

10.0 CONSISTENCY WITH THE MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT (MSFCMA)

10.1 NATIONAL STANDARDS

Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act requires that fishery management plans (FMPs) contain conservation and management measures that are consistent with the ten National Standards:

In General. – Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the...national standards for fishery conservation and management.

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

The overfishing definition for Atlantic herring was specified in the Herring FMP (NEFMC, 1999). This amendment updates that overfishing definition by establishing a proxy for maximum sustainable yield (MSY) that is intended to prevent overfishing while allowing the fishery to achieve, on a continuing basis, the optimum yield from the herring fishery. With the implementation of Amendment 1, the reference points in the overfishing definition for Atlantic herring will be revised as follows:

MSY = 220,000 mt

B_{MSY} (B_{Target}) = 1, 100,000 mt

F_{MSY} ($F_{Threshold}$ when stock is at B_{MSY}) = 0.2 – 0.25, based on TRAC assessment results and SSC recommendations

$B_{Threshold}$ = 550,000 mt

F_{Target} = F that produces OY, $\leq F_{MSY}$

$F_{Threshold}$ when stock is below B_{MSY} = F with 50% probability of rebuilding in 5 years (currently equal to F_{MSY})

Rebuilding Period = five years

In the future, the reference points contained in the overfishing definition may be re-specified or updated through a peer-reviewed process and/or as stock assessments are completed. If the next stock assessment for Atlantic herring produces one scientifically-accepted estimate of MSY, then the MSY value specified in the Atlantic Herring FMP (and its associated reference points) would automatically change to be consistent with the newly-accepted MSY value.

The additional management measures proposed in this amendment should further reduce the possibility of overfishing the herring fishery. Optimum yield for the Atlantic herring fishery is defined in the Herring FMP so that it will not exceed the Allowable Biological Catch (ABC), and cannot exceed MSY. The ABC is based upon a target fishing mortality rate that is determined as prescribed in the overfishing definition. Optimum yield (OY) can be reduced from this maximum amount based upon relevant economic, social, or ecological factors. Once Amendment 1 is implemented, OY for the herring fishery will continue to be established through the specification process, and impacts on the resource associated with the OY value will be addressed in the EA for the specification package. Nothing in this amendment changes the current (2006) specification of OY for the herring fishery.

For more information relative to this issue, see Sections 4.5 and 8.1.5 of this document.

- (2) *Conservation and management measures shall be based upon the best scientific information available.*

This document uses information of known quality from sources acceptable to the relevant scientific and technical communities. Several sources of data were used in the development of this document, including the analysis of potential impacts. These data sources include, but are not limited to: landings data from vessel trip reports, landings data from interactive voice response reports, information from resource trawl and hydroacoustic surveys, sea sampling (observer) data, data from the dealer weighout purchase reports, descriptive information provided (on a voluntary basis) by processors and dealers of Atlantic herring, and ex-vessel price information. Although there are some limitations to the data used in the analysis of impacts of management measures and in the description of the affected environment, these data are considered to be the best available. Information about bycatch is based on reports collected by the NEFSC Sea Sampling (Observer) Branch and incorporated into the NOAA Fisheries observer database. The observer data are collected using an approved, scientifically-valid sampling process. Furthermore, the analyses were prepared by and reviewed by the Council's Herring Plan Development Team and complies with the Data Quality Act (DQA). Additional discussion related to the DQA can be found in Section 11.7 of this document.

The proposed MSY proxy is based on the best available science because it utilizes the scientific information and methodology that was developed by the Herring PDT based on the SSC recommendations. The Council has almost always accepted and utilized stock assessment results from the NEFSC in the past regardless of whether or not it agrees with the results; the fact that the Canadian assessment scientists produced differing results should not preclude the Council from utilizing the best available assessment information in the management of the herring complex in the U.S. Exclusive Economic Zone (EEZ). The proposed proxy will be replaced with an analytical estimate of MSY for the Atlantic herring stock complex when available. More discussion of this issue can be found in Section 6.6 of this document.

