



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240228-0062]

RTID 0648-XD699

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustments to 2024 Specifications

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 2024 harvest specifications for the herring fishery. Specifically, it adjusts catch limits in herring management areas 1A, 1B, and 2 to account for catch overages and an underage in those areas during 2022. This action is necessary to help prevent overfishing and support the harvest of optimum yield consistent with the requirements of the Fishery Management Plan.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Copies of supporting documents, including the 2023-2025 Atlantic Herring Specifications, 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: <https://www.nefmc.org/management-plans/herring> and <https://www.fisheries.noaa.gov/species/atlantic-herring#management>.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978-281-9272.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic herring harvest in the United States is managed under the Atlantic Herring Fishery Management Plan (FMP) developed by the New England Fishery Management Council and approved by NMFS. The FMP divides the 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 published 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 ACL and corresponding sub-ACL of 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 published Framework Adjustment 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 catch (*i.e.*, underages) in the year following a fishing year's catch accounting determination. Provided that annual total catch does not exceed the ACL, up to 10 percent of each sub-ACL may be carried over and added to the following year's sub-ACL. The carryover provision allows

a sub-ACL increase for a management area, but it does not allow a corresponding increase to the ACL.

NMFS published Framework Adjustment 9 to the FMP on July 19, 2022 (87 FR 42962). Among other measures, Framework 9 revised the catch overage provision so that only overages greater than 10 percent of a sub-ACL must be deducted from the ACL and the corresponding sub-ACL in the year following the total catch accounting determination. Additionally, provided total catch does not exceed the ACL, overage deductions equal the overage amount above the 10-percent overage deduction threshold. For example, if the ACL is not exceeded, a 13-percent sub-ACL overage would require a 3-percent ACL and sub-ACL deduction.

NMFS published the 2023-2025 specification for the herring fishery on March 23, 2023 (88 FR 17397) to initially set sub-ACLs for each of the four management areas in the herring fishery.

Provisions Implemented Through This Final Rule

NMFS recently completed the catch accounting for 2022 and determined there were catch overages in Areas 1A, 1B, and 3 and a catch underage in Area 2. To account for the overages, this action implements allowable deductions for catch overages in Areas 1A and 1B from the Area 1A and 1B 2024 sub-ACLs and from the ACL. Catch in 2022 exceeded the 10-percent overage deduction threshold for Area 1A (12 percent); therefore, this action deducts 2 percent (42 metric tons (mt)) of the 2022 Area 1A overage from the 2024 Area 1A sub-ACL and ACL. Because the 2022 sub-ACL for Area 1B was zero, the full amount of the 2022 overage (6 mt) is deducted from the 2024 Area 1B sub-ACL and ACL. The overage in Area 3 (1 mt) is less than the overage deduction threshold (greater than 10 percent of the sub-ACL or 182 mt); therefore, this action makes no deductions to the 2024 Area 3 sub-ACL. To account for the underage, this action carries over unharvested 2022 Area 2 catch to the 2024 Area 2 sub-ACL but does not increase the

ACL. Allowable carryover for Area 2 is up to 10 percent of 2022 sub-ACL (114 mt); therefore, this action carries over 114 mt of the 1,221 mt unharvested Area 2 catch to the 2024 Area 2 sub-ACL. Table 1 provides catch details for 2022 and the corresponding adjustments for the 2024 sub-ACLs. The ACL is reduced by overage deductions, but not increased by carryover; therefore, this action reduces the 2024 ACL by 48 mt for overages in Areas 1A and 1B that occurred in 2022.

Table 1. Herring Catch Limits, Catch, Overage Deductions, and Carryover (all values are in metric tons (mt))

	Final 2022 sub-ACLs	2022 Catch	2022 Overages (+) Underages (-)	Allowable Deductions*	Allowable Carryover*	Initial 2024 sub-ACLs	Adjusted 2024 sub-ACLs
Area 1A	2,075	2,325	+ 250	42	NA	5,546	5,504
Area 1B	0	6	+ 6	6	NA	825	819
Area 2	1,300	79	- 1,221	NA	114	5,335	5,449
Area 3	1,824	1,825	+ 1	0	NA	7,484	7,484
ACL***	4,813	4,234	NA	48	NA	19,189	19,141

* Allowable deductions are overage amounts exceeding 10 percent of the final 2022 sub-ACLs.

** Allowable carryover is limited to 10 percent of the initial 2022 sub-ACL. The initial sub-ACL for Area 2 was 1,139 mt before it was adjusted in-season to 1,300 mt.

*** The 2024 ACL is reduced by overage deductions from Areas 1A and 1B, but it is not increased by carryover.

NMFS calculated the amount of herring landings in 2022 based on dealer reports (Federal and state) of herring purchases, supplemented by vessel trip reports (VTR) and vessel monitoring system (VMS) reports (Federal and states of Maine and Massachusetts) of herring landings. NMFS generally uses dealer reports to estimate herring landings; however, if the amount of herring reported via VTR exceeds 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 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 research set-aside (RSA) is removed from management area sub-ACLs at the beginning of the fishery year, when appropriate, NMFS tracks RSA catch but does not count it towards the herring sub-ACLs. No RSA was specified for 2022 or is specified for 2024.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, 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, unnecessary, 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 by impairing a vessels' ability to harvest available catch allocations. Allowing for prior notice and public comment on this adjustment is also impracticable because the adjustments need to be implemented as close to the January 1 start of the fishing year as possible. Further, prior notice and public comment is also unnecessary because this is a nondiscretionary action required by provisions of Amendment 4 and Frameworks 2, 6, 8, and 9 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 Frameworks 2, 6, 9 and Amendment 4 explained the need and likelihood for adjustments to the sub-ACLs based on final catch and were subject to notice and opportunity to comment. Frameworks 2 and 8, 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 adjust the specifications as close to the start of the fishing year as possible. Management Areas 1B and 2 open on January 1 and Area 1A opens on June 1. The adjustments in this action reduce catch in Areas 1A and 1B and increase catch in Area 2. Putting in place the adjusted specifications as soon as possible will provide the fleet with an opportunity to develop their business plans in sufficient time to avoid an overharvest in Areas 1A and 1B and facilitate the harvest of additional catch in Area 2.

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: February 28, 2024.

Samuel D. Rauch III,

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National Marine Fisheries Service.