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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140221166-4166-01]

RIN 0648-BE01

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 3

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

ACTION: Proposed rule, request for comments.

SUMMARY: Framework Adjustment 3 to the Atlantic Herring Fishery Management Plan would establish a process for setting river herring (alewife and blueback) and shad (American and hickory) catch caps for the herring fishery. In addition, this action would set these catch caps for the 2014 and 2015 fishing years. This action is consistent with Herring Amendment 5, which addresses river herring catch and allows for river herring and shad catch caps to be implemented through a framework. This action would allow the Council to set river herring and shad catch caps and associated measures in future years through specifications or frameworks, whichever is appropriate. Catch of river herring and shad includes both bycatch (discards) and incidental catch that is retained.

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

ADDRESSES: The New England Fishery Management Council developed an environmental

assessment (EA) for this action that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the framework, the EA, and the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2014-0033, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0033, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments. Mail: Submit written comments to NOAA Fisheries, Greater Atlantic Regional Fisheries Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Herring Framework 3.”

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

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

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council adopted Framework Adjustment 3 at its September 24, 2013, meeting. The Council submitted Framework 3 to NOAA Fisheries Service (NMFS) for review on January 3, 2014, and resubmitted to NMFS on March 26, 2014.

Framework 3 proposes to establish a process for setting and modifying catch caps for river herring (alewife and blueback) and shad (American and hickory) catch caps in the Atlantic (sea) herring fishery, and would set specific river herring and shad catch caps for the 2014 and 2015 fishing years. Catch of river herring and shad for 2014 would count against the cap in 2014 only after the effective date of a final rule implementing these caps.

River herring and shad are anadromous species that may co-occur seasonally with Atlantic herring and are harvested as a non-target species in the fishery. When river herring are encountered in the herring fishery, they are either discarded at sea (bycatch) or, because they closely resemble herring, they are retained and sold as part of the herring catch (incidental catch). According to the most recent river herring stock assessment (May 2012) conducted by the Atlantic States Marine Fisheries Commission, river herring populations have declined from historic levels and many factors will need to be addressed to allow their recovery, including: Fishing in both state and Federal waters; improvement of river passageways and water quality; reduced predation; and understanding the effects of climate change. The Council has been working on addressing river herring and shad catch issues in the herring fishery, most recently in

Herring Amendment 5 (79 FR 8786; February 13, 2014). Framework 3 is consistent with Amendment 5, which allowed for river herring and shad catch caps to be implemented through a framework adjustment. Framework 3 would allow the Council to set river herring and shad catch caps and associated measures in future years through specifications or frameworks, whichever is appropriate.

Framework 3 outlines a process for setting and modifying the river herring and shad catch caps that includes: Identification of gears, areas, and trips that would be subject to the catch caps; changes to reporting requirements for vessels issued limited access and Herring Management Areas 2/3 open access herring permits; criteria that would trigger the closure of an area to directed herring fishing for a particular gear type; and a list of management measures related to setting catch caps that can be modified through the herring specifications process and/or framework adjustment process. This rule uses that process and sets the applicable caps.

Area and Gear Provisions of the River Herring and Shad Catch Caps

Framework 3 proposes four distinct Catch Cap Areas that could have associated catch caps: Gulf of Maine (GOM); Cape Cod (CC); Southern New England/Mid-Atlantic (SNE/MA); and Georges Bank (GB) (Table 1). During a given fishing year, catch of river herring and shad from all herring trips landing more than 6,600 lb (3 mt) of herring would apply against the catch caps for specific fishing gears in one or more of these areas. The Council considered alternatives for catch caps for all gear types used in the herring fishery, but ultimately decided to adopt catch caps for midwater trawl gear in the GOM, CC, and SNE/MA, as well as for bottom trawl gear in SNE/MA. The selection of these gear types in these areas is based on recent fishery data that indicate where river herring and shad interactions are occurring, and to what extent they may be

occurring by each gear type used in the herring fishery. Because river herring and shad are not caught by the herring fishery in GB, the Council is not proposing catch caps for GB during 2014-2015. The Council may consider adjustments to the selected gears and areas that have associated catch caps in a future management action.

Table 1. River Herring and Shad Catch Cap Areas

| Catch Cap Areas | Statistical Areas |
|-----------------|---|
| GOM | 511-515 |
| CC | 521 |
| GB | 522, 525-526, 541-543, 561-562, and 640 |
| SNE/MA | 533-534, 537-539, 611-616, 621-629, and 631-639 |

Reporting Requirements and Monitoring the River Herring and Shad Catch Caps

This action proposes adjustments to current Vessel Monitoring System (VMS) trip notification requirements in order for NMFS to monitor the catch caps. Vessel operators would have to report kept catch of all species by statistical area daily via VMS catch reports. The Council may consider adjustments to trip notification requirements in the future as necessary to ensure the effectiveness of the catch caps.

In terms of monitoring the catch cap, the Greater Atlantic Regional Fisheries Office would estimate the total river herring and shad catch in the herring fishery using data from observed hauls on herring trips to extrapolate to unobserved herring trips. The rate of river herring and shad catch would be estimated as the ratio of observed river herring and shad catch (including discards) to the kept catch of all species on observed trips that land greater than 6,600 lb (3 mt) of herring. Total river herring and shad catch (in weight) would then be derived by multiplying the catch rate by total pounds of all kept species on all trips that land greater than

6,600 lb (3 mt) of herring. This methodology is identical to that used for catch cap accounting in the mackerel fishery. More information about our monitoring methodology for the mackerel fishery's river herring and shad catch can be found at <http://www.nero.noaa.gov/sustainable/species/msb/>.

