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**FOR FURTHER INFORMATION CONTACT:** Adrienne Borgia, EPA Region IX, (415) 97-3576, [Borgia.adrienne@epa.gov](mailto:Borgia.adrienne@epa.gov).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 19, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Accordingly, the amendment to 40 CFR 52.220 published in the **Federal Register** on July 15, 2011, (76 FR 41717) is withdrawn as of September 1, 2011.

[FR Doc. 2011-22289 Filed 8-31-11; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 110131079-1521-02]

RIN 0648-BA79

#### Fisheries of the Northeastern United States; Atlantic Herring Fishery; Regulatory Amendment

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

**ACTION:** Final rule.

**SUMMARY:** NMFS revises the reporting requirements for vessels issued Atlantic herring (herring) permits, because more timely catch information is necessary to monitor herring catch against the stock-wide herring annual catch limit (ACL) and herring management area sub-ACLs, to help prevent sub-ACLs overages and the chance of premature fishery closures. This action requires limited access herring vessels to report catch daily via vessel monitoring systems (VMS), open access herring vessels to report catch weekly via the interactive voice response (IVR) system, and all herring-permitted vessels to submit vessel trip reports (VTRs) weekly.

**DATES:** Effective September 8, 2011.

**ADDRESSES:** An Environmental Assessment (EA) was prepared for this regulatory amendment; it describes the proposed action and other considered alternatives, and provides a thorough

analysis of the impacts of the proposed measures and alternatives. Copies of the regulatory amendment, including the EA, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from: NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to NMFS, at the address above, and to the Office of Management and Budget (OMB) by e-mail at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-7285.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

The herring fishery in the United States is managed by a fishery management plan (FMP) developed by the New England Fishery Management Council (Council), and implemented by NMFS, in 2000. The harvest of herring is managed by a stock-wide ACL that is divided among three management areas, one of which has two sub-areas. Area 1 is located in the Gulf of Maine 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 Georges Bank. In order to monitor catch against management area quota allocations (*i.e.*, sub-ACLs), reporting requirements for the herring fishery were implemented as part of the original Herring FMP in 2000, and are specified at § 648.7. This action revises catch reporting requirements for owners/operators of vessels issued herring permits. A proposed rule revising reporting requirements for the herring fishery was published on June 15, 2011 (75 FR 34947), with a comment period ending June 30, 2011. Because the proposed rule included detailed information on the background and rationale for the revised reporting requirements, that information is only briefly summarized in this final rule.

Fishing year 2010 was the first year that NMFS monitored herring catch against recently reduced herring management area allocations (reduced from 2009 levels by 20 to 60 percent). When catch is projected to reach 95 percent of a management area sub-ACL, NMFS implements a 2,000-lb (907.2-kg)

possession limit for that management area, essentially closing that area to the directed herring fishery, to prevent the sub-ACL from being exceeded. In 2010, NMFS experienced difficulty projecting a closure date in Area 1B because of a pulse of fishing effort. NMFS had similar difficulties projecting a closure date in Area 1A, resulting in premature fishery closures, because bycatch rates were highly variable. Preliminary 2010 data indicate that catches from Area 1B and Area 1A exceeded their respective allocations. Overage determinations, and any subsequent overage deductions, will be determined when the 2010 herring catch data are finalized.

NMFS's monitoring experiences in 2010 illustrated the need for more timely catch reporting to better monitor herring catch against management area sub-ACLs, help prevent sub-ACL overages, and reduce the chance of premature fishery closures. The Council is in the process of developing Amendment 5 to the Herring FMP (Amendment 5), which considers revisions to catch reporting requirements for the herring fishery, but that amendment, if approved, is not anticipated to be implemented before 2013. NMFS recognizes the importance of timely catch information to monitor herring catch against management areas sub-ACLs in 2011 and beyond, as well as to help catch achieve, but not exceed, sub-ACLs. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) section 402(a)(2), in conjunction with regulations at § 648.7, provide NMFS with the authority to revise fishery reporting requirements as necessary to monitor a FMP. Therefore, in this action, NMFS requires that: Limited access herring vessels report herring catch daily via VMS; open access herring vessels report catch weekly via IVR; and all herring-permitted vessels submit VTRs weekly.

