



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 180703607-8744-01]**

**RIN 0648-XG340**

**Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to 2018 Atlantic Herring Management Area Sub-Annual Catch Limits**

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule reduces the sub-annual catch limits for the four Atlantic Herring Management Areas (including Area 1A, 1B, 2, and 3). This action is necessary to address Atlantic herring population decline due to poor recruitment into the population. The reduction is intended to mitigate herring population declines and lead to more available herring biomass and higher catch limits in 2019 and beyond.

**DATES:** This action is effective [*insert date of publication in the FEDERAL REGISTER*] through December 31, 2018. Comments must be received on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2018-0094, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0094*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Michael Pentony, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Atlantic Herring 2018 ACL Adjustments.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Daniel Luers, Fishery Management Specialist, 978-282-8457.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) for herring appear at 50 CFR part 648, subpart K. We implemented 2016-2018 herring specifications (November 1, 2016; 81 FR 75731) in November 2016 as recommended by the Council. The specifications included overfishing limits (OFLs) of 138,000 mt, 117,000 mt, and

111,000 mt for 2016, 2017, and 2018, respectively. The resulting acceptable biological catch (ABC) based on the New England Fishery Management Council's ABC control rule was 111,000 mt in 2018, an amount equal to the OFL and that had no greater than a 50-percent probability that overfishing would occur. This ABC was consistent with the Council Scientific and Statistical Committee's advice. The current ACL for the herring fishery is 100,969 mt, and the sub-ACLs for the four management areas are: Area 1A-31,789 mt; Area 1B-3,552 mt; Area 2-31,137 mt; and Area 3-43,763 mt.

In June of 2018, a new Northeast Regional Stock Assessment Workshop (SAW) and review by the Stock Assessment Review Committee (SARC) for Atlantic herring was completed. The assessment concluded that although Atlantic herring was not overfished and overfishing was not occurring in 2017, the stock is declining due to poor recruitment of herring into the population. The stock assessment estimated that recruitment has been at historic lows during the most recent 5 years (2013-2017). The final assessment summary report is available on the Northeast Fisheries Science Center website ([www.nefsc.noaa.gov/publications/](http://www.nefsc.noaa.gov/publications/)).

The assessment projects that poor recruitment of Atlantic herring will likely result in a substantial decline in biomass, but that the biomass should increase after reaching a low in 2019 if recruitment returns to historic average levels. The SAW/SARC estimated that if the entire 2018 acceptable biological catch (ABC) (111,000 mt) is harvested, the 2019 overfishing limit (OFL) would need to be reduced by nearly 90 percent, to 13,700 mt. The SAW/SARC also estimated that if the 2018 catch is half of the ABC (55,000 mt), the OFL in 2019 would need to be 28,900 mt.

The herring specification regulations provide us with the authority to make in-season adjustments to the specifications and sub-ACLs to achieve conservation and management

objectives after we have consulted with the Council. Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions. After receiving preliminary SAW/SARC results, we consulted with the Council on potential sub-ACL adjustments during the Council's June 2018 meeting.

At its June 2018 meeting, based on the SAW/SARC preliminary stock assessment projections, the Council recommended capping the sub-ACLs for herring Management Areas 1A, 1B, and 3 at 2017 catch levels, and to set the Area 2 sub-ACL at 8,200 mt. The Council recommended a slightly different approach for Area 2 because the 2017 harvest level had been surpassed, and they wanted to allow for a fall fishery for the bottom trawl fleet, who have consistently relied upon fall herring catch in that area. The Council recommendation was intended to provide some conservation benefits for herring in 2018 and thereby mitigate the impacts of estimated 2019 reductions on the herring industry. After the June Council meeting, additional catch projections completed at the SARC meeting indicated the Council's recommended level of catch has a 69-percent chance of resulting in overfishing in 2018. The Northeast Fisheries Science Center subsequently provided us with an additional projection based on a 50-percent probability of overfishing. This projection resulted in catch equal to 49,900 mt.