River Herring and Shad Catch Triggers and Closure Areas

This action proposes that when 95 percent of the river herring and shad catch for a gear-specific catch cap is projected to be reached in a Catch Cap Area, all vessels fishing with that gear type in the respective closure area would be subject to a reduced herring possession limit of 2,000 lb (0.9 mt) in or from that area for the remainder of the fishing year. Vessels using other gear types in the closure area would not be affected (i.e., those vessels would not be subject to the 2,000-lb (0.9-mt) possession limit and could continue directed fishing for herring in those areas with other gear types). Vessels participating in the herring fishery outside of the catch cap closure area(s) would be able to use any gear type (consistent with other regulations) until the applicable herring annual catch limits/sub-annual catch limits are harvested. This 95-percent catch trigger is consistent with the trigger implemented for the river herring and shad catch cap in the mackerel fishery (79 FR 18834; April 4, 2014).

The Catch Cap Closure Areas are identical to the Catch Cap Areas for GB, GOM, and CC. For SNE/MA, the catch cap closure area is the inshore portion of the SNE/MA Catch Cap Area (Table 2).

Table 2. River Herring and Shad Catch Cap Closure Areas

| Catch Cap Closure Areas | Statistical Areas |
|-------------------------|---|
| GOM | Identical to GOM Cap Catch Area |
| CC | Identical to CC Cap Catch Area |
| GB | Identical to GB Cap Catch Area |
| SNE/MA | 533-534, 537-539, 611-616, 621-629, and 631-639 |

Modifying Future River Herring and Shad Catch Cap Management Measures

This action proposes the mechanisms to modify measures related to the catch caps. Measures related to the catch cap process that would be established in this framework may be modified in the future through the specifications or framework adjustment process, depending on whether the modification is suitable for either specifications or framework adjustment. New or additional measures (e.g., new accountability measures to become effective when a catch cap is reached), or measures outside the scope already analyzed, would be implemented through another framework action or an amendment.

River Herring and Shad Catch Caps for Fishing Years 2014-2015

This action proposes river herring and shad catch caps for the 2014-2015 fishing years (Table 3). Catch of river herring and shad for 2014 would only be counted after the effective date of a final rule implementing a 2014 catch cap. All the proposed catch caps in the GOM, CC, and SNE/MA Catch Cap Areas are based on the median value of estimated river herring and shad catch from 2008-2012. Current data are not sufficient to definitively determine the potential effects of such a cap on river herring and shad stocks. Using the median values are expected to provide an incentive for the industry to continue to avoid river herring and shad and help to minimize overall river herring and shad catch to the extent practicable, while still providing the opportunity to fully utilize the herring annual catch limit if the fleet can avoid river

herring and shad.

Table 3. Proposed River Herring and Shad Catch Caps by Area and Gear Type for 2014 and 2015

| Catch Cap Area | Gear Type | Catch Cap (metric tons) |
|----------------|----------------|-------------------------|
| GOM | Midwater Trawl | 86 |
| CC | Midwater Trawl | 13 |
| SNE/MA | Midwater Trawl | 124 |
| | Bottom Trawl | 89 |
| GB | N/A | N/A |

Due to very low observed river herring and shad catch in GB, the Council did not recommend a catch cap in the GB Catch Cap Area for the 2014-2015 fishing years. If the catch of river herring and shad increases in this area, the Council could consider setting a cap for this area in a future herring specifications.

Corrections

This proposed rule also contains minor corrections to existing regulations. NMFS proposes these adjustments under the authority of section 305(d) to the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to a fishery management plan (FMP) are carried out in accordance with the FMP and the Magnuson-Stevens Act. These adjustments, which are identified and described below, are necessary to clarify current regulations or the intent of the FMP, and would not change the intent of any regulations.

NMFS proposes to clarify many the coordinates for the herring management areas, modified haddock stock areas, and river herring monitoring/avoidance areas at § 648.200(f) to more accurately define various areas. For example, some areas are based on groups of defined

statistical areas, but the previous coordinates were unintentionally misaligned with those statistical areas. This action updates those coordinates to correctly coincide with the statistical areas upon which they were based. In addition, some area boundaries are being revised to correctly incorporate coastal bodies of water, as well as the legally defined U.S. Canada Maritime boundary. This action also proposes to move the coordinates for the GOM and GB modified haddock stock areas in the regulations from § 648.10 to § 648.200(f) so that all the herring-related management areas are in a single location for easy reference. Finally, this action also proposes to add a possession limit regulation to § 648.204(a) to describe the possession limit requirements of the Areas 2/3 Open Access Permit. This regulation was overlooked during rulemaking for Herring Amendment 5 and is consistent with the intent of that action.

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 FMP; other provisions of the Magnuson-Stevens Act; and other applicable law, subject to further consideration after public comment.

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

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see ADDRESSES) or via the Internet at <http://www.nero.noaa.gov>.

Statement of Objective and Need

This action proposes a process for establishing river herring and shad catch caps in the herring fishery, as well as specific catch caps for the 2014-2015 fishing years. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

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

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for finfish fishing from \$4.0 to \$19.0 million, shellfish fishing from \$4.0 to \$5.0 million, and other marine fishing from \$4.0 to \$7.0 million.