##### Reporting Requirements for Limited Access Herring Vessels

To ensure timely catch data are available to better inform management decisions, NMFS requires owners/operators of vessels issued limited access herring permits to report herring catch, retained and discarded, daily via VMS. Daily catch reports would include the following information: Vessel name; VTR serial number; date; and the amount of herring retained and discarded from each management area. During a declared herring trip, catch reports would be required to be submitted via VMS by 9 a.m., eastern time, for herring caught the previous calendar day (0000-2400 hr). If no fish were caught on a particular day during

the trip, a negative report (0 lb) would be submitted.

In this action, NMFS also requires owners/operators of vessels issued limited access herring permits to submit VTRs on a weekly basis. VTRs would be due by midnight each Tuesday, eastern time, for the previous week (Sunday–Saturday). This requirement would increase the frequency of information reporting from status quo, but the required content of the VTR would be unchanged.

#### *Reporting Requirements for Open Access Herring Vessels*

In an effort to simplify reporting requirements, to improve the timeliness of herring catch data, and to more efficiently apportion catch to management areas, NMFS requires owners/operators of vessels issued open access herring permits to report catch, retained and discarded, weekly via the IVR system. An IVR report would be required by midnight each Tuesday, eastern time, for any herring caught the previous week (Sunday–Saturday). If no herring was caught during a week, no IVR report would be required.

Consistent with the VTR requirements for limited access vessels, NMFS requires owners/operators of vessels issued open access herring permits be required to submit VTRs on a weekly basis. VTRs would be due by midnight each Tuesday, eastern time, for the previous week (Sunday–Saturday). This requirement would increase the frequency of information reporting from status quo, but the required content of the VTR would be unchanged.

#### **Comments and Responses**

Seven comment letters were received on the proposed rule for this action; one from the Atlantic States Marine Fisheries Commission (ASMFC), two from herring fishing organizations (Lunds Fisheries Inc., O'Hara Corporation/Starlight Inc.), one from a fishing/environmental organization (CHOIR Coalition), one from an environmental advocacy group (Herring Alliance), one from the State of Maine, and one from a member of the public. All commenters expressed general support for the proposed measures because they think the measures will improve catch monitoring, but several commenters qualified their support with recommendations for revisions to the proposed measures.

*Comment 1:* The ASMFC supported measures in the proposed rule, because daily reporting will reduce the chance of premature closures and overages, which increase operational costs and reduce market stability, with little

change to reporting burden. The ASMFC also commented that VMS reporting has been used successfully in the Northeast multispecies fishery, and that it is pleased to see consistent requirements for the herring fishery.

*Response:* While this action does increase the reporting burden on owners/operators of vessels issued herring permit, NMFS believes that the potential benefits of more frequent reporting, such as the decreased likelihood of sub-ACL overages and premature fishery closures, justifies the increase in reporting burden.

*Comment 2:* A member of the public commented that the proposed measures will allow for better enforcement of the ACL and more accountability and efficiency to herring monitoring with little change to the reporting burden on vessels.

*Response:* See response to Comment 1.

*Comment 3:* The Herring Alliance and CHOIR both expressed support for more timely catch reporting in the herring fishery, but believe this action is only an interim step, and that there is still a need to develop a comprehensive monitoring system, including independent, third-party monitoring, in Amendment 5.

*Response:* This action is intended to address the specific need for more timely catch reporting while Amendment 5 is being developed and implemented.

*Comment 4:* The Herring Alliance and CHOIR both commented that weekly IVR reporting is unnecessary for vessels issued open access permits. The Herring Alliance explained that, because open access vessels catch less than 1 percent of the herring harvest and contribute little to the problem of pulse fishing activities, simply requiring weekly VTRs seems sufficient to monitor herring catch from open access vessels. The Herring Alliance commented that the IVR system is reported to be complex, unreliable, and challenging. But it also suggested maintaining the current IVR requirement (*i.e.*, open access vessels submit weekly IVR reports only if catch is equal to or greater than 2,000 lb (907.2 kg) on a trip) rather than requiring open access vessels to report all catch weekly via IVR. Because the catch from open access vessels is only a percentage of the herring harvest, CHOIR commented that requiring weekly IVR reports from all open access vessels would lead to a large amount of reporting confusion for little benefit to herring management.

