

(b) Any motor carrier who permits the exercise of controlling influence over its operations by any person that the Agency determines, under this subpart, engages in or has engaged in a pattern or practice of avoiding regulatory compliance or masking noncompliance while acting on behalf of any motor carrier, shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

(c) Any two or more motor carriers that the Agency determines, under this subpart, use or have used common ownership, common management, common control, or common familial relationships to enable such motor carriers to avoid compliance, or mask or otherwise conceal noncompliance, shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

#### **§ 385.923 Service and computation of time.**

Service of documents and computations of time will be made in accordance with §§ 386.6 and 386.8 of this subchapter.

### **PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS**

3. The authority citation for part 386 is revised to read as follows:

**Authority:** 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106–159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109–59; 49 CFR 1.86 and 1.87; and Sec. 32112, Pub. L. 112–141.

4. In Appendix A to Part 386, add a new paragraph IV.j. to read as follows:

#### **Appendix A to Part 386—Penalty Schedule; Violations of Notice and Orders**

\* \* \* \* \*

IV. \* \* \*

j. Violation—Conducting operations during a period of suspension or revocation under § 385.913 or 385.915.

Penalty—Up to \$11,000 for each day that operations are conducted during the suspension or revocation period.

Issued on: October 31, 2012.

**Anne S. Ferro,**  
*Administrator.*

[FR Doc. 2012–27569 Filed 11–9–12; 8:45 am]

**BILLING CODE 4910-EX-P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No. 121022572–2572–01]**

**RIN 0648–XC318**

### **Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to 2013 Annual Catch Limits**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** Through this action NMFS proposes to reduce the 2013 annual catch limits (ACLs) for the Atlantic herring (herring) fishery to account for catch overages in 2011 and to prevent overfishing.

**DATES:** Public comments must be received no later than 5 p.m., Eastern Standard Time, on December 13, 2012.

**ADDRESSES:** Copies of supporting documents, the 2010–2012 Herring Specifications and Amendment 4 to the Herring Fishery Management Plan (FMP) are available from: Paul J. Howard, 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–2012–0197, by any one of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA–NMFS–2012–0197 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Mail:** NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Adjustment to 2013 Herring Catch Limits.”

- **Fax:** (978) 281–9135, Attn: Lindsey Feldman.

**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](http://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:**

Lindsey Feldman, Fishery Management Specialist, 978–675–2179, fax 978–281–9135.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The New England Fishery Management Council (Council) developed herring specifications for 2010–2012, which were approved by NMFS on August 12, 2010 (75 FR 48874). The stock-wide herring ACL (91,200 mt) is divided among three management areas, one of which has two sub-areas. Area 1 is located in the Gulf of Maine (GOM) and is divided 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 stock complex is considered 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. The management area sub-ACLs established for 2010–2012 were: 26,546 mt for Area 1A, 4,362 mt for Area 1B, 22,146 mt for Area 2, and 38,146 mt for Area 3.

Amendment 4 to the Herring FMP (Amendment 4) (76 FR 11373, March 2, 2011) revised the specification-setting process, bringing the Herring FMP into compliance with ACL and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Under the FMP, if NMFS determines catch will reach 95 percent

of the sub-ACL allocated to a management area or seasonal period, then NMFS prohibits vessels from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip from that area or period. This AM slows catch to prevent or minimize catch in excess of a management area or seasonal period sub-ACL. As a way to account for ACL overages in the herring fishery, Amendment 4 established an AM that provided for overage deductions. If the catch of herring in any given fishing year exceeds any ACL or sub-ACL, the overage will subsequently be deducted from the corresponding ACL/sub-ACL. A range of reasonable alternatives to the current AMs will be considered as a part of the 2013–2015 specifications process. Until then, the current AMs, including the overage deduction addressed in this proposed rule, are still in place.

Fishing year 2010 was the first year that NMFS monitored herring catch against the management area sub-ACLs. Herring catch from Areas 1B and 1A exceeded their 2010 allocations by 1,639 mt and 1,878 mt respectively. NMFS deducted the 2010 overages from the 2012 herring specifications in a final rule, which became effective on February 24, 2012 (77 FR 10978). Due to the overages that occurred in 2010, NMFS had previously revised vessel reporting requirements to obtain more timely catch reports (76 FR 54385, September 1, 2011). Accordingly, limited access herring vessels are now required to report herring catch daily via vessel monitoring systems (VMS), open access herring vessels are required report catch weekly via the interactive voice response system (IVR), and all herring-permitted vessels are required to submit vessel trip reports (VTRs) weekly.

