

report) in such an operational area. It is expected the HCA for Afghanistan could exempt "payments made in the theater of operations" from Prompt Payment Act interest and interest penalties.

In the preparation of the interim rule, a review of Federal Procurement Data Systems data for FY08 showed that of the 140 awards made to U.S. firms, only 21 were made to small business entities. This total represents 15 percent of all awards made during this time period. Therefore, the overall impact of the rule is not expected to have a significant aggregate economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, a regulatory flexibility analysis was completed because there is an economic impact to consider.

There is no reporting requirement established by this rule. There are no significant alternatives which accomplish the stated objectives. This rule will allow DoD to utilize the exemptions provided by OMB implementation of the Prompt Payment Act, which exempts military contingencies.

#### V. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 48 CFR Parts 212, 232, and 252

Government procurement.

#### Mary Overstreet,

*Editor, Defense Acquisition Regulations System.*

Therefore, the Defense Acquisition Regulations System confirms as final the interim rule published at 75 FR 40712, July 13, 2010, with the following changes:

■ 1. The authority citation for 48 CFR part 232 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### PART 232—CONTRACT FINANCING

■ 2. Section 232.901 is amended by—

■ a. Revising the first sentence of paragraph (1) introductory text to read as set forth below;

■ b. Amending paragraph (1)(i)(C) by removing "Section" and adding in its place "section".

#### 232.901 Applicability.

(1) Except for FAR 32.908, FAR subpart 32.9, Prompt Payment, does not apply when—

\* \* \* \* \*

[FR Doc. 2011-4526 Filed 3-1-11; 8:45 am]

BILLING CODE 5001-08-P

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 080513659-1114-03]

RIN 0648-AW75

#### Fisheries of the Northeastern United States; Atlantic Herring; Amendment 4

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements approved measures in Amendment 4 to the Atlantic Herring (Herring) Fishery Management Plan (FMP). Amendment 4 was developed by the New England Fishery Management Council (Council) to bring the FMP into compliance with new Magnuson-Stevens Fishery Conservation and Management Act (MSA) requirements by: Revising definitions and the specifications-setting process, consistent with annual catch limit (ACL) requirements; and establishing fishery closure thresholds, a haddock incidental catch cap, and overage paybacks as accountability measures (AMs). In addition, the amendment designates herring as a "stock in the fishery;" establishes an interim acceptable biological catch (ABC) control rule; and makes adjustments to the specification process by eliminating consideration of total foreign processing (JVPt), including joint venture processing (JVP) and internal waters processing (IWP), and reserve from the specification process, and eliminates the Council's consideration of total allowable level of foreign fishing (TALFF).

**DATES:** Effective April 1, 2011.

**ADDRESSES:** An environmental assessment (EA) was prepared for Amendment 4 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 Amendment 4, including the EA, the Regulatory Impact Review (RIR), and the

Initial Regulatory Flexibility Analysis (IRFA), are available from: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465-0492. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Carrie Nordeen, Fishery Policy Analyst, 978-281-9272, fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

#### Background

This amendment brings the Herring FMP into compliance with requirements of the reauthorization of the MSA in 2006, specifically ACLs and AMs. Because herring is not subject to overfishing, the MSA requires the Herring FMP to be in compliance with ACL and AM requirements by 2011. In addition to the public meetings at which Amendment 4 was developed, the Council held three public meetings on the draft Amendment 4 and its EA during January 2010. Following the public comment period that ended on January 12, 2010, the Council adopted Amendment 4 on January 26, 2010, and submitted the amendment to NMFS on April 22, 2010. The Notice of Availability (NOA) for Amendment 4 was published on August 12, 2010, with a comment period ending October 12, 2010. A proposed rule for Amendment 4 was published on October 18, 2010, with a comment period ending December 2, 2010. On November 9, 2010, NMFS approved Amendment 4 on behalf of the Secretary of Commerce.

Initially, the Council intended for Amendment 4 to also consider the issues of catch monitoring and reporting, interactions with river herring, access by midwater trawl vessels to groundfish closed areas, and interactions with the Atlantic mackerel fishery. In June 2009, the Council determined there was not sufficient time to develop and implement all the measures originally contemplated in Amendment 4 by 2011, so it decided that Amendment 4 would only address ACL and AM requirements and specification issues. The other issues (e.g., catch monitoring and reporting, interactions with river herring and Atlantic mackerel, access to groundfish closed areas) are currently being considered in Amendment 5 to the Herring FMP (Amendment 5). NMFS has the independent authority to revise reporting requirements, and has informed the Council that it will be developing a rulemaking to establish

daily catch reporting for limited access herring vessels in 2011.

This rule implements management measures that: Revise current definitions and the specification-setting process to include ACLs and AMs; designate herring as a "stock in the fishery;" establish an interim ABC control rule; eliminate JVPT, including JVP and IWP, and reserve from the specifications process; and eliminate the Council's consideration of TALFF. The proposed rule includes detailed information about the Council's development of these measures, and that discussion is not repeated here.