- (3) *To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.*

The Atlantic Herring FMP as well as Amendment 1 manage Atlantic herring throughout the range of the species in U.S. waters, in accordance with the jurisdiction of U.S. law. While most Atlantic herring are landed in Maine, Massachusetts, and Rhode Island, Atlantic herring landings have been reported in every state from Maine through Virginia. Most Atlantic herring are caught in the EEZ. In order to address that portion of the resource that is caught in State waters, the FMP and this amendment were developed in close coordination with the Atlantic States Marine Fisheries Commission. The Commission has adopted measures that are consistent with Amendment 1 as part of Amendment 2 to the Interstate FMP for Herring. In addition, the herring fishery specification process requires close coordination with the ASMFC.

The coastal stock complex of Atlantic herring includes herring that are caught in the Canadian fixed gear fishery in New Brunswick and in Canadian waters on Georges Bank. While the management plan considers catches of herring that may occur in Canadian waters, it does not explicitly regulate those catches because of a lack of U. S. jurisdiction. In general, allowable biological catch (ABC) is estimated for the entire coastal stock complex, and OY for the U. S. fishery is then determined by accounting for the Canadian catch. Estimates of the Canadian catch that are deducted from the ABC are based on recent catches. This amendment recognizes that these estimates should be reviewed regularly in the future and establishes a process so that can be accomplished through the fishery specifications (see Section 4.6 of this document).

While the FMP manages the coastal stock complex as a single unit, it also considers impacts of fishing mortality on individual spawning components. The TAC system for the Atlantic herring fishery assigns TACs to one of four management areas or sub-areas. This system is designed to protect the individual spawning components from excessive fishing pressure. The measures proposed in this amendment also are intended to achieve the following objectives, all of which relate to this National Standard (see Section 3.0 for a discussion of goals and objectives):

- Harvest the Atlantic herring resource consistent with the definition of overfishing contained in the Herring FMP and prevent overfishing.
- Prevent the overfishing of discrete spawning components of Atlantic herring.
- Avoid patterns of fishing mortality by age which adversely affect the age structure of the stock.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The management measures proposed in this amendment do not discriminate between residents of different States. The allocation of fishing privileges through the proposed limited access program is intended to be fair and equitable to current and recent herring fishery participants and also considers historical participation in the fishery to the extent possible. Fishing privileges are allocated based on participation in the directed fishery from 1993-2003 and the incidental catch fishery from 1988-2003. Special consideration is given to the need to maintain adequate opportunities in the fishery for purse seine and fixed gear fishermen. In addition, the proposed limited access program qualifies vessels for the herring fishery on an individual basis and is intended to be carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed management measures have been analyzed in this FSEIS document and are expected to promote conservation of the herring resource over the long-term by managing capacity in the fishery and minimizing the race to fish in all management areas. The herring fishery will continue to be managed by TACs, set through the specification process, which are designed to prevent overfishing of the resource and its spawning components while providing opportunities to achieve OY and harvest herring in all management areas.

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

The Proposed Action should promote efficiency in the utilization of fishery resources by implementing a limited access program intended to provide access to the fishery for both current and historical participants while minimizing the race to fish in any of the herring management areas. Economic allocation is not the sole purpose of the action proposed in this framework adjustment. The allocation of fishing privileges in this amendment is based on participation in the fishery since 1993 (or 1988 for incidental catch permits) and is intended to promote stability in the fishery, consequently benefiting the industry over the long-term. The limited access program is intended to promote the orderly development of the fishery in offshore areas and cap harvesting capacity in inshore areas. Incidental catch permits have been proposed (limited access and open access) to accommodate small incidental catches of herring in non-directed fisheries, thereby reducing bycatch and promoting the efficiency in the utilization of these resources.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

Changes in fisheries occur continuously, both as the result of human activity (for example, new technologies or shifting market demand) and natural variation (for example, oceanographic perturbations).