The proposed action would affect all limited access herring vessels (i.e., category A, B, or C permit). In 2012, there were 94 fishing vessels that had a limited access herring permit. Vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purpose of this analysis, affiliated ownership entities are determined by those entities with common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an ownership entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with different co-owners (i.e., either sub-sets of the original seven personnel or new co-owners), those ownership arrangements are deemed to be separate ownership entities for the purpose of this analysis.

Based on this ownership criterion, NMFS dealer-reported landings data for the last 3 years, and the size standards for finfish and shellfish firms, there are 72 directly regulated small entities and 6 large entities, as defined in section 601 of the RFA. Not all of these permitted firms are active: Only 25 directly regulated small entities and 4 large entities were actively fishing for herring during the last 3 years.

The Office of Advocacy at the SBA suggests considering disproportionality and profitability criteria when determining the significance of regulatory impacts. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of "small entity"), not the difference between segments of small entities. The impacts of this rule on profits are discussed in greater detail below. However, the changes in profits, costs, and net revenues due to Framework 3 are not expected to be disproportional for small versus large entities as the proposed action will affect all entities, large and small, in a similar manner. As a result, this action would have proportionally similar impacts on revenues and profits of each vessel and each multi-vessel owner compared both to status quo (i.e., FY 2013) and no action levels. Therefore, this action is not expected to have disproportionate impacts or place a substantial number of small entities at a competitive disadvantage relative to large entities. Profitability is described below.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

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

Minimizing Significant Economic Impacts on Small Entities

Proposed Actions

Framework 3 establishes a process for specifying and adjusting annual river herring and shad catch caps, and sets those caps for the 2014 and 2015 fishing years. This action is consistent with the measures adopted in Amendment 5 and may result in positive impacts on fishery participants by reducing bycatch through industry-based initiatives.

Under the proposed river herring and shad catch caps, small entities are expected to experience slight declines in both gross revenues and herring revenues if the catch cap(s) is exceeded. The catch cap can impose costs by triggering a 2,000-lb (0.9 mt) herring possession limit for certain gear types in the four monitoring areas. These are evaluated relative to the status quo in which catch of river herring and shad does not result in any directed fishery closures. Under the status quo, average net operating revenues are predicted to be \$21.9 million per year. Under the proposed action, net operating revenues are projected to fall to \$20.1 million per year. Therefore, because of the potential closure of portions of the directed herring fishery due to the river herring and shad catch cap, the proposed action may reduce net operating revenue across the fishery by \$1.8 million. The reduction in revenue per entity ranges from less than \$10,000, to \$50,000, depending on the entity's reliance on herring revenue. More specifically, the average reduction in revenue for vessels is estimated to be as follows: \$1,600 for vessels earning less than \$0.5 million, \$6,600 for vessels earning \$0.5 million - \$1 million, \$4,700 for vessels earning \$1 million - \$2 million, and \$18,600 for vessels earning \$2 million - \$5 million.

To minimize the economic impacts of directed fishery closures, catch caps are divided across various areas. If a catch cap in a given area for a specific gear is reached, the proposed action would close only that area to that gear type. Thus, the proposed catch cap measures avoid

closing the directed herring fishery in all areas due to a single catch cap overage. This measure seeks to minimize negative impacts on fishing businesses reliant on gear types subject to directed fishery closures in terms of forgone profits. The extent of these impacts would depend on when an area is closed to directed fishing relative to nearby areas available for directed herring fishing. Further, the catch caps are not likely to preclude herring fishing in all areas and would provide midwater trawl vessels an opportunity to fish in Area 3 (Georges Bank) without a catch cap, thereby potentially mitigating some of the negative impacts.

Limiting catches of river herring and shad has the potential to benefit those species, although the extent of this benefit is unknown because overall abundance information for these species is not available. A benefit to these species is not expected to have an economic effect on the herring fishery, however.

Alternatives to the Proposed Rule

Aside from the proposed action, the Council considered a No Action (status quo) alternative, which would not have implemented a river herring and shad catch cap in the fishery because there is currently no cap in place. This alternative would not have resulted in additional economic or social impacts on the participants of the herring fishery. However, selecting the No Action alternative could affect participants negatively in the future if the catch of river herring and shad is not managed proactively (i.e., more management measures may be necessary in the herring fishery if the stocks of river herring and shad continue to decline).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 6, 2014

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 §648.2, add in alphabetical order the definitions for “River herring” and “Shad” to read as follows:

§ 648.2 Definitions.

* * * * *

River herring means alewife (Alosa pseudoharengus) and blueback herring (Alosa aestivalis).