#### *ACL Specification Process*

Amendment 4 revises the specification-setting process for the herring fishery. This action establishes a process whereby an overfishing limit (OFL) may be set, which corresponds to a maximum sustainable yield (MSY). This action specifies that ABC is to be recommended by the Council's Scientific and Statistical Committee (SSC). During the setting of ABC, scientific uncertainty is to be considered, and ABC may be reduced from the OFL to account for scientific uncertainty. Scientific uncertainty includes, but is not limited to, uncertainty related to stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues. This action establishes a process whereby a stock-wide ACL may be set that is to be equal to or less than ABC. During the setting of the stock-wide ACL, management uncertainty is to be considered. The stock-wide ACL may be reduced from the ABC to account for management uncertainty, which includes, but is not limited to, uncertainty related to expected catch of herring in the New Brunswick weir fishery and discard estimates of herring caught in Federal and state waters.

The stock-wide ACL is specified to account for all herring catch. Estimates of discards are reported by harvesters, and provided by NMFS observers. The available information suggests that discards in the herring fishery are low, relative to the amount of landed herring. Therefore, this action does not establish a specific deduction between the ABC and stock-wide ACL, to account for management uncertainty related to discards at this time. However, if new information on discards becomes available, Amendment 4 provides the Council with flexibility to incorporate that information into the stock-wide ACL-setting process as appropriate.

This action revises the specifications authorized by the Herring FMP. The

original FMP authorizes specifications for JVPT, JVP, IWP, reserve, and TALFF to be set for the herring fishery. Historically, JVPT (including JVP and IWP) was allocated to enable foreign processing operations to accept catch from U.S. vessels; TALFF was allocated to ensure fish were available to foreign processing vessels when U.S. vessels could not supply it. The U.S. herring fishery has experienced growth in both harvesting and processing capacity, accordingly, neither JVPT nor TALFF have been allocated since 2005. Because the U.S. herring industry is capable of harvesting and processing the entire available yield in the foreseeable future, and to maximize U.S. economic benefits, this action eliminates the annual specifications of JVPT, JVP, and IWP from the Herring FMP. Additionally, while TALFF could still be awarded consistent with the MSA, if the Secretary of Commerce determines there is inadequate domestic harvesting capacity and other requirements of section 201 of the MSA are satisfied, this action eliminates Council consideration of TALFF during development of the specifications.

Historically, the FMP included the reserve to buffer against such things as uncertainty in stock size estimates, uncertainty in Canadian catch, excess U.S. capacity entering the herring fishery, and fluctuations in import/export demand. With the implementation of limited access in 2007 and Amendment 4's proposed consideration of sources of scientific and management uncertainty in the setting of OFL, ABC, and ACL, the Council concluded that specifying a reserve is no longer necessary. Therefore, this action eliminates the specification of reserve from the Herring FMP.

With the implementation of Amendment 1 to the Herring FMP (72 FR 11252, March 12, 2007), the Council has the authority to set herring specifications for a period of 3 years. Amendment 4 maintains the current schedule of setting herring specifications for a period of 3 years.

The herring stock complex is considered to be a single stock, but it is comprised of inshore (Gulf of Maine (GOM)) and offshore (Georges Bank (GB)) stock components. These stock components segregate during spawning and mix during feeding and migration. Herring management areas were developed in recognition of these different stock components; each management area has a total allowable catch (TAC) to allow the fishing mortality of the stock components to be managed independently. Area 1 is

located in the GOM and is divided into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on GB. Because the inshore stock component has substantially less biomass than the offshore stock component, it is likely more vulnerable to overfishing. This action maintains the function of the herring management area TACs, but re-defines each area TAC as an area sub-ACL (i.e., each management area has its own sub-ACL). The Area 1A TAC is currently allocated to two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. This action maintains these seasons and allocates the Area 1A sub-ACL into the same two seasonal periods.

The specification of OY is required by the MSA and authorized in the current Herring FMP. OY is derived from MSY, as reduced by relevant economic, social, or ecological factors. This action specifies that OY remain part of the specification-setting process, that it is to be equal to or less than ABC, and that it address uncertainty related to economic, social, or ecological factors. For example, the Council may choose to allocate an OY that is reduced from ABC to address the role of herring as forage or the fishing mortality rate on the inshore stock component. If the Council allocates a reduced OY, it would be in addition to any consideration of scientific or management uncertainty and would be a specific reduction to address a specific issue.

#### *Stocks in a Fishery*

The MSA requires that an FMP contain a description of the fish species in a fishery, and National Standard 1 guidelines task the Council with determining which specific target stocks and/or non-target stocks to include in the fishery. Target stocks are defined as stocks that fishers seek to catch for sale or personal use, and non-target stocks are fish caught incidentally during the pursuit of target stocks. In general, any stock managed through an FMP is considered to be in that fishery. While other species are caught incidentally when fishing for herring, herring is the target stock, and the only stock directly managed by the Herring FMP. This action establishes herring as a stock in the fishery. The Council retains the authority to designate additional stocks in the fishery in a future action. Bycatch in the herring fishery will continue to be addressed and minimized to the extent possible, consistent with other requirements of the MSA. Additionally,

incidental catch in the herring fishery counts against the ACLs for incidental catch species if ACLs have been established in their respective Federal FMPs.

#### *Interim ABC Control Rule*

The ABC control rule is the specified method of setting the ABC, giving full consideration to scientific uncertainty. The ABC control rule is based on scientific advice from a Council's SSC and, when possible, considers the probability of overfishing. The ABC control rule should consider the scientific uncertainty associated with stock assessment results, including time lags in updating assessments, the degree of retrospective revision of assessment results, and the uncertainty of stock projections.