To lessen the risk of overfishing occurring in 2018, we are reducing the 2018 total allowable catch to 49,900 mt, which is 3,775 mt less than the Council's recommended 53,655 mt. This action only reduces the sub-ACLs for the four herring management areas and does not alter any other limits in the 2016-2018 specifications. We chose to reduce the Council's recommended catch so that the new area sub-ACLs provide at least a 50-percent probability of preventing overfishing in 2018. We set levels based on the newly projected OFL for 2018 out of precaution to prevent overfishing while allowing the fishery to achieve optimum yield. As

explained below, projections based on current catch rates show a low probability that the fishery will catch these amounts. However, Atlantic herring catch is highly unpredictable, and catch totals could quickly surpass current sub-ACLs in spite of our projections. The fishery still has an opportunity to achieve these limits and mitigate the economic hardship from expected reductions in 2019-2021. This 2018 reduction is projected to increase the OFL to 30,700 mt in 2019, 38,900 mt in 2020, and 59,800 mt in 2021.

**Table 1. Adjustment of Specifications for 2018 Herring sub-ACLs**

	<b>2018 Original (From Specifications)</b>	<b>2018 Council Recommendation</b>	<b>NMFS Adjusted Final</b>
<b>Area 1A Sub-ACL</b>	31,789*	28,682*	27,743
<b>Area 1B Sub-ACL</b>	3,552	2,639	2,639
<b>Area 2 Sub-ACL</b>	31,137	8,200	8,200
<b>Area 3 Sub-ACL</b>	43,763	14,134	11,318
<b>Total of Sub-ACLs</b>	110,536**	53,655	49,900
* If New Brunswick weir fishery catch through October 1 is less than 4,000 mt, then 1,000 mt will be added to the ACL and Area 1A Sub-ACL.			
**Total of the sum of the area sub-ACLs. Note that this is different from the stockwide ACL (100,969 mt) which is not increased by carrying over underages.			

We are relying on the SAW/SARC’s report and the Northeast Fisheries Science Center’s additional projection to set reduced 2018 management area sub-ACLs for the fishery. The SAW/SARC used the most recent and best available data to make projections for future biomass. Although the estimates of future biomass are projections, they represent the best available scientific data for NMFS to act upon to mitigate both further biomass reductions and adverse economic impacts to the herring fishery. Based on this information, we are setting sub-ACLs consistent with projection probabilities that were used to set OFLs for the 2016-2018 specifications.

The herring specification regulations provide that the OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is usually the fishing rate supporting maximum sustainable yield ( $F_{MSY}$ ). Catch that exceeds this amount would result in overfishing. The ABC may be set equal to the OFL, or it may be set lower than the OFL to account for scientific uncertainty. The ACL may be equal to or lower than the ABC after considering management uncertainty.

The 2016-2018 specifications included an ABC that was equal to the OFL for 2018 and was based on a projection showing there was no greater than a 50 percent probability that overfishing would occur at that level. Further, the SSC determined there was a near zero chance the stock would become overfished at that level based on the scientific information available to it at the time. The sub-ACLs were slightly reduced from the ABC to account for management uncertainty in the New Brunswick weir fishery.

We do not anticipate that the fishery will catch the reduced limits for each of the four management areas. The herring fishery caught 49,500 mt in 2017, and catch rates to date in 2018 are substantially below those for 2017. The largest catch limit reduction in 2018 would occur in Area 3, where we would reduce the sub-ACL by over 30,000 mt. However, catch in Area 3 has dropped sharply in the past 3 years. The fishery caught 33.3k mt in 2015, 18.8k mt in 2016, and 14.1k mt in 2017. The 2018 catch through July 20 is only about 1.2k mt. This is below the catch level through July 20 for 2017, which was the previous lowest catch level for that time series. Similarly, the fishery has failed to catch the Area 1B sub-ACL in two of the previous three years, and the current catch level is less than the lowest of those years (2015), suggesting that it may be difficult for the fishery to catch this area's sub-ACL. Additionally, the

vast majority of Area 2 is closed to the midwater trawl fishery due to a river herring/shad catch cap closure, which greatly reduces the likelihood that any more than a small portion of the remaining sub-ACL would be harvested. Finally, even if catch rates increase this year and catch amounts approach the new catch limits set in this action, we are required to close the directed fisheries once 92 percent of the sub-ACL is projected to be caught. This would allow us to constrain catch below the limit that is expected to prevent overfishing.