* * * * *

Shad means American shad (Alosa sapidissima) and hickory shad (Alosa mediocris)

* * * * *

3. In § 648.7, revise introductory paragraph (b)(3)(i) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(3) * * *—(i) Atlantic herring owners or operators issued a limited access permit or Areas 2/3 open access permit. The owner or operator of a vessel issued a limited access permit or Areas 2/3 open access permit to fish for herring must report catch (retained and discarded) of herring daily via VMS, unless exempted by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month and day herring was caught; pounds retained for each herring management area; and pounds discarded for each herring management area. Additionally, the estimated total amount of all species retained (in pounds, landed weight) must be reported by statistical area for use in tracking catch against catch caps (haddock, river herring and shad) in the herring fishery. Daily Atlantic herring VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr (9:00 a.m.) of the following day. Reports are required even if herring caught that day has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

§ 648.10 [Amended]

4. In § 648.10, paragraph (l) is removed and reserved.
5. In § 648.14, revise paragraph (r)(1)(ii)(B) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(ii) * * *

(B) Fish for, possess, transfer, receive, or sell; or attempt to fish for, possess, transfer, receive, or sell; more than 2,000 lb (907.2 kg) of herring per trip; or land, or attempt to land more than 2,000 lb (907.2 kg) of herring per day in or from a management area closed pursuant to § 648.201(a), or with a specific gear type in or from a river herring and shad catch cap closure area closed pursuant to § 648.201(a)(4)(ii) if the vessel has been issued and holds a valid herring permit.

* * * * *

6. In § 648.200, revise introductory paragraph (a), paragraph (f), add paragraphs (b)(6), and (g) to read as follows:

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limit (ACL), Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), U.S.

at-sea processing (USAP), border transfer (BT), the sub-ACL for each management area, including seasonal periods as specified at § 648.201(d) and modifications to sub-ACLs as specified at § 648.201(f), the amount to be set aside for the RSA (from 0 to 3 percent of the sub-ACL from any management area), and river herring and shad catch caps, as specified in § 648.201(a)(4). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

* * * * *

(b) * * *

(6) River herring and shad catch caps may be allocated to the herring fishery by the following: Species, as defined in § 648.2, either separately or combined, area as specified in paragraph (f)(7) of this section, vessel permit, gear type or any combination of these.

* * * * *

(f) Management areas. The specifications process establishes sub-ACLs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(1) Management Area 1 (Gulf of Maine): All U.S. waters of the Gulf of Maine (GOM) north of a line extending from a point at 41°39' N. lat, 70°00' W. long. to 42°53' 14.32125" N. lat., 67° 44' 33.01613" W. long., thence northerly along the U.S.-Canada Maritime Boundary to the U.S.-Canadian border, to include state and Federal waters adjacent to the states of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

| Point | N Latitude | W Longitude | Note |
|-------|-----------------|-----------------|------------------|
| 1 | 41°58' | 70° 00' | |
| 2 | 42°38' | 70° 00' | |
| 3 | 42°53' | 69° 40' | |
| 4 | 43°12' | 69° 00' | |
| 5 | 43°40' | 68° 00' | |
| 6 | 43°58' 16.0314" | 67° 21' 26.157" | (¹) |

(¹) Point 6 falls on the U.S.–Canada Maritime Boundary

(2) Management Area 2 (South Coastal Area): All state and Federal waters inclusive of sounds and bays, bounded on the east by 70°00' W. long. and the outer limit of the U.S. Exclusive Economic Zone; bounded on the north and west by the southern coastline of Cape Cod, Massachusetts, and the coastlines of Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina; and bounded on the south by a line following the lateral seaward boundary between North Carolina and South Carolina from the coast to the Submerged Lands Act line, approximately 33° 48' 46.37" N. lat, 78° 29' 46.46" W. long., and then heading due east along 38°48' 46.37" N. lat. to the outer limit of the US Exclusive Economic Zone.

(3) Management Area 3 (Georges Bank): All U.S. waters east of 70°00' W. long. and southeast of the line that runs from a point at 41°39' N. lat. and 70°00' W. long., northeasterly to U.S.-Canada Maritime Boundary at 42°53' 14.32125" N. lat., 67°44' 33.01613" W. long.

(4) River Herring Monitoring/Avoidance Areas—(i) January-February River Herring Monitoring/Avoidance Areas. The January-February River Herring Monitoring/Avoidance Areas include four sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) January-February River Herring Monitoring/Avoidance Sub-Area 1.

| Point | N Latitude | W Longitude |
|-------|------------|-------------|
| JF1A | 43°00'N | 71°00'W |
| JF1B | 43°00'N | 70°30'W |
| JF1C | 42°30'N | 70°30'W |
| JF1D | 42°30'N | 71°00'W |
| JF1A | 43°00'N | 71°00'W |

(B) January-February River Herring Monitoring/Avoidance Sub-Area 2.

| Point | N Latitude | W Longitude |
|-------|------------|-------------|
| JF2A | 42°00'N | 70°00'W |
| JF2B | 42°00'N | 69°30'W |
| JF2C | 41°30'N | 69°30'W |
| JF2D | 41°30'N | 70°00'W |
| JF2A | 42°00'N | 70°00'W |

(C) January-February River Herring Monitoring/Avoidance Sub-Area 3.

| Point | N Latitude | W Longitude | Note |
|-------|------------------|-------------|------------------|
| JF3A | 41°30'N | 72°00'W | |
| JF3B | 41°30'N | 71°00'W | |
| JF3C | 40°30'N | 71°00'W | |
| JF3D | 40°30'N | 72°30'W | |
| JF3E | (¹) | 72°30'W | (³) |
| JF3F | (²) | 72°00'W | (³) |
| JF3A | 41°30'N | 72°00'W | |

(¹) The southernmost shoreline of Long Island, New York

(²) The north-facing shoreline of Long Island, New York

(³) Points JF3E and JF3F are connected following the coastline of the south fork of eastern Long Island, New York