There are a number of factors which could introduce variations into the Atlantic herring fishery. As discussed in the Herring FMP as well as this amendment, there is some uncertainty in the estimate of current stock size. In addition, the structure and status of individual spawning components cannot be determined with precision, resulting in the assessment of a coastal stock complex rather than separate assessments for each individual spawning component. Because of the lack of a permitting and reporting system prior to VTR requirements and implementation of the Herring FMP, there is some uncertainty regarding the total harvest of Atlantic herring and the proportion of herring that is utilized for food/bait.

These uncertainties make it difficult to predict exactly how the fishery will continue to develop and how it will respond to the limited access program and the additional measures proposed in this amendment. The Council has adopted a precautionary approach to many elements of the management program in order to account for these uncertainties. First, the Council is proposing a precautionary MSY proxy that accounts for the current lack of scientific consensus regarding the status of the resource. OY will be further addressed during the fishery specification process. The Council also is recommending the establishment of a purse seine/fixed gear-only area to address concerns about localized depletion and the health of the resource in the inshore GOM.

In order to provide the greatest flexibility possible for future management decisions, the FMP includes a framework adjustment mechanism with an extensive list of possible framework adjustment measures that can be used to quickly adjust the plan as conditions in the fishery change. This amendment builds on that process by adding items to the list of measures that can be implemented through a framework adjustment to the Herring FMP and authorizing some of these measures to be implemented through the fishery specification process as well, whichever is most expeditious. For additional information, see Section 4.12 of this document.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

As always, the Council considered the costs and benefits associated with the Proposed Action when developing this amendment. The Proposed Action is intended to minimize costs and avoid unnecessary duplication, to the extent possible, while controlling capacity and promoting sustainable, long-term management of the Atlantic herring fishery. Any costs incurred as a result of the Proposed Action are considered to be necessary in order to achieve the goals and objectives of this management program (see Section 3.0).

The management measures proposed in this amendment are not duplicative and were developed in close coordination with NMFS, the Mid-Atlantic Fishery Management Council, the Atlantic States Marine Fisheries Commission (ASMFC), and other interested entities and agencies to minimize duplicity. Amendment 2 to the ASMFC Interstate Management Plan was developed in conjunction with the Council's amendment specifically to minimize both redundancy and inconsistency. As an example, the ASMFC amendment includes requirements for fixed gear fishermen to report catch through the IVR call-in program. This will help to ensure the effectiveness of the additional measures for fixed gear fisheries that are proposed in the NEFMC amendment. Measures in both amendments were developed cooperatively to minimize duplication. In addition, the Mid-Atlantic Council was involved with the

development of this amendment to ensure close coordination with regulations and upcoming actions for the Atlantic mackerel fishery.

- (8) *Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.*

The Council carefully considered the importance of the herring resource to affected fishery-related businesses and communities when developing the management measures proposed in Amendment 1. A complete description of the fishing communities engaged in the Atlantic herring fishery is provided in Section 7.4.2 of this document and Appendix XI in Volume II. Relative to the no action alternative, the measures proposed in this amendment are expected to have positive impacts on communities engaged in and dependent on the Atlantic herring fishery over the long-term by controlling harvesting capacity, minimizing the race to fish, and managing the herring resource in a precautionary manner to ensure long-term sustainable catch.

Negative impacts from the proposed limited access program and purse seine/fixed gear area are likely to be experienced on an individual vessel level. In some cases, these impacts may affect fishing communities, but the effects on communities are not expected to jeopardize the sustained participation of these communities in the fishery. Although herring are found and captured across a wide geographic range, each vessel lands fish and is connected to a limited number of ports (see *Mapping the Herring Fishery* in Section 7.4.2.3 of this document). Given this, impacts on individual vessels could have impacts on the coastal communities to which they are linked. Some measures proposed in this amendment like the limited access and open access incidental catch permits help to mitigate these adverse impacts.

Although the Proposed Action limits new entrants, qualification criteria are quite inclusive of current and historic participants in the fishery (either via limited access permits or incidental catch permits). Given this, all active herring participants from each of the affected communities of interest maintain their access to this fishery, and as a result, it is unlikely that the communities would be negatively affected by the measures proposed in Amendment 1. The proposed management measures limit access to a fishery that has experienced substantial technological economic and social change in recent decades. Ideally, one result of the Proposed Action is that it will introduce a greater sense of certainty and stability within the industry. Over the long-term, this may translate into more stable job opportunities within the fishery on vessels, at processing plants and in canneries.

