



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 230316-0077]

RTID 0648-XD421

### Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to the 2023 Specifications

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

**ACTION:** Temporary rule; inseason adjustment.

**SUMMARY:** NMFS is adjusting the 2023 Atlantic herring specifications for the remainder of 2023. Herring regulations specify that NMFS will subtract 1,000 metric tons (mt) from the management uncertainty buffer and reallocate it to the herring annual catch limit and Area 1A sub-annual catch limit if NMFS determines that the New Brunswick weir fishery landed less than 2,722 mt of herring through October 1.

**DATES:** Effective [*INSERT DATE OF FILING WITH THE FEDERAL REGISTER*] through December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Maria Fenton, Fishery Management Specialist, 978-281-9196.

**SUPPLEMENTARY INFORMATION:** NMFS published final 2023 specifications for the Atlantic herring fishery on March 23, 2023 (88 FR 17397), establishing the 2023 annual catch limit (ACL) and management area sub-ACLs. The regulations at 50 CFR 648.201(h) specify that NMFS will subtract 1,000 mt from the management uncertainty buffer and reallocate it to the herring ACL and Area 1A sub-ACL if NMFS determines that the New Brunswick weir fishery landed less than 2,722 mt of herring through

October 1. When such an adjustment is made, the regulations at § 648.201(h) state that NMFS will notify the New England Fishery Management Council and publish the adjustment in the **Federal Register**.

Data from Canada’s Department of Fisheries and Oceans indicate that the New Brunswick weir fishery landed 525 mt of herring through October 1, 2023. Based on this catch information and NMFS’ analysis of recent catch performance data, the best available information indicates that the New Brunswick weir fishery landed less than 2,722 mt of herring through October 1, 2023, and NMFS is implementing an inseason adjustment to the 2023 herring fishery specifications. Effective upon notice filing in the **Federal Register**, the management uncertainty buffer will decrease from 4,220 mt to 3,220 mt, the ACL will increase from 12,287 mt to 13,287 mt, and the Area 1A sub-ACL will increase from 3,345 mt to 4,345 mt for the remainder of 2023 (Table 1).

**Table 1 -- Atlantic Herring Specifications for 2023**

	Current Specifications (mt)	Adjusted Specifications (mt)
Overfishing Limit	29,138	29,138
Acceptable Biological Catch	16,649	16,649
Management Uncertainty	4,220	3,220
Optimum Yield/ACL	12,287	13,287
Domestic Annual Harvest	12,429	13,429
Border Transfer	0	0
Domestic Annual Processing	12,429	13,429
U.S. At-Sea Processing	0	0
Area 1A Sub-ACL (28.9 percent)	3,345	4,345
Area 1B Sub-ACL (4.3 percent)	555	555
Area 2 Sub-ACL (27.8 percent)	3,589	3,589
Area 3 Sub-ACL (39 percent)	4,806	4,806
Fixed Gear Set-Aside	30	30
Research Set-Aside (RSA)	0%	0%

Once this temporary rule takes effect, NMFS will use the adjusted specifications for the remainder of 2023 when evaluating whether NMFS needs to implement a possession limit adjustment for Area 1A or for the whole fishery. The regulations at §

648.201(a)(1)(i)(A) specify that NMFS shall implement a 2,000- pound (lb) (907.2-kilogram (kg)) possession limit for herring for Area 1A beginning on the date that catch is projected to reach 92 percent of the sub-ACL for that area. The regulations at § 648.201(a)(1)(ii) specify that NMFS shall close the herring fishery and implement a 2,000-lb (907.2-kg) possession limit for herring beginning on the date that catch is projected to reach 95 percent of the ACL.

### **Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is in accordance with 50 CFR part 648, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this inseason adjustment because it would be unnecessary and contrary to the public interest. This inseason adjustment reallocates a portion of the management uncertainty buffer to the herring ACL and Area 1A sub-ACL for the remainder of the calendar year pursuant to a previously published regulation that provides notice of this annual potential adjustment and does not include discretionary implementation. Further, this reallocation process was the subject of prior notice and comment rulemaking. The inseason adjustment is routine and formulaic, specified in the regulations, and is expected by industry. The potential to reallocate the management uncertainty buffer was also outlined in the 2023 herring specifications that were published March 23, 2023 (88 FR 17397), which were developed through public notice and comment. Further, this inseason adjustment provides additional economic opportunity for the herring fleet. If implementation of this action is delayed to solicit public comment, the objective of the fishery management plan to achieve optimum yield in the fishery could be compromised. Deteriorating weather conditions during the latter part of the fishing year may reduce

fishing effort, and could also prevent the ACL from being fully harvested. This would result in a negative economic impact on vessels permitted to fish in this fishery. Based on these considerations, NMFS further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30-day delayed effectiveness period.

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

Dated: October 11, 2023.

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National Marine Fisheries Service.

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