(D) January-February River Herring Monitoring/Avoidance Sub-Area 4.

| Point | N Latitude | W Longitude | Note |
|-------|------------|-------------|------|
| JF4A | 40°30'N | 74°00'W | |
| JF4B | 40°30'N | 72°30'W | |

| | | | |
|------|---------|---------|------------------|
| JF4C | 40°00'N | 72°30'W | |
| JF4D | 40°00'N | 72°00'W | |
| JF4E | 39°30'N | 72°00'W | |
| JF4F | 39°30'N | 73°30'W | |
| JF4G | 40°00'N | 73°30'W | |
| JF4H | 40°00'N | 74°00'W | (⁴) |
| JF4A | 40°30'N | 74°00'W | (⁴) |

(⁴) Points JF4H and JF4A are connected following 74°W longitude and the easternmost shoreline of New Jersey, whichever is furthest east.

(ii) March-April River Herring Monitoring/Avoidance Areas. The March-April River Herring Monitoring/Avoidance Areas include five sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) March-April River Herring Monitoring/Avoidance Sub-Area 1.

| Point | N Latitude | W Longitude |
|-------|------------|-------------|
| MA1A | 43°00'N | 71°00'W |
| MA1B | 43°00'N | 70°30'W |
| MA1C | 42°30'N | 70°30'W |
| MA1D | 42°30'N | 71°00'W |
| MA1A | 43°00'N | 71°00'W |

(B) March-April River Herring Monitoring/Avoidance Sub-Area 2.

| Point | N Latitude | W Longitude |
|-------|------------|-------------|
| MA2A | 42°00'N | 70°00'W |
| MA2B | 42°00'N | 69°30'W |
| MA2C | 41°30'N | 69°30'W |
| MA2D | 41°30'N | 70°00'W |
| MA2A | 42°00'N | 70°00'W |

(C) March-April River Herring Monitoring/Avoidance Sub-Area 3.

| Point | N Latitude | W Longitude | Note |
|-------|------------|-------------|------|
|-------|------------|-------------|------|

| | | | |
|------|------------------|------------------|------------------|
| MA3A | 41°00'N | (¹) | |
| MA3B | 41°00'N | 71°00'W | |
| MA3C | 40°30'N | 71°00'W | |
| MA3D | 40°30'N | 71°30'W | |
| MA3E | 40°00'N | 71°30'W | |
| MA3F | 40°00'N | 72°30'W | |
| MA3G | (²) | 72°30'W | (³) |
| MA3A | 41°00'N | (¹) | (³) |

(¹) The easternmost shoreline of Long Island, New York

(²) The southernmost shoreline of Long Island, New York

(³) Points MA3G and MA3A are connected following the southern shoreline of Long Island, New York

(D) March-April River Herring Monitoring/Avoidance Sub-Area 4.

| Point | N Latitude | W Longitude |
|-------|------------|-------------|
| MA4A | 40°00'N | 73°30'W |
| MA4B | 40°00'N | 72°30'W |
| MA4C | 39°00'N | 72°30'W |
| MA4D | 39°00'N | 73°30'W |
| MA4A | 40°00'N | 73°30'W |

(E) March-April River Herring Monitoring/Avoidance Sub-Area 5.

| Point | N Latitude | W Longitude | Note |
|-------|------------|-------------|------------------|
| MA5A | 40°30'N | 74°00'W | |
| MA5B | 40°30'N | 73°30'W | |
| MA5C | 40°00'N | 73°30'W | |
| MA5D | 40°00'N | 74°00'W | (⁴) |
| MA5A | 40°30'N | 74°00'W | (⁴) |

(⁴) Points MA5D and MA5A are connected following 74°W longitude and the easternmost shoreline of New Jersey, whichever is furthest east.

(iii) May-June River Herring Monitoring/Avoidance Areas. The May-June River Herring Monitoring/Avoidance Areas include two sub-areas. Each sub-area includes the waters bounded

by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) May-June River Herring Monitoring/Avoidance Sub-Area 1.

| Point | N Latitude | W Longitude |
|-------|------------|-------------|
| MJ1A | 44°00'N | 69°30'W |
| MJ1B | 44°00'N | 69°00'W |
| MJ1C | 43°30'N | 69°00'W |
| MJ1D | 43°30'N | 69°30'W |
| MJ1A | 44°00'N | 69°30'W |

(B) May-June River Herring Monitoring/Avoidance Sub-Area 2.

| Point | N Latitude | W Longitude |
|-------|------------|-------------|
| MJ2A | 42°00'N | 70°00'W |
| MJ2B | 42°00'N | 69°30'W |
| MJ2C | 41°30'N | 69°30'W |
| MJ2D | 41°30'N | 70°00'W |
| MJ2A | 42°00'N | 70°00'W |

(iv) July-August River Herring Monitoring/Avoidance Areas. The July-August River Herring Monitoring/Avoidance Areas include two sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) July-August River Herring Monitoring/Avoidance Sub-Area 1.

| Point | N Latitude | W Longitude | Note |
|-------|------------|-------------|------------------|
| JA1A | 44°00'N | 70°00'W | |
| JA1B | 44°00'N | 69°30'W | |
| JA1C | 43°00'N | 69°30'W | |
| JA1D | 43°00'N | 70°00'W | (¹) |
| JA1A | 44°00'N | 70°00'W | (¹) |

(¹) The boundary from Points JA1D to JA1A excludes the portions Maquoit Bay and Middle Bay (Brunswick, ME) east of 70°00'W.