During development of the 2010–2012 herring specifications, the SSC identified two sources of scientific uncertainty in the 2009 herring assessment: (1) The assessment model has a strong retrospective pattern that reduces estimates of stock size when updated with new (2001–2007) data; and (2) biomass projections suggest the herring stock cannot rebuild to  $B_{MSY}$  (biomass that would support MSY) using long-term projections at  $F_{MSY}$  (fishing mortality rate for MSY). Given this magnitude of scientific uncertainty, the SSC determined that a permanent herring ABC control rule cannot be derived until a new benchmark assessment is conducted to address these issues. In the meantime, the Council recommended that Amendment 4 contain an interim ABC control rule based on the SSC's 2010–2012 herring ABC recommendation. This action establishes an interim control rule specifying that ABC be based on recent catch in the herring fishery, and that the Council determines the desired risk tolerance in setting the ABC. For example, recent catch could be the most recent catch data (single year) or an average of recent data (3-year or 5-year average). This interim ABC control rule will remain in effect until a new ABC control rule is developed. If a new ABC control rule can be developed following the 2012 benchmark stock assessment, it will be developed in the 2013–2015 herring specifications.

#### *Accountability Measures*

The MSA requires AMs to be developed in association with ACLs. AMs should minimize the frequency and magnitude of catch in excess of the ACLs (overages) and provide for subsequent harvest adjustments if ACLs are exceeded. This action designates two existing herring management

measures as AMs, and establishes an additional AM that would require an overage deduction, if catch exceeds the stock-wide ACL or a sub-ACL. This action also specifies that these AMs can be modified, as necessary, through a framework adjustment to the Herring FMP or through the herring fishery specifications process.

Current herring regulations at § 648.201(a) state that, if NMFS determines catch will reach 95 percent of the TAC allocated to a management area or seasonal period, then NMFS shall prohibit vessels from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip from that area or period. The original FMP established the management area closure threshold (i.e., 95 percent of the management area TAC) to slow the herring fishery as catch approached the TAC for a management area, and intended the 5-percent buffer to account for the incidental catch of herring in other fisheries. In recognition that this measure functions as an AM, by slowing catch to prevent or minimize catch in excess of a management area or seasonal period TAC/sub-ACL, Amendment 4 designates this management area closure measure as an AM. Because the incidental catch of herring in other fisheries is typically low, if some herring discards were not accounted for in the vessel catch reports, the 5-percent buffer could also function to account for these discards. Therefore, the function of the 5-percent buffer is to account for the incidental catch of herring in other fisheries and, when appropriate, to buffer against the uncertainty associated with discard estimates.

Current Northeast multispecies regulations at § 648.86(a)(3)(ii) specify a haddock incidental catch cap to control haddock catch by herring vessels in the GOM/GB Herring Exemption Area. When the Regional Administrator has determined that the haddock incidental catch cap has been caught, all vessels issued a herring permit are prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in the GOM/GB Herring Exemption Area. Additionally, the haddock possession limit for all vessels issued All Areas or Areas  $\frac{2}{3}$  Limited Access herring permits is reduced to 0 lb (0 kg) in all of the herring management areas. Amendment 16 to the Northeast Multispecies FMP (Amendment 16) designated haddock catch in the herring fishery as a sub-ACL for the Multispecies FMP (75 FR 18262, April 9, 2010). Consistent with Multispecies Amendment 16, this action designates the haddock incidental catch

cap as an AM in the Herring FMP, with the clarification that the 0-lb (0-kg) haddock possession limit does not apply to herring vessels that also possess a Northeast multispecies permit and are operating on a declared groundfish trip.

As a way to account for ACL overages in the herring fishery, this action establishes an AM that would provide for overage deductions. Once the total catch of herring for a fishing year is determined, using all available information, any ACL or sub-ACL overage would result in a reduction of the corresponding ACL/sub-ACL the following year. For example, if final accounting of the 2010 total herring catch in Area 1A, which is generally available in the spring of 2011, indicated that the Area 1A sub-ACL was exceeded by 5 mt, then, in 2012, the sub-ACL for Area 1A would be reduced by 5 mt to account for the overage that occurred during 2010. All overage deductions will be announced by NMFS in the **Federal Register** prior to the start of the fishing year. NMFS understands that the size of an overage and the frequency of overages have the potential to affect the herring stock. In the event of multiple overages, Amendment 4 provides the flexibility to re-evaluate and modify, if necessary, the ACLs/sub-ACLs and AMs consistent with National Standard 1 guidelines, during the specifications process.

#### **Comments and Responses**

NMFS received five letters during the comment period relating to the NOA for Amendment 4; one letter was from a member of the public; two letters were from non-herring, fishing industry organizations (Coalition for the Atlantic Herring Fishery's Orderly, Informed, and Responsible Long-Term Development (CHOIR), Cape Cod Commercial Hook Fisherman's Association (CCCHFA)); and two letters were from environmental advocacy groups (Oceana, Herring Alliance). An additional four letters were received on the proposed rule for Amendment 4; one letter was from the Atlantic States Marine Fisheries Commission (ASMFC), two letters were from non-herring, fishing industry organizations (CHOIR, CCCHFA), and one letter was from an environmental advocacy group (Herring Alliance). Only the comments relevant to Amendment 4 are addressed below.

