwater Trawl Gear LOA to require midwater trawl vessels fishing in CA I to have 100-percent observer coverage; be prohibited from slipping codends (the practice of opening the codend of the net and releasing the catch before all of it is brought on board); and be required to pump aboard the vessel all fish caught, to allow sampling by the observer.

The final rule implementing Framework Adjustment 18 (FW 18) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (63 FR 7727, February 17, 1998) authorized midwater trawl vessels to fish in the groundfish year-round closed areas with specific conditions regarding bycatch of regulated multispecies. The FW 18 implementing regulations (§ 648.81(a)(2)(iii)), grant the Regional Administrator the authority to place restrictions and conditions in the LOA if it is determined that the bycatch of regulated multispecies in the groundfish closed areas exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation. Recent analysis of at-sea observer data, presented by NMFS at the April 8, 2009, Council meeting, demonstrated that the bycatch of regulated multispecies in groundfish CA I exceeded 1 percent of herring caught on at least two individual fishing trips between May 2004 and October 2008. Based on this information, the intent of the Council's motion is to collect additional information on bycatch by the midwater trawl directed herring fishery in CA I to determine whether revisions should be made to the exemption allowing these vessels to fish in groundfish closed areas.

Therefore, based on the authority granted in the regulation cited above, in combination with section 402(a) of the Magnuson-Stevens Act, which allows NMFS to implement information collections or observer programs if additional information is necessary to monitor a fishery management plan, NMFS proposes to implement the Council's recommendation by adding language to the existing LOA to prohibit midwater trawl vessels with All Areas and/or Areas 2 and 3 limited access Atlantic herring permits from fishing in CA I without a NMFS-approved at-sea observer aboard. The LOA would also stipulate that such vessels, while

operating in CA I, would be prohibited, except under certain circumstances, from releasing fish from the net before all of the catch has been pumped aboard and made available to the observer for sampling.

Starting in 2005 with FW 40-B to the NE Multispecies FMP (70 FR 31323, June 1, 2005), vessels in the directed herring fishery (those permitted to land 500 mt of herring or more) have been required to notify NMFS at least 72 hr prior to departing on a herring trip into the GOM/GB Exemption Area, to facilitate observer deployment. In 2006, FW 43 to the NE Multispecies FMP (71 FR 46871, August 15, 2006) instituted a bycatch allowance of regulated groundfish for vessels in the directed herring fishery. Based on the precedent set in these previous Council actions, the measures proposed by this action would apply to vessels in the directed herring fishery, specifically those with All Areas and/or Areas 2 and 3 limited access Atlantic Herring permits.

Observer Provisions

This proposed rule would require vessels using midwater trawl gear in the directed herring fishery to indicate their intention to fish in CA I when scheduling an observer through the Northeast Fishery Observer Program. This notification is intended to allow NMFS to ensure an observer is deployed on all vessels that intend to fish in CA I with midwater trawl gear. To ensure 100-percent observer coverage, midwater trawl vessels would not be permitted to fish in CA I without an observer.

Slipped Codend Provisions

NMFS proposes that midwater trawl vessels in the directed herring fishery, that have indicated an intention to fish in CA I, and that have been assigned a NMFS-approved at-sea observer, would be prohibited, unless specific conditions are met, from releasing (i.e., slipping) fish from the codend of the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer. Even if such a vessel did not fish an entire trip inside of CA I, it would be required to comply with these requirements for the entire trip to ensure that maximum amount of information is obtained.

NMFS recognizes that there are certain conditions under which fish must be released from the codend without being sampled. Therefore, this provision is not intended to limit the

discretion of the captain to regulate the stability of the vessel in adverse sea conditions, and the operator would be permitted to dump fish if bringing them aboard the vessel could compromise the safety of the vessel or her crew. In addition, mechanical failure of the pump may preclude bringing some or all of a catch aboard the vessel. That part of the catch that could not be pumped aboard because of mechanical failure could be released. Mechanical or safety problems of sufficient magnitude to warrant slipping a codend would require termination of the fishing trip and the vessel's return to port. This requirement is designed to help ensure that safety or mechanical justifications for slipping a codend are not used as a false pretext to avoid sampling.

NMFS recognizes that species composition in the catch, specifically a high concentration of spiny dogfish, can cause the fish pump to clog, slowing the pump-out process and potentially damaging the rest of the catch. Therefore, NMFS proposes allowing fish to be released unsampled if spiny dogfish are determined to comprise more than 50 percent of the catch, by weight. Pumping operations would have to be started so that the observer could determine that the quantity of spiny dogfish in the catch is sufficient to make pumping the remainder of the catch nearly impossible. A vessel would not be required to end the trip following a slipped codend due to a high concentration of spiny dogfish.

If a codend is slipped, the vessel operator would be required to sign an affidavit to NOAA's Office of Law Enforcement (OLE) attesting to the specific reason for the release, and a good-faith estimate of both the total weight of fish caught and the weight of fish released. Completed and signed affidavits would be sent to OLE at the conclusion of the trip. Slipped codends for which an affidavit has been completed and signed, citing one of the exemptions mentioned above, would be presumed to be in accordance with the regulations unless a preponderance of the evidence demonstrates otherwise.

