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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 160906823-6999-01]**

**RIN 0648-XE876**

**Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustments to 2017 Management Area Annual Catch Limits**

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

**ACTION:** Temporary final rule; adjustment of specifications.

**SUMMARY:** In accordance with the regulations implementing the Atlantic Herring Fishery Management Plan, this action adjusts the 2017 catch limits in the four herring management areas (Areas 1A, 1B, 2, and 3) to account for underages in those areas during 2015. In order to ensure that the carryover of underages do not cause overfishing of the herring resource, management area-specific carryover does not increase the stock-wide annual catch limit. 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, 2017.

**ADDRESSES:** Copies of supporting documents, including the 2013-2015 Specifications/Framework 2 and the 2016-2017 Specifications to the Atlantic 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:** Shannah Jaburek, Fishery Management Specialist, 978-282-8456, fax 978-281-9135.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Atlantic herring harvest in the United States is managed under the FMP developed by the New England Fishery Management Council (Council). The FMP divides the stock-wide herring annual catch limit (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 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 FMP (76 FR 11373, March 2, 2011) to address ACL and accountability measure (AM) requirements. As a way to account for ACL/sub-ACL overages in the herring fishery, Amendment 4 established an AM that requires NMFS to deduct any ACL/sub-ACL overages 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.

NMFS also published a final rule implementing Framework 2 to the FMP and the 2013-2015 specifications for the herring fishery on October 4, 2013 (78 FR 61828). Among other measures, Framework 2 allowed for the carryover of unharvested allocations (underages) in the year immediately following the catch determination. Up to 10 percent of each sub-ACL may be carried over and added to the following year’s sub-ACL, provided total 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.

NMFS published the 2016-2018 specifications for the herring fishery on November 1, 2016 (81 FR 75731). Table 1 outlines the 2017 herring sub-ACLs, minus deductions for research set-aside catch (RSA), that will be effective on January 1, 2017. RSA equal to 3 percent of each sub-ACL has been awarded to two research projects.

**Table 1. 2017 Herring Sub-ACLs (mt)**

	2017 sub-ACLs	Research Set-Aside (3 percent of sub-ACLs)	2017 sub-ACLs (minus RSA)
Area 1A	30,300	909	29,391
Area 1B	4,500	135	4,365
Area 2	29,100	873	28,227
Area 3	40,900	1,227	39,673
Stock-wide	104,800	3,144	101,656

**Provisions Implemented Through This Final Rule**

NMFS completed the 2015 catch determination in December 2016, and determined that the herring fishery caught less than its allocated catch in 2015 in all four herring management areas (Areas 1A, 1B, 2, and 3). As a result, this action carries over unharvested 2015 catch to the 2017 herring sub-ACL in all four areas. This carryover equals to the amount of each area's underages (or up to ten percent of the allocated 2015 sub-ACL, whichever is less) for Areas 1A, 1B, 2, and 3. Table 2 provides catch details for 2015 and corresponding adjustments for 2017 sub-ACLs.

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

	<b>Adjusted 2015 sub-ACLs</b>	<b>2015 Catch</b>	<b>2015 Underages</b>	<b>Carryover* (up to 10 percent)</b>	<b>2017 sub-ACLs</b>	<b>Adjusted 2017 sub-ACLs</b>
Area 1A	30,585	28,861	1,724	1,724	29,391	31,115
Area 1B	4,922	2,819	2,103	460	4,365	4,825
Area 2	32,100	15,114	16,986	3,000	28,227	31,227
Area 3	44,910	33,217	11,693	4,200	39,673	43,873
Stock-wide	104,566	80,011	24,555	NA	101,656	101,656**

\* Maximum carryover, where applicable, is based on 10 percent of initial 2015 sub-ACLs: Area 1A, 31,200 mt; Area 1B, 4,600 mt; Area 2, 30,000 mt; and Area 3, 42,000 mt.

\*\* The 2017 stock-wide ACL cannot be increased by carryover.

NMFS calculated the amount of herring landings in 2015 based on dealer reports (Federal and state) of herring purchases, supplemented by vessel trip reports (VTRs) and vessel monitoring system (VMS) reports (Federal and State of Maine) of herring landings. NMFS generally uses dealer reports to estimate herring landings. However, if the amount of herring reported via VTR exceeded the amount of herring reported by the dealer by 10 percent or more, NMFS assumes the dealer report for that trip was in error and uses the VTR report instead. NMFS assigns herring landings to individual herring management areas using VMS reports or using latitude and longitude coordinates from VTR reports when a VMS report is not available.

NMFS uses recent fishing activity to assign landings to a management area if dealer reports do not have a corresponding VTR or VMS catch report.

NMFS estimates herring discards by extrapolating discards from herring trips observed by the Northeast Fisheries Observer Program to all herring trips (observed and unobserved) according to gear and herring management area. Because RSA is removed from management area sub-ACLs at the beginning of the fishery year, NMFS tracks RSA catch but does not count it towards the herring sub-ACLs.

### **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 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. Notice and comment are impracticable and 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 by impairing a vessel's ability to harvest available catch allocations. Allowing for prior notice and public comment on this adjustment is also impracticable because regulations require notification of adjustments, if possible, before the herring fishing year begins on January 1, 2017. Further, this is a nondiscretionary action required by provisions of Amendment 4 and Framework 2, which were previously subject to public notice and comment. The adjustments required by these regulations are formulaic. This action simply effectuates these mandatory calculations. 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 amounts. 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.

For the same reasons as noted above, 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**. To prevent confusion and potential overharvests, it will be in the best interest of the fleet and the herring resource to set the adjusted sub-ACLs as soon as possible. Two areas are currently closed due to seasonal closures and will open on either May 1 (*i.e.*, Management Areas 1B) or June 1 (*i.e.*, Management Area 1A). Management Areas 2 and 3 are already open and subject to a lower catch limit until NMFS implements this action. The adjustments in this notice increase the amount of catch available to fishermen. Putting in place the adjusted sub-ACLs as soon as possible will provide the fleet with an opportunity to develop their business plans in sufficient time to facilitate their full harvest of available catch in the open areas.

This action is required by 50 CFR part 648 subpart K and is exempt from review under 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: December 22, 2016.

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