*Comment 1:* The Herring Alliance, CCCHFA, and CHOIR expressed concern about the sufficiency of the ACLs/sub-ACLs and AMs in the amendment. They believe that existing reporting and monitoring is not adequate to track catch against ACLs/

sub-ACLs and that AMs are not adequate to prevent ACLs/sub-ACLs from being exceeded. The commenters cited recent quota overages, specifically the quota overage in Area 1B, where 138 percent of the Area 1B quota was harvested (6,014 mt) in 2010, as evidence that, absent improvements to monitoring, measures in Amendment 4 are not sufficient to track catch against ACLs and prevent ACLs from being exceeded.

*Response:* While alternatives for modifications to the reporting and monitoring program for herring are being developed in Amendment 5, NMFS concludes that current reporting and monitoring is sufficient to monitor catch against ACLs/sub-ACLs. Herring vessels are required to report herring catch (landings and discards) weekly. These catch reports are verified by comparing them to herring landings reported by dealers. Herring is a high-volume fishery. When there is a pulse of fishing effort on a relatively small amount of unharvested quota, as occurred in Area 1B during September 2010, the chance of a quota overage exists, regardless of reporting or monitoring tools. Amendment 4 recognizes an existing measure as a preventative AM; the measure limits herring catch (2,000 lb (907.2 kg) per trip) when a specified percentage (95 percent) of an ACL/sub-ACL is projected to be harvested. The specified percentage is adjustable and, when it is set correctly, this AM is an appropriate measure to prevent ACLs/sub-ACLs from being exceeded.

NMFS has the authority to revise reporting requirements or make inseason adjustments to ACLs/sub-ACLs as necessary. Recognizing the importance of timely catch information, NMFS will be developing a rulemaking to establish daily catch reporting for limited access herring vessels for implementation in 2011.

*Comment 2:* The amendment contains a reactive AM that deducts any ACL/sub-ACL overages in the fishing year following total catch determinations, but the Herring Alliance, CCCHFA, and CHOIR believe that any overages should be paid back in the year immediately following the overage.

*Response:* The herring fishing year extends from January to December. The herring fishery can be active in December and, as explained in the amendment, information on the bycatch of herring in other fisheries is not finalized until the spring of the following year. For these reasons, and to provide sufficient notice to the industry when an ACL/sub-ACL is reduced due to an overage, NMFS concludes that it

is appropriate that the amendment establishes a payback measure for the fishing year following the total catch determination (e.g., overages in 2010 would be determined in 2011 and paid back in 2012). (See also the response to Comment 3.)

*Comment 3:* The Herring Alliance commented that delaying overage deductions may transfer accountability for overages to those not responsible for causing overages, because active participation in the fishery can change over time, and that ecological harm could result from unnecessary "balloon payments" due to overage rollovers. The CCCHFA commented that delaying overage deductions may cause harm to the stock.

*Response:* Since the implementation of limited access in 2007, active participation in the herring fishery has been relatively stable. Market conditions and the availability of herring to the fishery drive participation in the herring fishery, but it is unlikely that, in a given year, these factors would prevent a portion of the fleet from participating in the fishery. Generally, there is no danger to the stock associated with "balloon payments" resulting from overage rollovers, because overages, if there are any, would be consistently deducted from ACLs/sub-ACLs for the fishing year following total catch determination. Herring is a relatively long-lived species (over 10 years) and multiple year classes are harvested by the fishery (typically ages two through six). These characteristics suggest that the herring stock may be robust to a single year delay in overage deductions (i.e., overage deduction in 2012 versus 2011). There is no evidence that a single year delay is more likely to affect the reproductive potential of the stock than an overage deduction in the year immediately following the overage, particularly since the herring stock is not overfished at this time. However, NMFS understands that the health of a stock, size of an overage, and the frequency of overages could combine to affect the stock in the future. In the event that these factors combine to create a negative impact on the stock, Amendment 4 provides the flexibility to re-evaluate and modify ACLs/sub-ACLs and AMs, consistent with National Standard 1 guidelines, during the specifications-setting process.

*Comment 4:* The Herring Alliance and CCCHFA expressed concern about the adequacy of the interim ABC control rule in the amendment. The Herring Alliance also believes the Council should have stated its policy on the risk of overfishing in the control rule, and that it is inappropriate to establish an

updated control rule via the specifications process. Additionally, the Herring Alliance commented that, in the absence of a permanent ABC control rule, the final rule must specify a time frame and mechanism for replacing the interim control rule with a permanent control rule.

*Response:* Due to the scientific uncertainty associated with the 2009 herring stock assessment, the SSC determined that a permanent ABC control rule cannot be determined at this time. Therefore, Amendment 4 contains an interim ABC control rule (based on SSC recommendations) until the next herring benchmark assessment (currently scheduled for June 2012) determines if it can address the concerns with the last assessment. If a new ABC control rule can be developed following the 2012 benchmark stock assessment, it will be developed in the 2013–2015 herring specifications. The amendment does contain a default risk policy; the Council's default policy on the risk of overfishing is the amount of buffer between the Council's OFL and ABC recommendations for 2010–2012. This risk policy will be updated when the control rule is updated. Regarding the mechanism to update the control rule, the SSC makes ABC recommendations as part of the specifications process, and it is appropriate that this amendment provides the flexibility to update the control rule through that process.

*Comment 5:* The Herring Alliance, CHOIR, and CCCHFA all expressed concern about the accounting of herring discarded at sea. The commenters believe that the final rule must include protocols for quantifying herring discards as part of management uncertainty and a mechanism to offset the ACL from the ABC accordingly. Additionally, absent improved monitoring, the commenters doubt the credibility of the discard data and conclusions that herring discards are low.