The proposed purse seine/fixed gear-only area, in addition to the proposed measures for fixed gear fisheries (TAC set-aside, etc.), while putting some participants at a disadvantage (namely trawl and pair trawl vessels), may contribute positively to communities located in the northern half of Area 1A that are more likely to be dependant on fixed gear to provide them with lobster bait and fish for the Prospect Harbor cannery.

- (9) *Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.*

Comprehensive information related to bycatch in the Atlantic herring fishery is provided in Section 7.4.1.5 of this document. Framework 43 to the Northeast Multispecies FMP was recently submitted by the Council (February 2006) and includes measures that were originally part of the Amendment 1 DSEIS to address the bycatch of groundfish in the herring fishery. One of the primary objectives of this framework adjustment is to sustainably manage the bycatch of multispecies in the Atlantic herring fishery and, to the extent practicable, minimize bycatch and bycatch mortality. This framework adjustment specifically addresses National Standard 9 and should be referenced for more information and discussion.

Amendment 1 follows-up on the action proposed in Framework 43 by including language to establish the “catch cap” approach as one potential mechanism to address bycatch of groundfish and other species in the Atlantic herring fishery over the long-term. Establishing and modifying catch caps, including the cap proposed in Framework 43, are identified in Amendment 1 as measures that can be implemented through a framework adjustment to the Herring FMP or through the herring fishery specification process (with concurrent adjustments to regulations in other fisheries, as appropriate), whichever is most expeditious. Measures that could be implemented through a framework adjustment or the herring fishery specification process to address bycatch in the herring fishery also include seasonal and temporal closures in high bycatch areas and catch/bycatch caps. See Section 4.12 of this document as well as the Framework 43 document for additional information.

In 2006, NMFS initiated the development of an omnibus amendment to Northeast Region FMPs to address Standardized Bycatch Reporting Methodology (SBRM) across all fisheries. This issue is discussed in more detail below.

- (10) *Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.*

Fishing is a dangerous occupation; participants must constantly balance the risks imposed by weather against the economic benefits. A management plan should be designed so that it does not encourage dangerous behavior by the participants. The Council is aware of the safety implications of its management decisions, both through extensive public comment and the practical experience of many of its members. The management measures implemented through Amendment 1 promote the safety of human life at sea by implementing a limited access program that is intended to minimize the race to fish in all management areas and provide participants in the fishery with adequate opportunities to harvest the TACs on a year-round basis.

There are no impacts on the safety of herring vessels expected from the Proposed Action. In fact, the measures proposed in this amendment, particularly the limited access program and associated permit provisions, are intended to promote the safety of human life at sea by minimizing the potential for derby fishing to occur in any management area. The Council wants to minimize the potential for any vessel in the fleet to continue to increase its capacity such that derby fishing would become a problem in any area of the fishery. Derby fishing compromises vessel safety at sea, as vessels may fish in unsafe weather conditions to catch the TAC as quickly as possible. This is one consequence of overcapacity that the Council intends to avoid with the measures proposed in this amendment.

10.2 OTHER REQUIRED PROVISIONS OF THE M-S ACT

Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act contains 14 additional required provisions for FMPs, which are discussed below. Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, shall:

- (1) *contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are-- (A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery; (B) described in this subsection or subsection (b), or both; and (C) consistent with the National Standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;*

Foreign fishing for the Atlantic herring resource is considered during the fishery specification process when OY is determined and the management area TACs are established for a fishing year. None of the measures proposed in this amendment apply to foreign fishing vessels. Relative to domestic vessels, Section 4.0 of this document contains a description of the action proposed in this amendment. Section 10.1 discusses the amendment's consistency with the National Standards of the MSFCMA.