The 2011 Atlantic herring fishing year began on January 1 and ended on December 31, 2011. Based on dealer, VTR, and observer data, 2011 herring catch exceeded the sub-ACL in Area 1A by 1,425 mt. There were no sub-ACL overages in the other herring management areas. Therefore, NMFS is required to deduct the Area 1A overage in 2011 from the 2013 Area 1A sub-ACL. At the time of this proposed rule, the Atlantic herring 2013 specifications have not yet been finalized. The 2013–2015 herring specifications are currently in development and are not likely to be effective prior to the 2013 herring fishing year, which begins on January 1, 2013.

The Council's Scientific and Statistical Committee (SSC) met on September 13, 2012, to recommend acceptable biological catch (ABC) levels

for the herring fishery. The Council is expected to take final action at its November meeting, and a proposed and final rule will follow. Although the 2013 herring specifications won't be in place on January 1, 2013, the regulations at § 648.200(d) include a provision that allows the previous years' specifications to roll over when the specifications are delayed past the start of the fishing year. Therefore, the 2012 herring specifications will be in place on January 1, 2013, until the 2013–2015 specifications are finalized, and the 2011 overage will be deducted initially from the 2011 herring specifications. Once the 2013–2015 specifications are final, the 2011 overage will be deducted from that amount as part of the rulemaking for the 2013–2015 specifications.

#### Proposed Measures

In accordance with regulations at § 648.201(a)(3), this action proposes to deduct the 1,425-mt 2011 overage in Area 1A from the 2013 Area 1A sub-ACL. Since the 2012 herring specifications will not be in place on January 1, 2013, this action proposes adjusting the rolled over sub-ACL in Area 1A until the 2013–2015 specifications are finalized. Therefore, on January 1, 2013, the sub-ACL for Area 1A would be revised from 26,546 mt to 25,121 mt (a reduction of 1,425 mt) to account for the 2011 catch overage. When the 2013 specifications are finalized, we will deduct the 1,425-mt overage from the final 2013 Area 1A sub-ACL.

NMFS determined 2011 herring landings based on dealer reports (Federal and state) containing herring purchases, supplemented with VTRs (Federal and State of Maine) containing herring landings. NMFS compared dealer reports to VTRs for all trips that landed herring in 2011. 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 by 10-percent or more the amount of herring reported by the dealer, it was assumed that the dealer report for that trip was in error. In those instances, the amount of herring reported via VTR was used to determine the amount of herring landed on that trip. Herring landings in the VTR database were checked for accuracy against the scanned image of the paper VTRs submitted by the owner/operator of the vessel. VTR landings were also verified by comparing reported landings to harvesting potential and applicable possession

limits for each vessel. Federal dealer reports and state reports for 2011 were finalized in June 2012.

Herring landings reported on VTRs were assigned to herring management areas using latitude and longitude coordinates. VTRs with missing or invalid latitude/longitude coordinates were manually corrected using the statistical area reported on the VTR. If no statistical area was reported on the VTR, then a combination of recent fishing activity and a review of the scanned images of the original VTR were used to assign landings to a herring management area. Dealer reports without corresponding VTRs were prorated to a herring management area using the proportion of total herring landings stratified by week, gear type, and management area.

NMFS resolved data errors resulting from misreporting. This was done by reviewing the 2011 herring data, and comparing VMS daily catch reports. Common dealer reporting issues included: Missing dealer reports; incorrect or missing VTR serial numbers; incorrect or missing vessel permit numbers; and misidentification of pair trawling vessels landing catch. VMS daily catch reports and VTRs had similar errors. Common VMS daily catch report errors included: Missing reports; data entry mistakes (including too many or not enough zeros); and missing kept all data reported by haddock stock area. Common VTR reporting issues included: 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, NMFS strongly encourages vessel owner/operators and dealers to double check reports for accuracy and ensure reports are submitted on a timely basis.

Discards of herring in 2011 were determined by extrapolating Northeast Fisheries Observer Program (observer) data to the entire herring fishery. The amount of observed herring discards ("Atlantic herring" and "herring unknown") was divided by the amount of observed fish (all species) landed. That discard ratio was then multiplied by the amount of all fish landed for each trip to calculate total amount of herring discards in 2011. The amount of discards was determined for each management area and gear type. Observer data for 2011 were finalized on March 30, 2012.