*Response:* VTRs do not allow herring catch to be reported by herring management area; instead, VTR catch

information must be apportioned to management area using latitude and longitude. Given that these vessels land a low percentage of the total herring catch, it would create needless work to process a large amount of VTRs weekly. Therefore, at this time, IVR reporting is the most efficient and timely way to track the catch of open access vessels against management area sub-ACLs. In addition, there has been confusion with the existing 2,000-lb (907.2-kg) IVR reporting trigger (*i.e.*, is it a trip limit or a weekly limit?); and this misunderstanding likely affected IVR reporting compliance. This action simplifies the IVR reporting requirement by requiring a report if any herring are caught. If weekly IVR reporting by open access vessels proves to be unnecessary, the weekly IVR reporting requirement can be modified or eliminated in a future action.

*Comment 5:* Lunds opposed the proposed measures requiring open access vessels to report weekly via IVR and exempting open access vessels from submitting an IVR report if no fish were caught during a week. Instead, Lunds proposed that open access vessels be required to operate a VMS and submit daily VMS catch reports when they are directing fishing effort on herring.

*Response:* Currently, the Herring FMP does not require vessels with open access herring permits to operate a VMS, but many of these vessels possess a VMS as a result of other permit requirements. Because open access vessels catch such a small percentage of the total herring harvest, requiring open access vessels to obtain/operate a VMS and submit daily VMS catch reports was not considered in this action. At this time, NMFS believes that VMS catch reporting by limited access vessels and weekly IVR reporting by open access vessels is the most efficient and cost effective way to monitor catch in the herring fishery.

*Comment 6:* Lunds, O'Hara/Starlight, and the State of Maine supported the proposed measure requiring daily VMS reporting for limited access vessels, but opposed the proposed 0900 hr reporting deadline and recommend that the reporting deadline be delayed until later in the day. The commenters explained that mornings are a busy time on the docks and vessels are often offloading their catch at 0900 hr. If the reporting deadline was later in the day (Lunds and O'Hara/Starlight recommended 1700 hr; the State of Maine recommended 1500 hr), vessels could complete their offloads before the catch reports were due, thereby improving the accuracy of catch reports and

compliance with the reporting requirement.

*Response:* The daily VMS catch report is intended to be a hail weight of the previous day's catch. Throughout a trip, limited access vessels will be submitting hail weights via VMS for each day's catch. The methods used to estimate a hail weight for the last day of a fishing trip should be similar to the methods used to estimate catch on the previous days. Vessels are not expected to verify catch estimates with offload information, and reporting need not occur at 0900 hr, it can occur any time between 0000 and 0900 hr. Additionally, as herring catch approaches management area sub-ACLs, daily adjustments to catch projections will likely be necessary. If catch reports are not due until the afternoon, catch projections will not include the previous day's catch. Because herring catch can be highly variable, catch projections incorporating the previous day's catch will likely be better at preventing overages and premature fishery closures.

*Comment 7:* Lunds commented that, if technological issues prevent a vessel from submitting a catch report, particularly while at sea, provisions should be made so that the report can be delayed without penalty.

*Response:* Rather than modify the regulations, any penalty for a delay in reporting should remain at the discretion of the NMFS Office of Law Enforcement, which can take extenuating circumstances, such as those described by the commenter, into account.

*Comment 8:* Lunds also commented that if a sub-ACL overage occurs, the amount of the overage should not be subsequently deducted from the corresponding sub-ACL unless the stock-wide herring ACL has been exceeded, consistent with accountability measures (AMs) for the Atlantic scallop fishery.

*Response:* Amendment 4 to the Herring FMP established an AM that provides 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. Adjusting this AM is beyond the scope of this rulemaking and would require action by the Council.

*Comment 9:* Because 2010 catch data for the herring fishery have not yet been finalized, the State of Maine questioned language in the proposed rule stating that 2010 herring catch exceeded quota allocations for Areas 1A and 1B, and that those overages will be deducted

from the corresponding sub-ACLs in 2012.

*Response:* Preliminary NMFS data indicate that catch exceeded quota allocations for Areas 1A and 1B in 2010. Any overage determinations, and any subsequent overage deductions, will be determined when NMFS finalizes the 2010 herring catch data.

*Comment 10:* The Herring Alliance commented that, because herring discards are not adequately tracked against management area sub-ACLs, this action should implement a real-time protocol to use observer data to calculate a fishery-wide discard estimate and measures to address catch that is discarded without first being made available to the observer for sampling.