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

All of the information required by this provision can be found in this integrated Amendment 1 FSEIS document. This document updates herring stock and fishery information through the 2004 fishing year and through 2005 as available. The measures proposed in this amendment are found to be consistent with the goals, objectives, and provisions of the Atlantic Herring FMP and its related adjustments. A detailed description of the herring fishery is included in the Affected Human Environment section of this document (Section 7.4). Aside from the importance of herring as a forage species in the Northeast Region and the use of herring as bait, both of which are addressed in this amendment, there is no specific recreational interest in the fishery. Currently, there is neither foreign fishing for herring in the EEZ, nor are there any Indian treaty rights related to this fishery.

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

Amendment 1 to the Herring FMP proposes a new, precautionary proxy for MSY until scientific agreement can be reached as to the most appropriate value for MSY for the herring fishery. The present and probable future of the proposed MSY proxy for the fishery are addressed in Section 8.1.5 of this document. All of the information utilized in making the proposed MSY specification is provided as well:

- Section 4.5 identifies the proposed MSY proxy and its associated reference points;
- Section 6.6 provides the Council's rationale for the proposed MSY proxy, including background information utilized in the development of the proxy; and
- Section 8.0 includes analyses of the impacts of the proposed MSY proxy on the VECs identified for consideration in this amendment.

- (4) *assess and specify-- (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3); (B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and (C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;*

These required provisions relate directly to the fishery specification process and are addressed when the Council develops the specifications for the fishery, including OY, Domestic Annual Processing (DAP), and Domestic Annual Harvesting (DAH). However, analysis of the potential harvesting capacity of the limited access fleet is provided in Section 8.4.4 of this document. Under the Proposed Action, the limited access directed fishery fleet is estimated to have the capacity to harvest 161,030-198,710 mt of herring across all management areas, based on recent observed effort by these vessels. Issues related to this M-S Act provision will be further addressed during the herring fishery specification process.

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

Reporting requirements for the Atlantic herring fishery are addressed in the Herring FMP, the recent Emergency Rule to address haddock bycatch, and Fw 43 to the Northeast Multispecies FMP (haddock catch caps for the herring fishery). In addition, ASMFC Amendment 2 to the Interstate FMP for herring, will implement an IVR reporting requirement for fixed gear fishermen during the 2006 fishing year. This will better ensure that the fixed gear measures proposed in this amendment can be adequately monitored and enforced.

This document updates herring stock and fishery information through the 2004 fishing year and through 2005 as available. A detailed description of the herring fishery is included in the Affected Environment section of this document (Section 7.4).

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

The action proposed in this amendment does not alter any adjustments made in the Herring FMP that address opportunities for vessels that would otherwise be prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fisheries. No consultation with the Coast Guard is required relative to this issue.

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

Essential fish habitat was defined in earlier herring actions. This amendment does not further address or modify those EFH definitions. As discussed in Section 8.3 of this document, there are no additional impacts to the physical environment or EFH expected from the action proposed in this amendment.

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

Data and research needs relative to Atlantic herring and its associated fisheries are described in Section 9.0 of this document. Included are general research needs as well as those specific to cooperative research and improving information about the importance of herring as a forage species in the Northeast Region ecosystem.

- (9) *include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on-- (A) participants in the fisheries and fishing communities affected by the plan or amendment; and (B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;*

This amendment document includes analyses and discussion of the impacts of the Proposed Action on the affected human environment, including herring fishery participants and communities. The fishery impact statement for this amendment is contained in Section 8.4 (Impacts on Fishery-Related Businesses and Communities). The Council developed the measures proposed in this amendment in consultation with the Atlantic States Marine Fisheries Commission and Mid-Atlantic Fishery Management Council as well, through the participation of its members on the Herring PDT, Advisory Panel, and Committee, in addition to attendance at Council meetings.