(B) July-August River Herring Monitoring/Avoidance Sub-Area 2.

| Point | N Latitude | W Longitude |
|-------|------------|-------------|
| JA2A | 44°00'N | 69°00'W |
| JA2B | 44°00'N | 68°30'W |
| JA2C | 43°30'N | 68°30'W |
| JA2D | 43°30'N | 69°00'W |
| JA2A | 44°00'N | 69°00'W |

(v) September-October River Herring Monitoring/Avoidance Areas. The September-October River Herring Monitoring/Avoidance Areas include two sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) September-October River Herring Monitoring/Avoidance Sub-Area 1.

| Point | N Latitude | W Longitude | Note |
|-------|------------|------------------|------------------|
| SO1A | 44°30'N | 68°00'W | |
| SO1B | 44°30'N | (¹) | (²) |
| SO1C | 44°00'N | (³) | (²) |
| SO1D | 44°00'N | 68°00'W | |
| SO1A | 44°30'N | 68°00'W | |

(¹) The intersection of 44°30'N and the US-Canada Maritime Boundary.

(²) Point SO1B and Point SO1C are connected along the US-Canada Maritime Boundary.

(³) The intersection of 44°00'N and the US-Canada Maritime Boundary.

(B) September-October River Herring Monitoring/Avoidance Sub-Area 2.

| Point | N Latitude | W Longitude |
|-------|------------|-------------|
| SO2A | 43°00'N | 71°00'W |
| SO2B | 43°00'N | 70°30'W |
| SO2C | 42°30'N | 70°30'W |
| SO2D | 42°30'N | 71°00'W |

| | | |
|------|---------|---------|
| SO2A | 43°00'N | 71°00'W |
|------|---------|---------|

(vi) November-December River Herring Monitoring/Avoidance Areas. The November-December River Herring Monitoring/Avoidance Areas include two sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) November-December River Herring Monitoring/Avoidance Sub-Area 1.

| Point | N Latitude | W Longitude | Note |
|-------|------------------|------------------|------------------|
| ND1A | 43°00'N | 71°00'W | |
| ND1B | 43°00'N | 70°00'W | |
| ND1C | 42°00'N | 70°00'W | |
| ND1D | 42°00'N | 69°30'W | |
| ND1E | 41°30'N | 69°30'W | |
| ND1F | 41°30'N | 70°00'W | |
| ND1G | (¹) | 70°00'W | (²) |
| ND1H | 42°00'N | (²) | (³) |
| ND1I | 42°00'N | 70°30'W | |
| ND1J | 42°30'N | 70°30'W | |
| ND1K | 42°30'N | 71°00'W | |
| ND1A | 43°00'N | 71°00'W | |

(¹) The south-facing shoreline of Cape Cod, Massachusetts

(²) The west-facing shoreline of Cape Cod, Massachusetts

(³) Point ND1G and ND1H are connected following the coastline of Cape Cod, Massachusetts

(B) November-December River Herring Monitoring/Avoidance Sub-Area 2.

| Point | N Latitude | W Longitude |
|-------|------------|-------------|
| ND2A | 41°30'N | 72°00'W |
| ND2B | 41°30'N | 70°00'W |
| ND2C | 40°30'N | 70°00'W |
| ND2D | 40°30'N | 70°30'W |

| | | |
|------|---------|---------|
| ND2E | 41°00'N | 70°30'W |
| ND2F | 41°00'N | 72°00'W |
| ND2A | 41°30'N | 72°00'W |

(5) Gulf of Maine Modified Haddock Stock Area. The Gulf of Maine Modified Haddock Stock Area is composed of the portions of Greater Atlantic Region Statistical Areas #464, #465, #511, #512, #513, #514, and #515 in U.S. waters, and is defined by the following points connected in the order listed by straight lines unless otherwise noted:

| Point | N Latitude | W Longitude | Note |
|-------|------------------|------------------|------------------|
| A | (¹) | 67°00'W | |
| B | (²) | 67°00'W | (³) |
| C | 42°20'N | (⁴) | (³) |
| D | 42°20'N | 70°00'W | |
| E | (⁵) | 70°00'W | (⁶) |
| A | (¹) | 67°00'W | (⁶) |

(¹) The intersection of 67°00'W longitude and the southern coast of Maine.

(²) The intersection of 67°00'W longitude and the US-Canada Maritime Boundary.

(³) From POINT B to POINT C along the US-Canada Maritime Boundary.

(⁴) The intersection of 42°20'N latitude and the US-Canada Maritime Boundary.

(⁵) The intersection of 70°00'W longitude and the northeast-facing shoreline of Cape Cod, Massachusetts.

(⁶) From POINT E back to POINT A along the coastline of the United States.