NMFS calculated the total herring catch for 2011 by adding the amount of herring landings to the amount of

herring discarded. The methodology used by NMFS to calculate the amount of landed herring and the amount of discarded herring was reviewed and approved by the Council's Herring Plan Development Team (PDT) in August 2012. The final 2011 herring catch data differs from the catch data presented on the NOAA Fisheries Northeast Regional Office Web page ([www.nero.noaa.gov](http://www.nero.noaa.gov)) at the end of the 2011 fishing year due to differences in real-time quota monitoring and end of the year accounting methods. Herring catch was

monitored in real time using weekly IVR reports supplemented with dealer data until September 8, 2011, when the VMS catch reports were required for limited access vessels. From September 8, 2011, through the remainder of the fishing year, herring catch was monitored in real-time using daily VMS catch reports for limited access herring vessels, and IVR reports for open access vessels. While using daily VMS catch reports are crucial for monitoring high volume fisheries such as the herring fishery in real-time, the final 2011 herring catch

estimates used a combination of dealer and VTR data, which tends to have fewer errors and is more accurate. In addition, the year-end accounting method includes any late reported landings. Therefore, the final 2011 herring catch estimates can differ (sometimes significantly) from the real-time estimates shown on the NOAA Fisheries Northeast Regional Office Web site.

The following chart contains information on the 2011 herring fishery:

TOTAL CATCH OF ATLANTIC HERRING IN 2011

Management area	Sub-ACL (mt)	Landed herring (mt)	Discarded herring (mt)	Total herring catch (mt)	Herring catch as percentage of sub-ACL
1A .....	26,546	30,621	55	30,676	105
1B .....	4,362	3,528	2	3,530	81
2 .....	22,146	14,919	81	15,001	68
3 .....	38,146	36,966	71	37,038	97

### Classification

Pursuant to section 304(b)(1)(A) of the 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 analysis to support this action was completed in Amendment 4 (76 FR 11373, March 2, 2011).

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 Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA) in the Environmental Assessment for Amendment 4. The IRFA describes the economic impact that herring accountability measures, including overage deductions, would have on small entities. A summary of the analysis and additional analysis on the economic impact of this proposed rule follows. A copy of the Amendment 4 analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at <http://www.nero.noaa.gov>.

### Statement of Objective and Need

In 2011, there was a herring catch limit overage in herring management

area 1A equal to 1,425 mt. In accordance with regulations at § 648.201(a)(3), this action proposes to deduct the 2011 management Area 1A overage from the 2013 management Area 1A catch limits. Since the 2013 specifications will not be finalized by January 1, 2013, and the 2012 specifications will be in place at the start of the herring fishing year, NMFS proposes to revise the rolled over sub-ACL for Area 1A for 2013 from 26,546 mt to 25,121 mt to account for 2011 the catch overage. When the 2013 herring specifications are finalized, NMFS will deduct the 1,425 mt from the final 2013 Area 1A sub-ACL.

### Description and Estimate of Number of Small Entities to Which the Rule Will Apply

In 2011, 93 vessels were issued limited access herring permits, and 2,149 were issued open access herring permits. All participants in the herring fishery are small entities as defined by the SBA under the Regulatory Flexibility Act, as none grossed more than \$4 million annually, so there would be no disproportionate economic impacts on small entities.

Total herring revenue in 2011 equaled approximately \$22.4 million for limited access vessels and \$43,000 for open access vessels. The reduced sub-ACL in Areas 1A is estimated to equal approximately \$400,000 in lost revenue for the fishery in 2013. While this action reduces the amount of fish available for harvest, both the fishery-wide and

individual-vessel economic effects are anticipated to be minimal, because the reduction is relatively minor, as compared with the fishery's overall revenue, and because it only affects one of the herring management areas.

### Minimizing Significant Economic Impacts on Small Entities

Amendment 4 analyzed the effects of deducting ACL/sub-ACL overages from the subsequent corresponding ACL/sub-ACL. During a year when the ACL/sub-ACL is exceeded, fishery participants may benefit economically from higher catch. In the subsequent year, when the amount of the overage is deducted from that ACL/sub-ACL and the amount of harvest is lower, fishery participants may experience negative economic impacts. Since the participants in the fishery from year to year vary, there could be a minor economic impact on the fishery participants operating in Area 1A in 2013 due to the overage deduction from 2011.

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

Dated: November 7, 2012.

**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.*

[FR Doc. 2012-27543 Filed 11-9-12; 8:45 am]

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