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

The criteria for Atlantic herring were established in the Herring FMP and are further addressed in Section 4.5 of this amendment document. Amendment 1 to the Herring FMP proposes a new, precautionary proxy for MSY until scientific agreement can be reached as to the most appropriate value for MSY for the herring fishery. The present and probable future of the proposed MSY proxy for the fishery are addressed in Section 8.1.5 of this document. All of the information utilized in making the proposed MSY specification is provided as well:

- Section 4.5 identifies the proposed MSY proxy and its associated reference points (i.e., objective and measurable criteria);
- Section 6.6 provides the Council's rationale for the proposed MSY proxy, including background information utilized in the development of the proxy; and
- Section 8.0 includes analyses of the impacts of the proposed MSY proxy on the VECs identified for consideration in this amendment.

- (11) *establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority-- (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided;*

Amendment 1 to the Atlantic Herring FMP follows up on the action implemented through Framework 43 to the Northeast Multispecies FMP and establishes the “catch cap” approach as one potential mechanism to address bycatch of groundfish and other species in the Atlantic herring fishery over the long-term. Establishing and modifying catch caps, including the cap proposed in this Framework 43, is identified in this amendment as measures that can be implemented through a framework adjustment to the Herring FMP or through the herring fishery specification process (with concurrent adjustments to regulations in other fisheries, as appropriate), whichever is most expeditious. Measures that could be implemented through a framework adjustment or the herring fishery specification process to address bycatch in the herring fishery also include seasonal and temporal closures in high bycatch areas and catch/bycatch caps.

This amendment/FSEIS document also describes the Council’s current Standardized Bycatch Reporting Methodology (SBRM) for the Atlantic herring fishery, which will be further addressed further in an upcoming omnibus amendment to Northeast FMPs (NMFS, under development). The National Marine Fisheries Service is developing an omnibus amendment to Northeast Region FMPs to address SBRM requirements and this provision of the M-S Act in all federally-managed fisheries. This amendment will serve to ensure that all FMPs of the Northeast Region, for both the New England and Mid-Atlantic Councils, are in compliance with the SBRM requirements of the Magnuson-Stevens Act, taking into account the Agency’s mandates under the Endangered Species Act and the Marine Mammal Protection Act. The purpose of this amendment is to: (1) explain the methods and processes by which bycatch is currently monitored and assessed for Northeast Region fisheries; (2) determine whether these methods and processes need to be modified and/or supplemented; (3) establish standards of precision for bycatch estimation for all Northeast Region fisheries; and, thereby, (4) document the SBRMs established for all fisheries managed through the FMPs of the Northeast Region.

The scope of the NMFS SBRM amendment is limited to those fisheries that are prosecuted in the Federal waters of the Northeast Region and managed through an FMP developed by either the Mid-Atlantic or the New England Council. This amendment will not address fisheries managed through an FMP developed by any other regional fishery management council, the Highly Migratory Species branch of NOAA Fisheries Service, the Atlantic States Marine Fisheries Commission (ASMFC) (except those joint FMPs established by both the ASMFC and either the Mid-Atlantic or New England Council), or under the aegis of the Atlantic Coastal Fishery Cooperative Management Act (ACFCMA) (including American lobster and northern shrimp). The SBRM for the Atlantic herring fishery, which is managed by the NEFMC and the ASMFC, will be addressed by NMFS in this amendment.

As previously noted, this amendment will include a comprehensive examination, description, and analysis of the methods by which bycatch is monitored and assessed in the fisheries of the northeastern U.S.. It also will Establish standards for determining adequacy of SBRMs and include discussion and consideration of precision and accuracy aspects of SBRMs. Consideration of the adequacy of existing methods of bycatch monitoring for the Northeast Region fisheries, and recommendations for additional and/or alternative methods, will be addressed in the SBRM amendment if necessary and appropriate.

The timeline for the SBRM amendment is aggressive, with a scheduled completion target during the 2006 calendar year. Based on the current schedule of meetings for the Councils, the Mid-Atlantic Council would need to approve the amendment at its August 2006 meeting, and the New England Council would approve the amendment at its September 2006 meeting. Given this schedule, public hearings may occur by July 2006, with the Councils reviewing a draft amendment in June.

The Council's current SBRM for the herring fishery, as well as all available information relative to bycatch in the fishery, is presented in Section 7.4.1.5 of this document.

