



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 141002820-5113-01]

RIN 0648-XD536

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustments to 2015 Annual Catch Limits

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

ACTION: Temporary final rule; adjustment of specifications.

SUMMARY: This action adjusts 2015 annual catch limits for the Atlantic herring fishery to account for the underharvest of herring catch in 2013. The herring fishery caught less than its allocated catch in all herring management areas in 2013. As a result, this action adds unharvested 2013 catch to the 2015 herring catch limits, equal to ten percent of the allocated 2013 annual catch limit for each area. While the annual catch limit for each area increases, the total annual catch limit for the herring fishery will not increase under this action. This will ensure that the carryover pounds do not cause overfishing of the herring resource in 2015. This action is necessary to ensure that NMFS accounts for herring catch consistent with the requirements of the Atlantic Herring Fishery Management Plan.

DATES: Effective [insert date of publication in the Federal Register], through December 31, 2015.

ADDRESSES: Copies of supporting documents, including the 2013-2015

Specifications/Framework 2 to the Herring Fishery Management Plan (FMP), are available from the Sustainable Fisheries Division, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930, telephone (978) 281-9315, or online at:

<http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/atlherring/index.html>

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978-281-9233, fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Atlantic herring harvest in the United States is managed under the Atlantic Herring Fishery Management Plan (Herring FMP) developed by the New England Fishery Management Council (Council). The Herring FMP divides the stock-wide herring ACL among three management areas, one of which has two sub-areas. It divides Area 1 (located in the Gulf of Maine (GOM)) 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 (GB). The Herring FMP considers the herring stock complex to be a single stock, but there are inshore (GOM) and offshore (GB) stock components. The GOM and GB stock components segregate during spawning and mix during feeding and migration. Each management area has its own sub-ACL to allow greater control of the fishing mortality on each stock component.

NMFS issued a final rule that implemented Amendment 4 to the Herring FMP (76 FR 11373, March 2, 2011) to address ACL and accountability measure (AM) requirements. As a

way to account for ACL overages in the herring fishery, Amendment 4 established an AM that provided for overage deductions in the year immediately following the catch overage determination. If the catch of herring exceeds any ACL or sub-ACL, NMFS subsequently deducts the overage from the corresponding ACL/sub-ACL in the year following the catch overage determination. Amendment 4 also specified that NMFS will announce overage deductions in the Federal Register prior to the start of the fishing year, if possible.

We also published a final rule implementing Framework 2 to the Herring FMP and the 2013-15 specifications for the herring fishery on October 4, 2013 (78 FR 61828). Among other measures, Framework 2 allows for the carryover of unharvested catch in the year immediately following the catch determination. Up to 10 percent of each sub-ACL may be carried over, provided the stock-wide catch did not exceed the stock-wide ACL. The carryover provision allows a sub-ACL increase for a management area, but it does not allow a corresponding increase to the stock-wide ACL.

For fishing year 2015, the catch limits for the herring fishery, without any adjustments for catch overages or underages, are specified in Table 1. Research set-aside equal to 3 percent of each sub-ACL has been awarded to one research project. The 2015 Adjusted ACL in Table 1 is the catch, excluding carryover, that will be available to the commercial herring fishery in 2015 after removing research set-aside allocation from the 2015 sub-ACLs.

**Table 1. Herring sub-ACLs for 2015 (mt)**

	<b>2015 ACL</b>	<b>Research Set Aside (3 percent of Sub-ACL)</b>	<b>2015 Adjusted ACL</b>
<b>Area 1A</b>	31,200	936	30,264
<b>Area 1B</b>	4,600	138	4,462
<b>Area 2</b>	30,000	900	29,100

<b>Area 3</b>	42,000	1260	40,740
<b>Stock-wide</b>	107,800	3,234 (total of all sub-ACL set-asides)	104,566

#### Provisions Implemented through this Final Rule

After completing the 2013 catch determination in October 2014, NMFS determined that the herring fishery caught less than its allocated catch in all herring management areas in 2013. As a result, this action adds unharvested 2013 catch to the 2015 herring catch limits, equal to the amount of the underage (up to ten percent of the allocated 2013 sub-annual catch limit) for each area.

In 2013, the herring fleet underharvested the stockwide ACL and each of the management areas' sub-ACLs. Table 2 provides the harvest details for 2013 and adjustments for 2015.

**Table 2. Herring ACLs, Catch, and Carryover (mt)**

	<b>2013 ACL</b>	<b>2013 Catch</b>	<b>Underage</b>	<b>Carryover (max 10 Percent of sub-ACL)*</b>	<b>2015 Adjusted ACL (from Table 1)</b>	<b>2015 ACLs Adjusted for Carryover</b>
Area 1A	29,775	29,454	321	321	30,264	30,585
Area 1B	4,600	2,459	2,141	460	4,462	4,922
Area 2	30,000	26,562	3,438	3,000	29,100	32,100
Area 3	42,000	37,290	4,170	4,170	40,740	44,910
Stock-wide	106,375	95,764	10,611	NA	104,566	104,566**

\* Carryover is based on the initial sub-ACLs: Area 1A, 31,200 mt; Area 1B, 4,600 mt; Area 2, 30,000 mt; and Area 3, 42,000 mt (see Table 1).