*Response:* As described in the proposed rule, estimates of discards are reported by harvesters, and also provided by NMFS observers, on trips when observers are present. The available information suggests that discards in the herring fishery are low, relative to the amount of landed herring. Therefore, based on the best available information, Amendment 4 does not establish a specific deduction between the ABC and stock-wide ACL to account for management uncertainty related to discards at this time. However, if new information on discards becomes available, Amendment 4 provides the Council with flexibility to incorporate

that information into the stock-wide ACL-setting process, as appropriate. Additionally, as described previously, the Council is in the process of developing Amendment 5, which considers revisions to catch monitoring and reporting requirements for the herring fishery.

*Comment 6:* Following up on their concern with the accounting of discards, CHOIR and CCCHFA commented on a perceived discrepancy between the amendment and the proposed rule. They commented that the amendment describes the buffer (i.e., 5 percent of a management area sub-ACL) associated with the management area closure measure as a measure to buffer against the uncertainty associated with discard estimates while the proposed rule describes the buffer as a measure intended to address incidental catch. The commenters then questioned how the 5-percent buffer was intended to function.

*Response:* Proposed regulations state that, if NMFS projects that catch will reach 95 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip per day for that area. The original FMP established the management area closure threshold (i.e., 95 percent of the management area sub-ACL) to slow the herring fishery as catch approached the TAC for a management area, and intended the 5-percent buffer to account for the incidental catch of herring in other fisheries. Amendment 4 maintains this function of the buffer, as described in both the proposed rule and the amendment. Additionally, because the incidental catch of herring in other fisheries is typically low, if some discards were not accounted for in the vessel catch reports, the 5-percent buffer could also function to account for these discards, as described in the amendment. Because the amendment describes that the intent of the 5-percent buffer is to account for the incidental catch of herring in other fisheries and to buffer against the uncertainty associated with discard estimates, this final rule clarifies that the buffer associated with the management area closure measure has both functions.

*Comment 7:* The Herring Alliance commented that Amendment 4 should establish ACLs and AMs for river herring and shad, and suggested a Federal FMP is necessary for these species.

*Response:* In June 2009, the Council focused Amendment 4 on bringing the Herring FMP into compliance the ACL and AM requirements by 2011. When considering the development of a Federal FMP for river herring and shad, the analysis would have to take into account the benefits of the FMP versus the costs and the need for a Federal plan, given that ASMFC has an Interstate FMP for river herring and shad. Because there was not time to conduct these types of analyses and implement Amendment 4 by 2011, creating a Federal FMP for river herring and shad was outside the scope of this amendment. Additionally, an ASMFC river herring stock assessment is currently scheduled for 2011. In advance of stock status information, it would be difficult for a Federal FMP to detail how it would prevent overfishing on river herring. In the absence of Federal management for river herring and shad, the MSA does not require ACLs and AMs for these species.

*Comment 8:* One member of the public and the Herring Alliance commented on the National Environmental Policy Act (NEPA) requirements and questioned the Council's decision to conduct an EA for Amendment 4. The Herring Alliance believes that ABCs, ACLs, and AMs need to be analyzed in an environmental impact statement (EIS), and that it is unlawful to separate Amendment 4 from Amendment 5 because single actions must be analyzed together so as to not obscure the true environmental impacts.

*Response:* The scope and effect of Amendment 4 is primarily administrative in nature, as it modifies the process for setting specifications, but does not implement the actual specifications (e.g., ABC, ACL). Therefore, for this reason and the analyses contained in the EA, the Finding of No Significant Impact was justified in determining that an EIS was not necessary or appropriate. Amendment 4 and Amendment 5 are separate actions; therefore, it is both appropriate and lawful to analyze them as separate actions, recognizing that Amendment 5 is considered in Amendment 4's cumulative effects analysis as a future action, and Amendment 4 will be considered in the cumulative effects analysis of Amendment 5 as a past action.

*Comment 9:* The CCCHFA commented that the analysis in the EA prepared for Amendment 4 was flawed because it concluded that exceeding 95 percent of a sub-ACL is unlikely, and it did not analyze the effects of not

designating river herring as non-target stock in the fishery.

*Response:* Between 2001 and 2009, herring catch (reported by vessels) exceeded management area closure thresholds (i.e., 95 percent of the TAC for a management area) on eight occasions (less than 25 percent of the time). To explain, the 4 herring management areas were monitored over 9 years, for a total of 36 management area thresholds, and those thresholds were exceeded 8 times. NMFS believes it is appropriate to consider an event that occurs less than 25 percent of the time unlikely. National Standard 1 guidelines specify that Councils are to reconsider their ACLs, if those ACLs are consistently exceeded. Amendment 4 provides the flexibility to re-evaluate and modify, if necessary, ACLs/sub-ACLs and AMs during the specification process. Additionally, as described previously, the amendment contains an AM that requires any ACL/sub-ACL overages to be deducted in the year following total catch accounting. Designating river herring as a stock in the fishery was not considered by the Council in Amendment 4 nor was it representative of status quo; therefore, it is not required to be analyzed in the EA.

*Comment 10:* Language in the proposed rule states that, if the amendment is effective prior to final catch accounting for 2010, any overage in 2010 would be deducted in 2012. The CCCHFA questioned whether or not 2010 overages would be deducted in 2012 if the amendment was not effective prior to final catch accounting for 2010.