(6) Georges Bank Modified Haddock Stock Area. The Georges Bank Modified Haddock Stock Area is composed of Greater Atlantic Region Statistical Areas #521, #522, #525, #526, #561, and #562, and is defined by bounded by the following points connected in the order listed by straight lines unless otherwise noted:

| Point | N Latitude | W Longitude | Note |
|-------|------------|------------------|------------------|
| A | 42°20'N | 70°00'W | |
| B | 42°20'N | (¹) | (²) |
| C | 40°30'N | (³) | (²) |
| D | 40°30'N | 66°40'W | |
| E | 39°50'N | 66°40'W | |
| F | 39°50'N | 70°00'W | (⁴) |
| A | 42°20'N | 70°00'W | (⁴) |

(¹) The intersection of 42°20'N latitude and the U.S.-Canada Maritime Boundary

(²) From POINT B to POINT C following the U.S.-Canada Maritime Boundary

(³) The intersection of 40°30'N latitude and the U.S.-Canada Maritime Boundary

(⁴) From POINT F back to POINT A along 70°00'W longitude and the coastlines of Nantucket Island and mainland Cape Cod, Massachusetts, whichever is further east.

(7) River herring and shad catch cap areas --(i) Gulf of Maine Catch Cap Area. The Gulf of Maine Catch Cap Area is composed of the portions of Greater Atlantic Region Statistical Areas #464, #465, #467, #511, #512, #513, #514, and #515 in US waters. The Gulf of Maine Catch Cap Area is bounded on the west by the coastline of the United States, bounded on the east by the US-Canada Maritime Boundary, and bounded on the south by the following coordinates connected by straight lines in the order listed:

| Point | N Latitude | W Longitude |
|-------|------------------|------------------|
| A | (¹) | 70°00'W |
| B | 42°20'N | 70°00'W |
| C | 42°20'N | (²) |

(¹) The intersection of 70°00'W longitude and the northwest facing shoreline of Cape Cod, Massachusetts

(²) The intersection of 42°00'N latitude and the US-Canada Maritime Boundary

(ii) Cape Cod Catch Cap Area. The Cape Cod Catch Cap Area is composed of Greater

Atlantic Region Statistical Area #521, and is defined by bounded by the following points connected in the order listed by straight lines unless otherwise noted:

| Point | N Latitude | W Longitude | Note |
|-------|------------------|------------------|------------------|
| A | (¹) | 70°00'W | |
| B | 42°20'N | 70°00'W | |
| C | 42°20'N | 68°50'W | |
| D | 41°00'N | 68°50'W | |
| E | 41°00'N | 69°30'W | |
| F | 41°10'N | 69°30'W | |
| G | 41°10'N | 69°50'W | |
| H | 41°20'N | 69°50'W | |
| I | 41°20'N | (²) | (³) |
| J | (⁴) | 70°00'W | (³) |
| K | (⁵) | 70°00'W | (⁶) |
| A | (¹) | 70°00'W | (⁶) |

(¹) The intersection of 70°00'W longitude and the northeast-facing shoreline of Cape Cod,

Massachusetts

(²) The intersection of 41°20'N latitude and the northeast-facing shoreline of Nantucket

Island

(³) From Point I to Point J along the northeast-facing shoreline of Nantucket Island

(⁴) The intersection of 70°00'W longitude and the northeast-facing shoreline of Nantucket

Island

(⁵) The intersection of 70°00'W longitude and the south-facing shoreline of mainland Cape

Cod, Massachusetts

(⁶) From Point K back to Point A along the east-facing shoreline of Cape Cod,

Massachusetts

(iii) Georges Bank Catch Cap Area. The Georges Bank Catch Cap Area is composed of

the portions of Greater Atlantic Region Statistical Areas #522, #525, #526, #541, #542, #543, #561, #562, and #640 in US waters, and is defined by the following points, connected in the order listed by straight lines unless otherwise noted:

| Point | N Latitude | W Longitude | Note |
|-------|------------------|------------------|------------------|
| A | (¹) | 70°00'W | |
| B | (²) | 70°00'W | (³) |
| C | 41°20'N | (⁴) | (³) |
| D | 41°20'N | 69°50'W | |
| E | 41°10'N | 69°50'W | |
| F | 41°10'N | 69°30'W | |
| G | 41°00'N | 69°30'W | |
| H | 41°00'N | 68°50'W | |
| I | 42°20'N | 68°50'W | |
| J | 42°20'N | (⁵) | (⁶) |
| A | (¹) | 70°00'W | (⁶) |

(¹) The intersection of 70°00'W longitude and the outer limit of the US Exclusive

Economic Zone

(²) The intersection of 70°00'W longitude and the south-facing shoreline of Nantucket

Island

(³) From Point B to Point C along the south- and east-facing shorelines of Nantucket

Island

(⁴) The intersection of 41°20'N latitude and the northeast-facing shoreline of Nantucket

Island

(⁵) The intersection of 42°20'N latitude and the US-Canada Maritime Boundary

(⁶) From Point J back to Point A along the US-Canada Maritime Boundary and the outer limit of the US Exclusive Economic Zone

(iv) Southern New England/Mid-Atlantic Catch Cap Area. The coordinates of this area

are the same as Management Area 2 (South Coastal Area), as specified in paragraph (f)(2) of this section.

(8) River herring and shad catch cap closure areas --(i) Gulf of Maine Catch Cap Closure Area. The coordinates of this area are the same as the Gulf of Maine Catch Cap Area, as specified in paragraph (f)(7)(i) of this section.

(ii) Cape Cod Catch Cap Closure Area. The coordinates of this area are the same as the Cape Cod Catch Cap Area, as specified in paragraph (f)(7)(ii) of this section.

(iii) Georges Bank Catch Cap Closure Area. The coordinates of this area are the same as the Georges Bank Catch Cap Area, as specified in paragraph (f)(7)(iii) of this section.