*Response:* Vessels with herring permits report herring catch (*i.e.*, retained and discarded) by management area and that catch is tracked against area sub-ACLs. With this action, limited access vessels will be reporting discards daily, rather than weekly, and open access vessels will be reporting discards weekly, rather than monthly. Measures to address catch that is discarded without being sampled by an observer are beyond the scope of this rulemaking, but such measures are being considered in Amendment 5.

*Comment 11:* The Herring Alliance commented that tracking catch from vessels fishing near and across management area boundaries is a monitoring challenge. Because vessels report herring catch by management area, the Herring Alliance is concerned about the potential for reporting confusion when vessels fish across management boundaries and in multiple management areas. Because inshore sub-ACLs are smaller than offshore sub-ACLs, Herring Alliance believes there may also be incentives for misreporting. The Herring Alliance recommends that VMS information be used to verify vessel catch reports and consider prohibiting towing across area boundaries.

*Response:* NMFS currently uses VMS information to verify vessel catch reports. Prohibiting fishing in multiple management areas was beyond the scope of this action, but those measures could be considered in Amendment 5.

*Comment 12:* The Herring Alliance commented that measures should have been included in this action to improve the tracking of groundfish caught by herring vessels fishing in groundfish closed areas by requiring vessels with Category A and Category B limited access herring permits to report groundfish catch daily via VMS.

*Response:* This action addresses the need for more frequent reporting of herring. The Northeast Multispecies (Multispecies) FMP contains measures for monitoring the catch of groundfish species, and revising those measures is beyond the scope of this action. Revisions to haddock reporting requirements for herring vessels fishing with midwater trawl gear are currently being considered in Framework 46 to the Multispecies FMP (Framework 46), and requirements for herring vessels fishing in groundfish closed areas are being considered in Amendment 5.

*Comment 13:* The Herring Alliance commented that the EA for this action does not adequately analyze the effect of the herring fishery on non-target stocks and contains incorrect stock status information for Atlantic mackerel (mackerel).

*Response:* This action is administrative and is not anticipated to result in changes in effort or fishing behavior beyond those analyzed as part of the 2010–2012 herring specifications. The analysis of non-target stocks in the EA is consistent with the scope of an administrative action. Framework 46 considers haddock bycatch in the herring fishery and Amendment 5 considers groundfish and river herring/shad bycatch in the herring fishery. In Section 3.1.2 of the EA, the status of mackerel is listed as not overfished and not subject to overfishing. This information is consistent with mackerel stock status described in the quarterly updates for the 2010 Report on the Status of U.S. Fisheries.

*Comment 14:* The Herring Alliance commented that the requirements for declaring into the herring fishery, and those associated with being on a declared herring trip, are unclear.

*Response:* On January 22, 2010, NMFS issued a permit holder letter that provided guidance on declaring into the herring fishery and being on a declared herring trip. The letter explained that, if a vessel has been issued a limited access herring permit, a vessel representative must activate the VMS and declare that the vessel is participating in the herring fishery, by entering the code "HER" prior to leaving port, otherwise that vessel may not harvest, possess, or land herring on that trip. This guidance will also be provided in the compliance guide for this action.

#### Changes From the Proposed Rule

There are no changes from the proposed rule.

#### Classification

The Administrator, Northeast Region, NMFS, determined that this regulatory

amendment is necessary for the conservation and management of the herring fishery and that it is consistent with the MSA and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this rule and establish an effective date 7 days after publication in the **Federal Register**. Fishing year 2010 was the first year that NMFS monitored herring catch against recently reduced herring management area quota allocations (reduced from 2009 levels by 20 to 60 percent). That year, a pulse of fishing effort in Area 1B made it difficult to project a closure date. NMFS had similar difficulties projecting a closure date in Area 1A, resulting in premature fishery closures, because catch rates were highly variable. Catch information needs to be available quickly to help prevent overages and reduce the likelihood of premature fishery closures. Premature fishing closures unnecessarily interrupt fishing and processing operations and likely result in increased operational costs to the industry, contrary to public interest. Preliminary data indicate that catch from Areas 1A and 1B exceeded their respective allocations. If catch did exceed area allocations, those overages will need to be deducted from the corresponding sub-ACLs in 2012. Overages in any management area can be detrimental to both the fish stock and the fishery and, therefore, also contrary to public interest. Herring is a relatively long-lived species (over 10 years) and multiple year classes are harvested by the fishery (typically ages 2 through 6x). These characteristics suggest that the herring stock may be robust to overage deductions. However, the health of a stock, size of an overage, and the frequency of overages could combine to affect the stock in the future. Additionally, overages result in lower sub-ACLs, thus harming the industry by reducing potential profits. To help prevent sub-ACL overages, subsequent sub-ACL deductions, and premature fishery closures, these reporting requirements need to be effective before the fishery becomes active in September 2011. This action revises the method and frequency of reporting, but maintains the content of existing reporting requirements.

