

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No.: 130919816–3953–01]

RIN 0648–BD70

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustments to 2014 Sub-Annual Catch Limits

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes to adjust 2014 sub-annual catch limits (ACLs) for the Atlantic herring (herring) fishery to account for catch overages and underharvest in 2012. Three of the four sub-ACLs are being decreased and one sub-ACL is being increased. This would result in an increase to the overall catch available to the herring fleet.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on December 9, 2013.

ADDRESSES: Copies of supporting documents, 2013–2015 Specifications/Framework 2 and Amendment 4 to the Herring Fishery Management Plan (FMP), are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. These documents are also accessible via the Internet at <http://www.nero.nmfs.gov>.

You may submit comments, identified by NOAA–NMFS–2013–0153, by any one 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-2013-0153, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Adjustment to 2014 Herring Catch Limits.”

- **Fax:** (978) 281–9135, Attn: Travis Ford.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. 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) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. 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 or Excel, WordPerfect, or Adobe PDF formats only.

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 Herring FMP developed by the New England Fishery Management Council (Council), and was approved and implemented by NMFS in 2000. 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.

We, NMFS, determined the amount of herring landings in 2012 based on dealer reports (Federal and state) of herring purchases, supplemented with 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 2012. 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. To improve the likelihood of not exceeding ACLs, in those instances we used the higher amount of herring reported via VTR to determine the amount of herring landed on that trip. 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 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. 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 2012 herring data and comparing individual VTRs with individual dealer reports, we solved data errors resulting from misreporting. 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. 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 determined discards of herring in 2012 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 2012. We determined the amount of discards for each management area and gear type, and calculated the total herring catch for

2012 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.

Amendment 4 to the Herring FMP final rule (76 FR 11373, March 2, 2011) revised the Herring FMP 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 will subsequently deduct 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 published a final rule for Framework 2 and the 2013–15 specifications 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. The management area sub-ACLs established for 2014 are: 31,200 mt for Area 1A, 4,600 mt for Area 1B, 30,000 mt for Area 2, and 42,000 mt for Area 3 (Table 1).

We completed the 2012 catch determination in August 2013, so we would apply the adjustments for any overharvests or carryover in 2012 to the 2014 sub-ACLs. In 2012, the herring

fleet underharvested the stockwide ACL of 90,683 mt by 122 mt. However, the fleet overharvested the sub-ACLs in herring management Areas 1B (overage of 1,584 mt); 2 (overage of 336 mt); and 3 (overage of 1,325 mt). After deducting each 2012 overage, in 2014, the sub-ACL for Area 1B would be 3,016 mt (4,600 mt reduced by 1,584 mt); the sub-ACL for Area 2 would be 29,664 mt (30,000 mt reduced by 336); and the sub-ACL for Area 3 would be 40,675 mt (42,000 mt reduced by 1,325 mt) (Table 1).

The herring fleet underharvested the sub-ACL from Area 1A by 3,366 mt (approximately 12 percent of the 2012 Area 1A sub-ACL of 27,668 mt). Since the fleet did not exceed the stock-wide ACL in 2012, the fleet would carryover up to 10 percent of the 2012 Area 1A sub-ACL to the 2014 Area 1A sub-ACL. After adding the carryover from the 2012 sub-ACL, 2014 Area 1A sub-ACL would be 33,967 mt (increased by 2,767 mt, equal to 10 percent of the 2012 Area 1A sub-ACL of 27,668 mt) (Table 1).

TABLE 1—HERRING MANAGEMENT AREA 2014 HERRING QUOTAS [mt]

Area	2014	2014 Adjustment
Area 1A	31,200	33,967
Area 1B	4,600	3,016
Area 2	30,000	29,664
Area 3	42,000	40,675

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 proposed rule is consistent with the Atlantic Herring FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The National Environmental Policy Act analyses to support this action were completed in Amendment 4 (76 FR 11373, March 2, 2011) and 2013–2015 Specifications/Framework 2 (78 FR 46897, August 2, 2013).

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted,

would not have a significant economic impact on a substantial number of small entities. The rationale for that certification is as follows:

Amendment 4 analyzed the effects of deducting ACL/sub-ACL overages from the subsequent corresponding ACL/sub-ACL. During a year when the fleet exceeds the ACL/sub-ACL, fishery participants may benefit economically from higher catch. In the subsequent year, when NMFS deducts the amount of the overage from that ACL/sub-ACL and the amount of harvest is lower, fishery participants may experience negative economic impacts. Deductions are the same magnitude as the overages. Therefore, if participants are active in the fishery during the overage year and the deduction year, the total economic impact on participants are expected to be neutral.

NMFS has now identified 70 entities that held at least one limited access herring permit (category A, B, or C) in 2012. Many of these entities were active in both finfish fishing and shellfish fishing industries. In order to make a determination of size, fishing entities are first classified as participants in

either the Finfish Fishing or Shellfish Fishing industry. If an entity derives more than 50 percent of its gross revenues from shellfish fishing, the \$5.0 million standard for total revenues is applied. If an entity derives more than 50 percent of its gross revenues from finfish fishing, the \$19.0 million standard for total revenues is applied. Based on the revised criteria, there are 7 large shellfish fishing entities to which the final rule would apply and 63 small entities to which the final rule would apply.

Of the 63 small entities, 39 reported no revenue from herring during 2012. For the 24 small entities that were active in the herring fishery, median gross revenues were approximately \$872,000 and median revenues from the herring fishery were approximately \$219,000. There is large variation in the importance of herring fishing for these small entities. Eight of these 24 active small entities derive less than 5 percent of their total fishing revenue from herring. Seven of these 24 active small entities derive more than 95 percent of their total fishing revenue from herring.

After considering the new information, and the new SBA size standards and due to the limited nature of this action and the overall increase in herring availability in 2014, there would be no disproportionate economic impacts on small entities.

Total herring revenue in 2012 was approximately \$29 million. Because most vessels that harvest herring participate in other fisheries, revenue generated by herring catch is only a portion of their income. While this action reduces the amount of fish

available for harvest in three areas, it increases the overall amount of available harvest in the fishery, resulting in an overall economic benefit for the fishery. The reduced sub-ACLs in Areas 1B, 2, and 3 are estimated to equal \$1 million in lost revenue in 2012. However, the increased sub-ACL in Area 1A is estimated to equal \$1.1 million in gained revenue in 2012. Therefore, this action would increase revenues as a whole by approximately \$100,000.

For all the reasons described above, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: November 19, 2013.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

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