(iv) Southern New England/Mid-Atlantic Catch Cap Closure Area. The Southern New England/Mid-Atlantic Catch Cap Closure Area is composed of the portions of Greater Atlantic Region Statistical Areas #537, #538, #539, #611, #612, #613, #614, #615, #616, #621, #622, #623, #625, #626, #627, #631, #632, #635, and #636 in US waters, and is defined by the following coordinates, connected by straight lines in the order listed unless otherwise noted:

| Point | N Latitude | W Longitude | Note |
|-------|------------------|------------------|------------------|
| A | 35°00'N | (¹) | |
| B | 35°00'N | 74°00'W | |
| C | 37°00'N | 74°00'W | |
| D | 37°00'N | 73°00'W | |
| E | 38°00'N | 73°00'W | |
| F | 38°00'N | 72°00'W | |
| G | 39°00'N | 72°00'W | |
| H | 39°00'N | 71°40'W | |
| I | 39°50'N | 71°40'W | |
| J | 39°50'N | 70°00'W | |
| K | (²) | 70°00'W | (³) |
| A | 35°00'N | (¹) | (³) |

(¹) The intersection of 35°00'N latitude and the mainland shoreline of North Carolina

(²) The intersection of 70°00'W longitude and the south-facing shoreline of mainland Cape Cod, Massachusetts

(³) From Point K back to Point A along the mainland shoreline of the United States.

(g) All aspects of the following measures can be modified through the specifications process:

(1) AMs;

(2) Possession limits;

(3) River Herring Monitoring/Avoidance Areas; and

(4) River herring and shad catch caps, including a joint catch cap with the Mid-Atlantic Fishery Management Council.

7. In § 648.201 revise paragraphs (a)(2) and (e) and add paragraph (a)(4) to read as follows:

§ 648.201 AMs and harvest controls.

(a) * * *

(2) When the Regional Administrator has determined that the GOM and/or GB incidental catch cap for haddock in § 648.85(d) has been caught, no vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in the applicable Accountability Measure (AM) Area, i.e., the Herring GOM Haddock AM Area or Herring GB Haddock AM Area, as defined in § 648.86(a)(3)(ii)(A)(2) and (3) of this part, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area, and from landing herring more than once per calendar day, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions

specified in § 648.23(b) while transiting the applicable AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) in the applicable AM area, for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

* * *

(4) River herring and shad catch cap. (i) The river herring and shad catch cap on the herring fishery applies to all trips that land more than 6,600 lb (3 mt) of herring. Caps by gear and by area shall be established through the specifications process described in § 648.201.

(ii) If NMFS projects that catch will reach 95 percent of a specific catch cap for specified gear applicable to an area specified in § 648.200(f)(7), NMFS shall prohibit vessels, beginning on the date the catch is projected to reach 95 percent of the catch cap, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip using the applicable gear in the applicable catch cap closure area, specified in § 648.200(f)(8), and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section, for the remainder of the fishing year. NMFS shall implement these restrictions in accordance with the APA.

* * * * *

(e) Up to 500 mt of the Area 1A sub-ACL shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 67° 16.8' W. long (Cutler, Maine). This set-

aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the sub-ACL allocation for Area 1A.

* * * * *

8. In § 648.204, revise paragraph (a) to read as follows:

§ 648.204 Possession restrictions.

(a) A vessel must be issued and possess a valid limited access herring permit to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area in the EEZ, provided none of the harvest controls specified in § 648.201 have been triggered.

(1) A vessel issued an All Areas Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided none of the accountability measure or harvest controls specified in § 648.201 have been triggered.

(2) A vessel issued only an Areas 2 and 3 Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3, as defined in § 648.200(f), provided none of the accountability measure or harvest controls specified in § 648.201 have been triggered. Such a vessel may fish in Area 1 only if issued an open access herring permit or a Limited Access Incidental Catch Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Limited Access Incidental Catch Herring Permit may fish for, possess, or land up to 55,000 lb (25 mt) of Atlantic herring in any calendar day, and is limited to one landing of herring per calendar day, from any management area defined in § 648.200(f),

provided none of the accountability measure or harvest controls specified in § 648.201 have been triggered.

(4) A vessel issued an All Areas Open Access Permit may fish for, possess, or land up to 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip, and is limited to one landing of herring per calendar day, provided none of the accountability measure or harvest controls specified in § 648.201 have been triggered.

(5) A vessel issued an Areas 2/3 Open Access Permit may fish for, possess, or land up to 20,000 lb (9 mt) of Atlantic herring from only Area 2 or Area 3, as defined in § 648.200(f), per trip, and is limited to one landing of herring per calendar day, provided none of the accountability measure or harvest controls specified in § 648.201 have been triggered.

(6) A vessel issued a herring permit may possess herring roe provided that the carcasses of the herring from which it came are not discarded at sea.

* * * * *

9. In § 648.206, revise paragraphs (b)(36) and (b)(37) and add paragraph (b)(38) i to read as follows:

§ 648.206 Framework provisions.

* * * * *

(b) * * *

(36) River herring and shad catch caps, including species-specific caps, and vessels, permits, trips, gears, and areas to which caps apply;

(37) River herring and shad Catch Cap Areas and Catch Cap Closure Areas; and

(38) Any other measure currently included in the FMP.

* * * * *

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