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

This Proposed Action does not address recreational fishing regulations.

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

A detailed description of the herring fishery is included in the Affected Human Environment section of this document (Section 7.4). This section provides information relative to herring vessels, processors, and dealers. It updates all available information about the fishery through the 2005 fishing year, if possible. The Atlantic Herring FMP as well as recent Stock Assessment and Fishery Evaluation (SAFE) Reports for the Atlantic herring fishery should be referenced for more historical information.

- (14) *to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.*

The action proposed in this amendment does not reduce the overall harvest from the Atlantic herring fishery. Harvest from the Atlantic herring fishery, including ABC, OY, DAH, DAP, area-specific TACs, will continue to be reviewed, established, and analyzed through the fishery specification process. Action related to the specification process will consider fairness and equity as it relates to a reduction in the overall harvest of Atlantic herring, should such a reduction occur in the future. Although herring is commonly used as bait in many fisheries, there are no recreational and/or charter sectors that directly participate in the Atlantic herring fishery, so consideration of fairness and equity would relate to the various sectors of the commercial fishery.

Harvest privileges in the commercial herring fishery are allocated in this amendment through the proposed limited access program (Section 4.1). The Proposed Action includes a two-tier, area-specific limited access program designed to accommodate both current and historical participants in the fishery at various levels. Consideration of fairness and equity relative to the Proposed Action is discussed in more detail relative to other National Standards (see previous section) as well as the discretionary provisions related to limited access (see below).

10.3 DISCRETIONARY PROVISIONS RELATED TO LIMITED ACCESS

Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act also includes discretionary provisions for FMPs, one of which relates to the development of a limited access program for a fishery and is discussed below.

Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, may:

- (6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account --*
 - (A) present participation in the fishery,*
 - (B) historical fishing practices in, and dependence on the fishery,*
 - (C) the economics of the fishery,*
 - (D) the capability of fishing vessels used in the fishery to engage in other fisheries,*
 - (E) the cultural and social framework relevant to the fishery and any affected fishing communities, and*
 - (F) any other relevant considerations.*

The Council considered the above factors carefully when developing the limited access program proposed in this amendment, as discussed below.

Present participation was accounted for by extending the qualification time period for limited access permits beyond the 1999 control date and allowing vessels to qualify with landings through the 2003 fishing year. The Council is aware that new vessels have entered the herring fishery since the September 1999 control date and are pursuing the available TAC for herring in various management areas. The TACs in Areas 2 and 3 have yet to be fully utilized, so there may be opportunities for expansion of fishing effort in these areas. One of the Goals and Objectives for Amendment 1 is to “provide, to the extent practicable, controlled opportunities for fishermen and vessels in other Mid-Atlantic and New England fisheries.” More liberal criteria to qualify recent and new participants for the directed herring fishery may help to achieve this objective.

Due to the nature of this fishery and recent developments in shoreside processing, the Council believes that active participants (post-1999 control date, active between 1999 and 2003) with significant current investments should be accommodated in at least some management areas. Recency represents an important criterion in designing any limited access plan under the provisions of the Magnuson-Stevens Act. A limited access plan which eliminates “new” entrants into the fishery on the basis of the control date of 1999 would disenfranchise and harm participants with demonstrated and significant current participation and investment in the fishery.

Historical fishing practices and dependence on the fishery were accounted for by using a qualifying start date of 1993 for limited access directed fishery permits and 1988 for limited access incidental catch permits. The limited access incidental catch permit qualification criteria are intended to mitigate negative impacts of the proposed limited access program on historical participants and participants in other fisheries by providing them an opportunity to catch relatively small amounts of herring and to continue operations in other fisheries that may encounter herring seasonally and/or on a limited basis.