### **Classification**

The NMFS Assistant Administrator has determined that this interim final rule is consistent with the Atlantic Herring FMP, national standards and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

This interim final rule is exempt from the procedures of Executive Order (E.O.) 12866 because this action contains no implementing regulations.

This interim final rule does not introduce any new reporting, recordkeeping, or other compliance requirements.

This interim final rule does not contain policies with Federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries (AA) finds it is impracticable and contrary to the public interest to provide for prior notice and an opportunity for public comment. Additionally, the AA finds there is good cause under 5 U.S.C. 553(d)(1) and (3) to waive the 30-day delay in effectiveness so that the purpose of this rule is not undermined. This action reduces the herring catch limits to reduce the risk of overfishing in 2018 with a goal of increasing herring biomass and future fishery opportunity. This rule must be in effect as soon as practicable to realize these intended benefits.

Before taking this action, we consulted with the New England Council at its June 2018 meeting, at which the Council recommended that we reduce the 2018 sub-ACLs for each herring management area. This consultation was scheduled after preliminary results from the 2018 stock assessment became available indicating that herring biomass is likely to decline substantially in 2019. At this meeting, the Council discussed the preliminary stock assessment results, measures likely necessary in 2019, and took public comment on its recommendation to reduce the 2018 sub-ACLs. As a result of these discussions and input from the public, including the herring industry, the Council recommended reducing 2018 catch to mitigate the economic harm to the herring industry that is anticipated from necessary reductions in 2019.

A delay in implementing the new catch limits will increase the likelihood that 2018 catch will exceed these new limits. The 2018 catch reductions in this action are based on the new benchmark assessment, which was just recently completed in June 2018. Based on this new scientific information, the reductions in this action would result in a 50-percent probability of preventing overfishing in 2018. Exceeding the new harvest limits would result in a lower biomass and negative economic impacts to the herring industry due to a lower allowable catch in 2019 and beyond. Because herring is a critical bait source for the lobster fishery, these negative economic impacts are also expected to extend to the lobster fishery due to a reduction in bait supply.

Additionally, we are required to implement a 2,000-lb possession limit for each management area through the end of the current fishing year once 92 percent of the area sub-ACL is projected to be caught. We are also required to implement the 2,000-lb possession limit for the whole fishery (all areas) when 95-percent of the total herring ACL is harvested. If a

delay in implementing this action results in catch approaching, or exceeding, the new 2018 catch limits, the closure of the directed fishery is more likely. An inseason closure of the directed fishery would be counter to the goals and objectives of this action, which is intended to reduce 2018 catch, but also continue to provide fishing opportunities for the remainder of the 2018 fishing year.

Input from the public at the June 2018 Council meeting was nearly all supportive of reducing 2018 catch limits, and the fishing industry and the public generally are expecting new limits to be set as soon as practicable. The lack of catch to date in 2018 has tempered the industry's expectations, and they no longer anticipate reaching even the reduced ACL. Herring industry members were concerned about the economic impact to the fishery in 2019 if we do not ensure reduced catch this year. Representatives from fishing advocacy and environmental groups also supported reducing 2018 catch limits, suggesting it could improve the projected stock estimates and expedite growth of the stock to previous high levels. The Council recommended we implement this action with the goal of conserving herring biomass and allowing for higher fishery catch limits in the 2019-2021 specifications. We expect the 2018 sub-ACL reductions to increase the estimated herring biomass in 2019 and provide for more catch for the fishery.

This interim final rule is exempt from the procedures of the Regulatory Flexibility Act

because the rule is issued without opportunity for prior notice and opportunity for public comment.

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

Dated: August 17, 2018.

---

Chris Oliver,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

[FR Doc. 2018-18128 Filed: 8/21/2018 8:45 am; Publication Date: 8/22/2018]