*Response:* Catch accounting for 2010 will be finalized in 2011; therefore, any 2010 ACL/sub-ACL overages will be deducted from the corresponding ACL/sub-ACL in 2012.

*Comment 11:* CCCHFA commented that it is concerned with how the role of herring as forage is considered in Amendment 4. CHOIR commented that it was pleased that the proposed rule provides for the consideration of the role of herring as forage during the specifications-setting process, but that it is disappointed that this consideration is not required.

*Response:* This action provides for consideration of the role of herring as forage, as appropriate. NMFS believes it is sufficient that herring as forage can be considered by the SSC when it recommends ABC, and the Council has the ability to establish an additional buffer between ABC and OY to address herring as forage, and that a regulatory requirement is not necessary.

*Comment 12:* The Herring Alliance, CCCHFA, and Oceana all commented that Amendment 4 should have

considered additional species to be designated as “non-target stocks in the fishery,” including river herring, shad, haddock, mackerel, and spiny dogfish. Oceana also commented that the bycatch analysis in Amendment 4 is insufficient.

*Response:* NMFS disagrees with these comments. National Standard 1 guidelines state that designations for non-target stocks in the fishery are at the Council’s discretion, and the Council chose not to designate any species as “non-target stocks in the fishery” in this amendment. Amendment 4 includes NMFS observer information on all species caught and discarded on observer trips and considers the effects of this action on non-herring species. Incidental catch in the herring fishery counts against the ACLs established for these incidental catch species if they are managed under another Federal FMP. Additionally, as described previously, Amendment 5 is further considering interactions between the herring fishery and river herring.

*Comment 13:* The Herring Alliance, CCCHFA, and CHOIR commented that they support the proposed rule requirements to set sub-ACLs and AMs for the herring management areas.

*Response:* NMFS concurs.

*Comment 14:* The ASMFC commented that it supports measures in the proposed rule. ASMFC developed Addendum II to Amendment 2 to the Interstate FMP for Atlantic Herring to complement Amendment 4. ASMFC commented that any changes to the proposed rule may create inconsistent management between state and Federal management programs.

*Response:* NMFS concurs.

### Changes From the Proposed Rule

There are no substantive changes from the proposed rule, only clarifications to the possession limits associated with the management area closure AM (2,000 lb (907.2 kg)), limited access incidental catch permit (55,000 lb (25 mt)), and open access permit (6,600 lb (3 mt)).

### Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 4 is necessary for the conservation and management of the herring fishery and that it is consistent with the MSA and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Orders 12866 and 13563.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA and

NMFS responses to those comments, and analyses contained in Amendment 4 and its accompanying EA/RIR/IRFA. Copies of these analyses are available from the Council or NMFS (*see ADDRESSES*).

### Statement of Need

This action brings the Herring FMP into compliance with MSA requirements, specifically those requiring ACLs and AMs. A description of action, why it was considered, and the legal authority for the action is contained in the preamble and not repeated here.

### *A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

Nine comment letters were received during the comment periods on the NOA and proposed rule, but none of the comments were specifically directed to the IRFA.

### *Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

All participants in the herring fishery are small entities, as none grossed more than \$ 4 million annually; therefore, there are no disproportionate economic impacts on small entities. This action will affect all participants in the herring fishery, as it revises current definitions and the specifications-setting process in the Herring FMP, but these measures are not anticipated to have direct economic impacts. In 2009, there were 41 vessels issued All Areas Limited Access Permits, 4 vessels issued Areas 2 and 3 Limited Access Permits, 54 vessels issued Limited Access Incidental Catch Permits, and 2,272 vessels issued Open Access Permits. Section 6.2 in Amendment 4 describes the vessels, key ports, and revenue information for the herring fishery; therefore, that information is not repeated here.

### *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. It does not duplicate, overlap, or conflict with any other Federal rules.

### *Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected*

The measures in this action are not anticipated to have direct economic effects on herring fishery participants. The scope and effect of Amendment 4 is primarily administrative in nature, as it modifies the process for setting specifications, but does not implement the actual specifications (e.g., ABC, ACL). A detailed economic analysis of the measures, as well as the non-selected alternatives, is in Section 7.2 of Amendment 4. These measures bring the Herring FMP into compliance with new MSA requirements by revising current definitions and the specification-setting process to include ACLs and AMs. In addition, this action designates herring as a “stock in the fishery;” establishes an interim ABC control rule; and makes adjustments to the specification process by eliminating JVpt, including JVP and IWP, and reserve from the specifications process, and eliminating the Council’s consideration of TALFF. The alternative to these measures is the status quo, which would retain all current definitions and the current specification process.

The current Herring FMP contains a specification-setting process and measures to prevent overfishing. This action re-defines: The specification-setting process to include OFL, ABC, and ACL; the allocating of OY; the management area TACs as sub-ACLs; and the management area closure measure and haddock incidental catch cap as AMs. Additionally, this action establishes an AM that provides for an overage deduction if total catch exceeded an ACL/sub-ACL. Because this action only makes minor adjustments to the existing specification-setting process and measures that prevent overfishing, this action has no direct economic effects. However, when the actual specifications are set, using the process implemented by this action, an economic analysis will be conducted. By revising the specifications-setting process to make the process, and the SSC’s involvement in the process, more explicit and providing for overage deductions, this action has the potential

to better prevent overfishing, as compared to the non-selected, status quo alternative.