\*\* The sum of the 2015 adjusted sub-ACLs does not equal the overall ACL of 104,566 (as adjusted for RSA) because the overall ACL cannot be increased by carryover, as noted above.

NMFS calculated the amount of herring landings in 2013 based on dealer reports (Federal and state) of herring purchases supplemented by vessel trip reports (VTRs) (Federal and State of Maine) of herring landings. We compared dealer reports to VTRs for all trips that landed herring in 2013. Because VTRs are generally a hail weight or estimate of landings, with an assumed 10-percent margin of error, dealer reports are a more accurate source of landings data. However, if the amount of herring reported via VTR exceeded the amount of herring reported by the dealer by 10 percent or more, we assumed that the dealer report for that trip was in error. We used the higher amount of herring reported via VTR to determine the amount of herring landed on that trip to improve the likelihood of not exceeding ACLs. We checked the herring landings in the VTR database for accuracy against the scanned image of the paper VTRs submitted by the owner/operator of the vessel. NMFS also verified VTR landings by comparing reported landings to harvesting potential and applicable possession limits for each vessel.

We assigned herring landings reported on the VTRs to herring management areas using latitude and longitude coordinates. We also manually corrected VTRs with missing or invalid latitude/longitude coordinates using the statistical area reported on the VTR. If the fisherman did not report statistical area on the VTR, then we used a combination of recent fishing activity and a review of the scanned images of the original VTR to assign landings to herring management areas. Finally, we prorated dealer reports without corresponding VTRs to herring management area using the proportion of total herring landings stratified by week, gear type, and management area.

As we were reviewing the 2013 herring data and comparing individual VTRs with individual dealer reports, we encountered data errors resulting from misreporting. These errors

were resolved prior to calculating the final 2013 herring data. Common dealer reporting issues were: Missing dealer reports; incorrect or missing VTR serial numbers; incorrect or missing vessel permit numbers; and incorrect dates. VTRs had similar errors due to misreporting. Common VTR reporting issues were: Missing VTRs; missing or incorrect dealer information; incorrect amounts of landed herring; incorrect dates; and missing or incorrect statistical area. The quality of herring landings data is affected by unresolved data errors; therefore, we strongly encourage vessel owner/operators and dealers to double-check reports for accuracy and to ensure that reports are submitted on a timely basis. We will closely monitor reporting compliance in fishing year 2015 and will increase our compliance efforts, including referrals to the Office of Law Enforcement where appropriate.

NMFS determined discards of herring in 2013 by extrapolating Northeast Fisheries Observer Program (observer) data to the entire herring fishery. We divided the amount of observed herring discards (“Atlantic herring” and “herring unidentified”) by the amount of observed fish landed. Then we multiplied that discard ratio by the amount of all fish landed for each trip to calculate total amount of herring discards in 2013. We determined the amount of discards for each management area and gear type, and calculated the total herring catch for 2013 by adding the amount of herring landings to the amount of herring discarded. The Council’s Herring Plan Development Team reviewed and approved this methodology used by NMFS to calculate the amount of landed herring and the amount of discarded herring.

#### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the NMFS Assistant Administrator has determined that this final rule

is consistent with the Atlantic Herring FMP, other provisions of the MSA, and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action. This rule increases the 2015 herring management area catch limits by the amounts that were unharvested in 2013 (up to 10 percent). It thereby relieves a restriction. Further, notice and comment are contrary to the public interest because a delay would potentially impair achievement of the management plan's objectives of preventing overfishing and achieving optimum yield due to vessels' ability to harvest available catch allocations. Further, this is a nondiscretionary action required by provisions of Amendment 4 and Framework 2, which were previously subject to public comment. This action simply effectuates this mandatory calculation. The proposed and final rules for Framework 2 and Amendment 4 explained the need and likelihood for adjustments to the sub-ACLs based on final catch numbers. Framework 2, specifically, provided prior notice of the need to distribute carryover catch. These actions provided a full opportunity for the public to comment on the substance and process of this action.

Allowing for prior notice and public comment on this adjustment is impracticable because the Atlantic herring fishing year already began on January 1, 2015. It is important for the herring fleet to have as much advance notice as possible to aid in developing their business plans for the remainder of the fishing year (January 1, 2015 through December 31, 2015). The opportunity to plan is expected to facilitate the fleet's harvesting of available catch, thereby achieving optimum yield. Two areas are currently closed and will open on May 1 and June 1, respectively. Management Area 3 is already open and subject to a lower catch limit until this

action is implemented. Putting in place the correct sub-ACLs as soon as possible will provide the fleet with this opportunity to develop their business plans in sufficient time to facilitate their harvest of available catch.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and make the rule effective upon publication in the Federal Register. The 2015 herring fishing year began on January 1, 2015. To prevent confusion and finalize the structure of the 2015 fishing year, it is necessary to have the proper sub-ACLs in place as soon as possible. In addition, having the updated sub-ACLs in place will allow the herring fleet to develop accurate business plan for the remainder of fishing year. Accordingly, any delay in the rule's effectiveness would be contrary to the conservation objectives of the MSA and the Herring FMP.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.



Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 9, 2015.

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Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2015-02941 Filed 02/11/2015 at 8:45 am; Publication Date: 02/12/2015]