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 and analyses contained in this regulatory amendment and its accompanying EA/RIR/IRFA. Copies of these analyses are available from NMFS (see **ADDRESSES**).

#### *Statement of Need*

This action is necessary because more timely catch information is needed to monitor herring catch against the stock-wide herring ACL and herring management area sub-ACLs, to help prevent sub-ACLs overages, and reduce the chance of premature fishery closures. A description of the 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*

Seven comment letters were received during the comment periods on the 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 defined by the Small Business Administration's size standards, as none grossed more than \$4 million annually; therefore, there are no disproportionate economic impacts on small entities. In 2010, 42 vessels were issued Category A herring permits, 4 vessels were issued Category B herring permits, 55 vessels were issued Category C herring permits, and 2,258 vessels were issued Category D herring permits. A complete description of the number of small entities to which this rule applies is provided in Section 3.1.5 of this action's EA/RFA/IRFA (see **ADDRESSES**).

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement was submitted to OMB for approval under Control Numbers 0648-0202 and 0648-0212. This action 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*

This action directly affects all participants in the herring fishery because it increases the reporting burden for owners/operators of vessels issued herring permits. A complete description of the economic impacts associated with the proposed action and the non-selected alternatives is provided in Section 4.3 of action's EA/RFA/IRFA (see **ADDRESSES**).

In developing this rule, NMFS considered three alternatives: The no action alternative, which would require weekly IVR reporting by limited access vessels, weekly IVR reporting by open access vessels with catch equal to or greater than 2,000 lb (907.2 kg) on a trip, and monthly VTR reports from all herring-permitted vessels; this action, which requires daily VMS reporting by limited access vessels, weekly IVR reporting by open access vessels, and weekly VTR reports from all herring-permitted vessels; and a non-selected action alternative, which would require both limited access and open access-permitted vessels to provide NMFS with trip-by-trip IVR reports and weekly VTR reports.

This action increases reporting costs for herring fishery participants. VMS reporting and the submission of VTRs have a direct cost associated with the submission of the report. The cost of transmitting a catch report via VMS is \$0.60 per transmission. In 2010, the average number of fishing days for a limited access herring vessel was 93. Therefore, the annual cost of daily VMS reporting is estimated to be \$55.80 per vessel. The estimated annual VMS reporting burden (*i.e.*, time) is the submission of 93 reports per limited access vessel. Because the IVR system phone number is toll-free, there is no direct cost associated with reporting via the IVR system. The estimated annual IVR reporting burden is the submission of 52 reports per open access vessel. Additionally, this action requires weekly VTR submissions, which cost each vessel \$17.60 annually. This cost was calculated by multiplying 40 (52 weeks in a year minus 12 (number of monthly reports)) by \$0.44 (cost of a

postage stamp) to equal \$17.60). The annual VTR reporting burden is the submission of 52 reports per vessel.

Adding these costs together, this action is estimated to have an annual increased reporting cost of approximately \$73.40 per limited access herring vessel (submission of 145 VMS reports and VTRs), and approximately \$17.60 per open access herring vessel (submission of 104 IVR reports and VTRs). The ex-vessel value of the herring fishery varies by permit category. For limited access vessels, this action increases reporting costs by less than 1.8 percent of the average ex-vessel value of the fishery (2008–2010). For vessels with open access herring permits, this action increases reporting costs by 7.2 percent of the average ex-vessel herring value. While the increased reporting costs associated with this action may seem high for open access vessels, open access vessels typically operate in several fisheries and revenue from herring catch is likely only a small portion of their total ex-vessel value. Additionally, the majority of vessels issued open access herring permits (92 percent) are already paying these increased reporting costs, because they also possess a Northeast multispecies permit that requires weekly submission of VTRs, so they will not experience an increase in overall costs.