Representatives of the commercial midwater trawl industry have asserted that short duration tows, or "test tows," used to check the abundance of target and bycatch species in an area should not be required to be pumped aboard. Because the purpose of this proposed expansion of the information collection program is to increase the understanding of the bycatch of this fishery in CA I, it is necessary to collect information on bycatch in all tows made by midwater trawl vessels in CA I. However, the proposed regulations

would not require a vessel to pump out the catch from a test tow if the net is simply reset without releasing the catch. In this circumstance, the catch from the test tow would remain in the codend and would be available to the observer to sample when the subsequent tow is pumped out. In addition, fish that a vessel would normally discard because of regulatory, market, or other factors, could be discarded, but only after being brought on board and sampled by the observer.

Request for Comments

The public is invited to comment on any of the measures proposed in this proposed rule. NMFS is especially interested in receiving comments on proposed measures regarding the requirement for vessels to end a trip after a codend is slipped due to safety concerns or mechanical failure. Additionally, comment is specifically sought on whether or not 50 percent is the appropriate level of spiny dogfish bycatch at which to allow a codend to be released. Comment is also sought regarding how much of the catch should be pumped to determine the level of dogfish bycatch, in order to justify slipping the codend and releasing the remainder of the tow without being sampled by the observer.

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 Atlantic Herring and NE Multispecies FMPs, 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 purposes of Executive Order 12866.

The NMFS Northeast Regional Administrator has determined that this proposed rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This amendment does not significantly affect the practices of any fishing operation. It increases the rate of at-sea fishery observer coverage to 100 percent

for midwater trawl vessels fishing in CA I. Sufficient observer sea-days have been allocated to this program to cover the expected fishing effort by midwater trawlers in CA I in the next fishing year. If the Northeast Fishery Observer Program is unable to provide an observer for a vessel that indicates an intention to fish in CA I, the vessel may still fish, but would be prohibited from fishing inside CA I on that trip. The rule also stipulates that, during trips when a vessel has indicated an intention to fish in CA I, the codend of the net may not be slipped and all fish must be pumped aboard the vessel, unless specific conditions are met. For example, exceptions would be made for a vessel if pumping out the net is not possible due to concerns for vessel safety, mechanical problems, or a high concentration of spiny dogfish. Currently, very few midwater trawl trips fish in CA I on an annual basis, and vessels that do not receive an observer are still able to fish in any other areas open to this gear. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains one new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The observer notification of a vessel's intention to fish in CA I will be added to the information collection for the Herring Vessel Observer Program Notification, which has been approved by OMB under control number 0648-0202. The public reporting burden for the Herring Vessel Observer Program Notification will not change, and is estimated to average 2 min per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The new collection-of-information requirement pertaining to the slipped codend exemption affidavit has been submitted to OMB for approval. The public reporting burden for completion of the slipped codend exemption affidavit is estimated to average 5 min per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and

clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the ADDRESSES above, and e-mail to *David.Rostker@omb.eop.gov*, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 31, 2009.

Samuel D. Rauch III,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.14, add paragraphs (r)(2)(v), (r)(2)(vi), and (r)(2)(vii) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(2) * * *

(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 holds an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit.

(vi) 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 before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exemptions as defined at § 648.80(d)(7)(ii), if the vessel has expressed an intention to fish in Closed Area I, as detailed at § 648.80(d)(5) and is carrying an observer.

(vii) Fail to complete, sign, and submit an affidavit if fish are released pursuant to the exemptions detailed at § 648.80(d)(7)(ii).

* * * * *

3. In § 648.80, revise paragraph (d)(5) and add paragraph (d)(7) to read as follows:

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

* * * * *

(d) * * *

(5) To fish for herring under this exemption, vessels issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit 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

* * * * *

(7) *Fishing in Closed Area I.* (i) No vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may fish in, or possess or land fish from, Closed Area I with pelagic midwater trawl gear unless it has declared its intent to fish in Closed Area I as required by paragraph (d)(5) of this section, and is carrying a NMFS-approved observer.

(ii) No vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access

Herring Permit that has declared its intent to fish with pelagic midwater trawl gear in Closed Area I, in accordance with paragraph (d)(5) of this section, and is carrying a NMFS-approved observer, 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:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) That mechanical failure of the fish pump precludes bringing the fish aboard the vessel for inspection; or,

(C) After pumping of fish onto the vessel has begun, the vessel operator determines that spiny dogfish comprise at least 50 percent, by weight, of the catch, and observer sampling demonstrates that spiny dogfish comprise at least 50 percent, by weight, of the sampled catch.

(iii) If fish are released prior to being brought aboard the vessel due to any of exceptions detailed in paragraphs (d)(7)(ii)(A) through (C) of this section, the vessel operator shall make all reasonable efforts to assist the observer in identifying the reason for the release; the total weight of fish caught, and the weight of fish released, and shall sign an affidavit attesting to this information. Further, if fish are discarded prior to being inspected by the observer, for either safety or mechanical reasons, as detailed in paragraphs (d)(7)(ii)(A) or (B) of this section, the vessel must end the trip and return to port without making additional tows.

* * * * *

[FR Doc. E9-21404 Filed 9-3-09; 8:45 am]

BILLING CODE 3510-22-S