At its January 31-February 2, 2006 meeting, the New England Council voted to recommend that the start date for qualification criteria for the limited access incidental catch permit be January 1, 1988 instead of January 1, 1993. The Council took this action to address concerns expressed by the Mid-Atlantic Fishery Management Council and participants in the Atlantic mackerel fishery about the potential exclusion of some mackerel vessels from the herring limited access program proposed in Amendment 1 (those without significant herring landings since 1993). The overlap between the herring and mackerel fisheries has been an important consideration during the development of this limited access program, and the Council wants to minimize bycatch by providing opportunities for all mackerel vessels to catch small amounts of herring incidentally when targeting mackerel. This is especially important for historical mackerel vessels that have not been very active in the fishery in recent years, but may be in the future as the mackerel fishery continues to grow.

The economics of the fishery were accounted for by providing opportunities in the limited access fishery in Area 1 to an adequate number of vessels to minimize the potential to disrupt the supply of product to important markets (food and bait). Moreover, the limited access program is designed to control capacity in the fishery and minimize the potential for derby fishing, both of which have negative economic impacts on the fishery.

The capability of fishing vessels to engage in other fisheries was accounted for by developing a two-tier limited access program that is both area-specific for the herring fishery and accommodating to other fisheries that may encounter herring. The overlap between the herring and mackerel fisheries was especially considered, as discussed above.

Additionally, the ability of herring fishing vessels to engage in other fisheries was considered in the context of the proposed limited access program. For example, 34 vessels are estimated to qualify for the limited access directed herring fishery in either all areas or at least Areas 2/3 only. In general, 30-35 vessels catch 99% of all herring landings in any given year, so the proposed limited access program should provide access to the directed fishery for the most significant participants in the fishery. Access for these vessels is critical because they do not participate in many other fisheries to a large extent, with the exception of the mackerel fishery.

The cultural and social framework relevant to the fishery and affected fishing communities was considered as the Council developed a limited access program that is inclusive of both current and historical participants. Inclusion of more recent/current participants in the fishery is especially important relative to this issue because the Council has encouraged the development of U.S. shoreside processing capabilities for the herring fishery. Now that shoreside facilities have developed, management measures for the herring fishery should promote opportunities for these facilities and, to the extent possible, protect the economic investment that has been made in the U.S. herring fishery. This will help to maintain opportunities for communities that are engaged in and/or dependent on the herring fishery. Inclusion of historical participants is important for affected fishing communities as well, particularly those in Downeast Maine (including fixed gear) and southern New England/Mid-Atlantic areas where fishing for herring is more sporadic and/or seasonal, yet important to those communities.

11.0 RELATIONSHIP TO OTHER APPLICABLE LAW

11.1 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

11.1.1 Introduction and FSEIS Table of Contents

NEPA requires preparation of an Environmental Impact Statement (EIS) for major Federal actions that significantly affect the quality of the environment. The Council published a Notice of Intent (NOI) to prepare this Amendment and the EIS in the *Federal Register* on April 14, 2003, which was followed by four scoping meetings in Rockland ME, Danvers MA, Mansfield MA, and Atlantic City NJ. The Council prepared a scoping document that outlined some of the major issues and types of management measures that the Council might consider during the development of Amendment 1. The Council invited discussion on the scoping document and any other issues of concern at the scoping meetings as well as suggestions for appropriate management measures to consider during the development of this amendment.

To prepare the Final Amendment/FSEIS, the Council held numerous meetings of its Herring Oversight Committee, Herring Advisory Panel, and Herring Plan Development Team. All of these meetings, as well as several related Council meetings, were open to the public. A list of public meetings held during the development of Amendment 1 is provided in Section 12.0 of this document (p. 683).

The proposed management measures in this integrated amendment/FSEIS document were the subject of public hearings during 2005. Seven management alternatives were considered by the Council and analyzed in the Amendment 1 DSEIS, which was available for public review and comment during Fall 2005. The Council took public comment into consideration when selecting the final management measures for Amendment 1 in late 2005 and early 2006. The Council approved the final management action and voted to submit Amendment 1 to NMFS at its January 31-February 2, 2006 meeting in Portland ME.

The following Table of Contents for this FSEIS is provided to aid reviewers in referencing the appropriate corresponding sections of this integrated amendment/FSEIS document.