Under this action, catch data are updated more frequently and will likely better inform catch projections. If catch projections are less uncertain, ACL/sub-ACL overages, and the subsequent overage deduction, may become less likely. Additionally, the fleet may be allowed to harvest up to the 95 percent sub-ACL closure threshold without the management area being prematurely closed and herring potentially left unharvested. For limited access vessels, reporting via VMS is more flexible (reports can be made from sea or from land) than reporting via IVR (reports usually made only from land). For open access vessels, reporting weekly rather than trip-by-trip still provides timely catch data, but likely results in a lower reporting burden. For these reasons, there may be indirect positive impacts for fishery participants associated with this action.

As compared to this action, the reporting burden under the no action alternative would be less. The no action alternative would require weekly reporting via IVR for limited access vessels, weekly reporting via IVR for open access vessels when catch was greater than 2,000 lb (907.2 kg) per trip, and monthly submission of VTRs for all vessels issued herring permits. Because

the IVR system phone number is toll-free, there is no direct cost associated with reporting via the IVR system. The no action alternative is estimated to have an annual reporting cost of approximately \$5.28 per limited access herring vessel (submission of 64 reports) and approximately \$5.28 per open access herring vessel (submission of 19 reports). Under the no action alternative, there is the possibility that catch data may not be timely enough to inform catch projections increasing the likelihood of either an ACL/sub-ACL overage or a premature implementation of a reduced possession limit. Because of issues with phone reception, reporting via IVR is often not possible while at sea. Therefore, reporting for limited access vessels would be less flexible under the no action alternative than under this action. For these reasons, there may be indirect negative economic impacts to fishery participants resulting from the no action alternative, including overage deductions, increased operational costs if fishing activities are interrupted by a premature closure, and the potential risk that a premature closure may result in a percentage of a management area sub-ACL left unharvested.

The reporting burden under the non-selected action alternative would be less costly than reporting under this action (because IVR is less costly than VMS), but the number of reports submitted may be higher than under this action (because trip-by-trip reporting would likely result in the submission of more reports than weekly reporting). The non-selected action alternative would require trip-by-trip reporting via IVR and weekly submission of VTRs for all vessels issued herring permits. The non-selected action alternative is estimated to have an annual reporting cost of approximately \$17.60 per herring vessel. Because trips can vary in length from 1 day to several days, the frequency of trip-by-trip reporting would be variable. Under the non-selected action alternative, IVR reporting and weekly VTR submission would result in a minimum annual submission of 104 reports per vessel. The ex-vessel value of the herring fishery varies by permit category. For limited access vessels, the non-selected action alternative would have increased reporting costs that are less than 0.0007 percent of the average ex-vessel value of the fishery (2008–2010). The non-selected action alternative would have increased reporting costs of 7.2 percent of the average ex-vessel value of the herring fishery for open access vessels. While the increased reporting costs

associated with the non-selected action alternative may seem high for open access vessels, open access vessels typically operate in several fisheries and revenue from herring catch is likely only a small portion of their total ex-vessel value. Additionally, the majority of vessels issued open access herring permits (92 percent) are already paying these increased reporting costs, because they also possess a Northeast multispecies permit that requires weekly submission of VTRs.

Similar to this action, catch data under the non-selected action alternative would be updated frequently and would likely be sufficient to inform catch projections. If catch projections contained less uncertainty, ACL/sub-ACL overages, and the subsequent overage deduction, may be less likely. Additionally, the fleet may be allowed to harvest up to the 95-percent sub-ACL closure threshold without the management area being prematurely closed and herring potentially left unharvested. For limited access vessels, reporting via IVR is less flexible than reporting via VMS, so reporting for limited access vessels would be less flexible under the non-selected action alternative than under this action. For these reasons, there may be both indirect positive and indirect negative impacts for fishery participants under the non-selected action alternative.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control numbers 0648–0202 and 0648–0212. Public reporting burden for catch reporting is estimated to average 5 min per individual per VMS response, 7 min per individual per IVR response, and 5 min per individual per VTR response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or any other aspects of the collection of information, to NMFS,

Northeast Regional Office (see **ADDRESSES**) and to the OMB by e-mail at *OIRA\_Submission@omb.eop.gov*, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 26, 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 § 648.7, paragraphs (b)(2)(i) and (f)(2)(i) are revised, and paragraph (b)(3) is added to read as follows:

#### § 648.7 Recordkeeping and reporting requirements.

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(b) \* \* \*  
(2) \* \* \*

(i) *Atlantic herring owners or operators issued an open access permit.* The owner or operator of a vessel issued an open access permit to fish for herring must report catch (retained and discarded) of herring to an IVR system for each week herring was caught, unless exempted by the Regional Administrator. IVR reports are not required for weeks when no herring was caught. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; week in which herring are caught; management areas fished; and pounds retained and pounds discarded of herring caught in each management area. The IVR reporting week begins on Sunday at 0001 hr (12:01 a.m.) local time and ends Saturday at 2400 hr (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight each Tuesday, eastern time, for the previous week. Reports are required even if herring caught during the week has not yet been landed. This

report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

(B) *Reporting requirements for vessels transferring herring at sea.* A vessel that transfers herring at sea must comply with these requirements in addition to those specified at § 648.13(f).

(1) A vessel that transfers herring at sea to a vessel that receives it for personal use as bait must report all transfers on the Fishing Vessel Trip Report.

(2) A vessel that transfers herring at sea to an authorized carrier vessel must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

(3) A vessel that transfers herring at sea to an at-sea processor must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the at-sea processing vessel is defined as a trip for the purposes of the reporting requirements and possession allowances. For each trip, the vessel must submit a Fishing Vessel Trip Report and the at-sea processing vessel must submit the detailed dealer report specified in paragraph (a)(1) of this section.

(4) A transfer between two vessels issued open access permits requires each vessel to submit a Fishing Vessel Trip Report, filled out as required by the LOA to transfer herring at sea, and a weekly IVR report for the amount of herring each vessel lands.

\* \* \* \* \*

(3) *VMS Catch Reports.* (i) *Atlantic herring owners or operators issued a limited access permit.* The owner or operator of a vessel issued a limited access permit to fish for herring must report catches (retained and discarded) of herring daily via VMS, unless exempted by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month and day herring was caught; pounds retained for each herring management area; and pounds discarded for each herring management area. Daily Atlantic herring VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr of the following day. Reports are

required even if herring caught that day has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) The owner or operator of any vessel issued a limited access herring permit must submit an Atlantic herring catch report via VMS each day, regardless of how much herring is caught (including days when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) Atlantic herring VMS reports are not required from Atlantic herring carrier vessels.

(C) *Reporting requirements for vessels transferring herring at sea.* The owner or operator of a vessel issued a limited access permit to fish for herring that transfers herring at sea must comply with these requirements in addition to those specified at § 648.13(f).

(1) A vessel that transfers herring at sea to a vessel that receives it for personal use as bait must report all transfers on the Fishing Vessel Trip Report.

(2) A vessel that transfers herring at sea to an authorized carrier vessel must report all catch daily via VMS and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

(3) A vessel that transfers herring at sea to an at-sea processor must report all catch daily via VMS and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the at-sea processing vessel is defined as a trip for the purposes of the reporting requirements and possession allowances. For each trip, the vessel must submit a Fishing Vessel Trip Report and the at-sea processing vessel must submit the detailed dealer report specified in paragraph (a)(1) of this section.

(4) A transfer between two vessels issued limited access permits requires each vessel to submit a Fishing Vessel Trip Report, filled out as required by the LOA to transfer herring at sea, and a daily VMS catch report for the amount of herring each vessel catches.

(ii) [Reserved]

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(i) For any vessel not issued a NE multispecies or Atlantic herring permit, fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS

within 15 days after the end of the reporting month. If no fishing trip is made during a particular month for such a vessel, a report stating so must be submitted, as instructed by the Regional Administrator. For any vessel issued a NE multispecies or Atlantic herring permit, Fishing Vessel Trip Reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If no fishing trip is made during a reporting week for such a vessel, a report stating so must be submitted and received by NMFS by midnight of the first Tuesday

following the end of the reporting week, as instructed by the Regional Administrator. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month that the Fishing Vessel Trip Report must be submitted to NMFS, as appropriate. Any fishing activity during a particular reporting week (*i.e.*, starting a trip, landing, or offloading catch) will constitute fishing during that reporting week and will eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel

issued a NE multispecies or Atlantic herring permit begins a fishing trip on Wednesday, but returns to port and offloads its catch on the following Thursday (*i.e.*, after a trip lasting 8 days), the VTR for the fishing trip would need to be submitted by midnight Tuesday of the third week, but a negative report (*i.e.*, a “did not fish” report) would not be required for either week.

\* \* \* \* \*

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