Designating herring as the stock in the fishery is administrative. While other species are caught incidentally when fishing for herring, Atlantic herring is the only stock directly managed by the Herring FMP. National Standard 1 guidelines state that designations for non-target stocks in the fishery are at the Council's discretion, and the Council chose not to designate any species as "non-target stocks in the fishery" in this amendment. Because there may be non-target stocks that warrant consideration in the future, the Council retains authority to designate additional stocks in the fishery in a future action. Designating herring as the stock in the fishery will not change how the current FMP operates; therefore, there are no economic differences between this action and the non-selected, status quo alternative.

As described previously, the current Herring FMP contains a specifications-setting process and measures to prevent overfishing. Therefore, establishing an ABC control rule in this action is similar to the non-selected, status quo, alternative. However, making the ABC-setting process, and the SSC's involvement in that process, explicit has the potential to better prevent overfishing, as compared to the non-selected, status quo alternative.

This action eliminates JVPT, including JVP and internal waters processing IWP, and reserve from the specifications process. Because the U.S. herring fishery has experienced growth in both harvesting and processing capacity, and has sufficient capacity to harvest the available yield, JVPT, including JVP and IWP, has been allocated at zero since 2005. Accordingly, there are no economic differences between this action and the non-selected, status quo alternative. Historically, the reserve was specified to buffer against such things as uncertainty in stock size estimates, uncertainty in Canadian catch, excess U.S. capacity entering the herring fishery, and fluctuations in import/export demand. With this action's consideration of OFL, ABC, and ACL to account for sources of scientific and management uncertainty, specifying a reserve is redundant; therefore, there is no economic difference between this action and the non-selected, status quo alternative. Additionally, while TALFF could still be awarded, consistent with the MSA, by the Secretary of Commerce, this action eliminates Council consideration of TALFF during development of the specifications. Like JVPT, TALFF has been specified at zero

since 2005. Because there is no functional difference between not considering TALFF and setting TALFF at zero, there are no economic differences between this action and the non-selected, status quo alternative.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 25, 2011.

**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 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 § 648.200, paragraphs (a) introductory text, (b)(1), (b)(2), (b)(3), (b)(4), (e), and (f) introductory text are revised, and paragraphs (b)(5) and (g) are added 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), and the amount to be set aside for the RSA (from 0 to 3 percent of the sub-ACL from any management area). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

\* \* \* \* \*

(b) \* \* \*

(1) OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and

overfishing is not occurring, this is usually the fishing rate supporting maximum sustainable yield ( $F_{MSY}$ ). Catch that exceeds this amount would result in overfishing.

(2) ABC must be equal to or less than the OFL. The Council's Scientific and Statistical Committee (SSC) shall recommend ABC to the Council. Scientific uncertainty, including, but not limited to, uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, shall be considered when setting ABC. If the stock is not overfished and overfishing is not occurring, then ABC may be based on  $F_{MSY}$  or its proxy, recent catch, or any other factor the SSC determines appropriate. If the stock is overfished, then ABC may be based on the rebuilding fishing mortality rate for the stock ( $F_{REB}$ ), or any other factor the SSC determines appropriate.

(3) ACL must be equal to or less than the ABC. Management uncertainty, which includes, but is not limited to, expected catch of herring in the New Brunswick weir fishery and the uncertainty around discard estimates of herring caught in Federal and state waters, shall be considered when setting the ACL. Catch in excess of the ACL shall trigger accountability measures (AMs), as described at § 648.201(a).

(4) OY may not exceed OFL (*i.e.*, MSY) and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors. OY may equal DAH.

(5) DAH is comprised of DAP and BT.  
\* \* \* \* \*

(e) *In-season adjustments.* The specifications and sub-ACLs established pursuant to this section may be adjusted by NMFS to achieve conservation and management objectives, after consulting with the Council, during the fishing year in accordance with the Administrative Procedure Act (APA). Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(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:

\* \* \* \* \*

(g) All aspects of AMs, as described at § 648.201(a), can be modified through the specifications process.

■ 3. Section 648.201 is revised to read as follows:

**§ 648.201 AMs and harvest controls.**

(a) *AMs. (1) Management area closure.* If NMFS projects that catch will reach 95 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A sub-ACL allocated to the first seasonal period as set forth in paragraph (d) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip in such an area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(2) *Haddock incidental catch cap.* If NMFS determines that the incidental catch cap for haddock in § 648.85(d) has been caught, all vessels issued an Atlantic herring permit or fishing in the Federal portion of the Gulf of Maine/ Georges Bank (GOM/GB) Herring Exemption Area, defined at § 648.85(a)(3)(ii)(A)(1), shall be prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from the GOM/GB Herring Exemption Area. This prohibition shall not apply unless all herring possessed and landed by a vessel were caught outside the GOM/GB Herring Exemption Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the Exemption Area. Upon this determination, the haddock possession limit shall be reduced to 0 lb (0 kg) for all vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, regardless of where they were fishing, unless the vessel also possesses a Northeast Multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip. NMFS shall implement the described fishing restrictions in accordance with the APA.

(3) *ACL overage deduction.* If NMFS determines that total catch exceeded any ACL or sub-ACL for a fishing year, then the amount of the overage shall be subtracted from that ACL or sub-ACL for the fishing year following total catch determination. NMFS shall make such determinations and implement any changes to ACLs or sub-ACLs, in accordance with the APA, through

notification in the **Federal Register**, prior to the start of the fishing year, if possible, during which the reduction would occur.

