

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

A. JUSTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

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

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

4. Describe efforts to identify duplication.

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

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

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

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

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

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

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

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

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

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

Neither payments nor gifts are given to the respondents.

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

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

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

There are no questions of sensitive nature.

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

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

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

Table 1. Burden Hours and Cost

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

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

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

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

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

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

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

This is a new program.

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

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

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

Not applicable.

18. Explain each exception to the certification statement.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.