(b) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(c) A vessel may land in an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with >2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(d) The sub-ACL for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal sub-ACLs for Area 1A, including the specification of the seasonal periods, shall be set through the annual specification process described in § 648.200.

(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 44° 36.2 N. Lat. and 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.

(f) If NMFS determines that the New Brunswick weir fishery landed less than 9,000 mt through October 15, NMFS shall allocate an additional 3,000 mt to the Area 1A sub-ACL in November, in accordance with the APA.

■ 4. In § 648.204, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), and (a)(4) are revised 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 that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(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 that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(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 that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201. 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 that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area.

(4) A vessel issued an open access herring 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 that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

\* \* \* \* \*

■ 5. In § 648.206, paragraphs (b)(8), (b)(25), (b)(28), and (b)(30) are revised, and paragraph (b)(31) is added to read as follows:

**§ 648.206 Framework provisions.**

\* \* \* \* \*

(b) \* \* \*

(8) Distribution of the ACL;

\* \* \* \* \*

(25) In-season adjustments to ACLs;

\* \* \* \* \*

(28) ACL set-aside amounts, provisions, adjustments;

\* \* \* \* \*



(30) AMs; and  
 (31) Any other measure currently included in the FMP.

\* \* \* \* \*

■ 6. In § 648.207, paragraph (g) is revised to read as follows:

**§ 648.207 Herring Research Set-Aside (RSA).**

\* \* \* \* \*

(g) If a proposal is approved, but a final award is not made by NMFS, or if NMFS determines that the allocated RSA cannot be utilized by a project, NMFS shall reallocate the unallocated or unused amount of the RSA to the respective sub-ACL, in accordance with the APA, provided that the RSA can be available for harvest before the end of the fishing year for which the RSA is specified.

\* \* \* \* \*

[FR Doc. 2011-4726 Filed 3-1-11; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 090428799-9802-01]

RIN 0648-BA57

#### Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Inseason Adjustments to Fishery Management Measures

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

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

**SUMMARY:** This final rule makes inseason adjustments to commercial and recreational fishery management measures for several groundfish species taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

**DATES:** Effective 0001 hours (local time) March 1, 2011. Comments on this final rule must be received no later than 5 p.m., local time on April 1, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 0648-BA57, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.

- **Fax:** 206-526-6736, *Attn:* Gretchen Hanshew.

- **Mail:** William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070, *Attn:* Gretchen Hanshew.

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

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Gretchen Hanshew (Northwest Region, NMFS), 206-526-6147, *fax:* 206-526-6736, [gretchen.hanshew@noaa.gov](mailto:gretchen.hanshew@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents are available at the Pacific Fishery Management Council's (the Council or PFMCC) Web site at <http://www.pcouncil.org/>.

**Background**

On December 31, 2008, NMFS published a proposed rule to implement the 2009-2010 specifications and management measures for the Pacific Coast groundfish fishery (73 FR 80516). The final rule to implement the 2009-2010 specifications and management measures for the Pacific Coast Groundfish Fishery was published on March 6, 2009 (74 FR 9874). The final rule was subsequently amended by inseason actions on the following dates: April 27, 2009 (74 FR 19011); July 6, 2009 (74 FR 31874); October 28, 2009 (74 FR 55468); February 26, 2010 (75 FR 8820); May 4, 2010 (75 FR 23620); July 1, 2010 (75 FR 38030); July 16, 2010 (75 FR 41386); August 23, 2010 (75 FR

51684); October 4, 2010 (75 FR 61102); and December 3, 2010 (75 FR 75417). Additional changes to the 2009-2010 specifications and management measures for petrale sole were made in two final rules on November 4, 2009 (74 FR 57117), and December 10, 2009 (74 FR 65480). NMFS also issued a final rule in response to a duly issued court order on July 8, 2010 (75 FR 39178). In addition, NMFS issued two final rules to implement Amendments 20 and 21 to the FMP on October 1, 2010 (75 FR 60868), and December 15, 2010 (75 FR 78344). The October 1, 2010, final rule, in part, re-organized the entire Pacific Coast Groundfish Fishery Regulations. Because of the restructuring, beginning on November 1, 2010, these specifications and management measures are found at 50 CFR part 660, subparts C through G.

In June 2010, the Council recommended, and NMFS is working to implement, specifications and management measures for the 2011-2012 biennium. Given the complexity of the biennial specifications and management measures, the need for adequate National Environmental Policy Act documents and public review periods, and competing workloads, NMFS did not have enough time to implement a final rule by January 1, 2011. Unless new management measures are implemented in a separate rulemaking, groundfish specifications and management measures that are in effect at the end of the previous biennial fishing period will remain in effect until they are modified, superseded, or rescinded. On December 30, 2010, NMFS issued an emergency rule to revise some harvest specifications and management measures, including several pieces necessary to sustainably manage the entire fishery and to begin the rationalized trawl fishery (75 FR 82296). Therefore, with the exception of changes implemented in the December 30, 2010, emergency rule, the 2009-2010 harvest specifications are in effect and the management measures that were in place at the end of the 2009-2010 biennium will remain in effect for the start of the 2011 fisheries (e.g., January-February 2010 trip limits would remain in effect for January-February 2011).

NMFS raised these issues to the Council at its November 2-9, 2010, meeting in Costa Mesa, California. The Council recommended adjusting the groundfish management measures to respond to updated fishery information and other inseason management needs.

The Council considered the most recent 2010 fishery information, relative to 2010 specifications, and recommended inseason modifications