

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

■ 1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.15, revise paragraph (b) introductory text and add paragraph (b)(9) to read as follows:

**§ 635.15 Individual bluefin tuna quotas.**

(b) *IBQ allocation and usage.* An initial IBQ quota allocation is the amount of bluefin tuna (whole weight) in metric tons (mt) that a qualified IBQ share recipient (*i.e.*, a share recipient who has associated their permit with a vessel) is allotted to account for incidental catch of bluefin tuna during a specified calendar year. Unless otherwise required under paragraph (b)(5) of this section, an Atlantic Tunas Longline permitted vessel's initial IBQ allocation for a particular year is derived by multiplying its IBQ share (percentage) by the initial Longline category quota for that year. NMFS may transfer additional quota to the Longline category inseason as authorized under § 635.27(a), and in accordance with § 635.27(a)(8) and (9), and may distribute the transferred quota within the Longline category in accordance with paragraph (b)(9) of this section.

(9) *Distribution of additional Longline category quota transferred inseason.* NMFS may distribute the quota that is transferred inseason to the Longline category either to all IBQ share recipients as described under paragraph (k)(1) of this section or to permitted Atlantic Tunas Longline vessels that are determined by NMFS to have any recent fishing activity based on participation in the pelagic longline fishery. In making this determination, NMFS will consider factors for the subject and previous year such as the number of BFT landings and dead discards, the number of IBQ lease transactions, the average amount of IBQ leased, the average amount of quota debt, the annual amount of IBQ allocation, any previous inseason allocations of IBQ, the amount of BFT quota in the Reserve category (at § 635.27(a)(7)(i)), the percentage of BFT quota harvested by the other quota categories, the remaining number of days in the year, the number of active vessels fishing not associated with IBQ share, and the number of vessels that have incurred quota debt or that have low levels of IBQ allocation. NMFS will determine if a vessel has any recent fishing activity based upon the best

available information for the subject and previous year, such as logbook, vessel monitoring system, or electronic monitoring data. Any distribution of quota transferred inseason will be equal among selected recipients; when inseason distribution is only to Atlantic Tunas Longline permit holders with IBQ shares, it will therefore not be based on the initial IBQ share determination as specified in paragraph (k)(2) of this section.

(i) Regional designations described in paragraph (b)(2) of this section will be applied to inseason quota distributed to IBQ share recipients.

(ii) For permitted Atlantic Tunas Longline vessels with recent fishing activity that are not qualified IBQ share recipients, regional designations of Atlantic (ATL) or Gulf of Mexico (GOM) will be applied to the distributed quota based on best available information regarding geographic location of sets as reported to NMFS during the period of fishing activity analyzed above in this paragraph, with the designation based on where the majority of that activity occurred.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No: 151215999-6960-02]

RIN 0648-XF071

**Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to the Atlantic Herring Management Area 1A Annual Catch Limit**

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

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

**SUMMARY:** NMFS adjusts the 2016 fishing year annual catch limit for Atlantic Herring Management Area 1A due to an underharvest in the New Brunswick weir fishery. This action is necessary to comply with the 2016-2018 specifications and management measures for the Atlantic Herring Fishery Management Plan and to ensure that accounting of the annual catch limit is accurate for fishing year 2016.

**DATES:** Effective December 29, 2016, through December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Daniel Luers, Fishery Management Specialist, 978-282-8457, Fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of the overfishing limit, acceptable biological catch (ABC), annual catch limit (ACL), optimum yield (OY), domestic harvest and processing, U.S. at-sea processing, border transfer, and sub-ACLs for each management area. The 2016 Domestic Annual Harvest was set as 104,800 metric tons; an additional 4,704 mt was added to this total due to an underharvest during the 2014 fishing year, and 3 percent of herring catch was set aside for research in the 2016-2018 specifications (81 FR 75731, November 1, 2016). After these adjustments, the resulting ACL for the 2016 fishing year was 106,360 mt, and the ACL allocated to Area 1A (sub-ACL) was 29,524 mt.

The Area 1A sub-ACL has 295 mt set aside for fixed gear fisheries west of Cutler, ME, until November 1, 2016. Due to the variability of Canadian catch in the New Brunswick weir fishery, a 1,000-mt portion of the 4,000-mt buffer between ABC and OY (the buffer to account for Canadian catch) is allocated to Area 1A, provided New Brunswick weir landings are lower than the amount specified in the buffer.

The NMFS Regional Administrator is required to monitor the fishery landings in the New Brunswick weir fishery each year. If New Brunswick weir fishery herring catch through October 1 is less than 4,000 mt, then 1,000 mt will be subtracted from the management uncertainty buffer and allocated to the ACL and Area 1A Sub-ACL as soon as possible. When such a determination is made, NMFS is required to publish a notification in the **Federal Register** to adjust the Area 1A sub-ACL upward for the remainder of the fishing year.

The Regional Administrator has determined, based on the best available information, that the New Brunswick weir fishery catch for fishing year 2016 through October 1, 2016, was 3,478 mt. Therefore, effective December 29, 2016, 1,000 mt will be allocated to the Area 1A sub-ACL, thereby increasing the fishing year 2016 Area 1A sub-ACL from 29,524 mt to 30,524 mt. Because any increase to a sub-ACL also increases the stock-wide ACL, this allocation increases the 2016 stock-wide ACL from 106,360 mt to 107,360 mt.

The allocation of 1,000 mt will be applied to the quota of Area 1A, which closed on October 18, 2016, before

implementation of the 2016–2018 Atlantic herring specifications and management measures. The New Brunswick weir fishery allocation was delayed until the new specifications became effective (December 1, 2016).

When applied to the 2016 quota for Area 1A, this 1,000 mt increase will drop the catch total from 94.2 percent of the quota to 91.1 percent. NMFS closed Area 1A on October 18 based on the projection that herring catch would reach 92 percent of the quota for that area. In the case where projection falls short of the 92 percent limit, characteristics of the high volume herring fishery make it impracticable to reopen unless the underage is substantial. This is due to the capability of the herring fishing fleet to harvest a large percentage of the quota in only a few days, in which case a reopening would likely result in an overage of the quota before a closure could be imposed. For this reason, NMFS uses discretion in reopening the fishery, and generally would only do so in the case of a large underage. In this case, the allocation of 1,000 mt will only result in an underage of 0.9 percent and thus is not large enough to reopen the herring fishery in Area 1A. This notification principally ensures that the 2018 fishery adjustments for underharvest/

overharvest (which are based on 2016 catch) will be accurate.

#### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it is impracticable and contrary to the public interest. This action increases the sub-ACL for Area 1A by 1,000 mt (29,524 mt to 30,524 mt) through December 31, 2016, thereby relieving a more restrictive catch limit. The regulations at § 648.201(f) require such action to help mitigate some of the negative economic effects associated with the reduction in the Area 1A sub-ACL in the 2016–2018 specifications process. The herring fishery extends from January 1 to December 31. Data indicate the New Brunswick weir fishery landed 3,478 mt through October 1, 2016. Allowing for prior notice and public comment on this adjustment is impracticable because regulations require this allocation to occur as quickly as is practicable and for the remainder of the fishing year. NMFS was unable to allocate this quota until the 2016–2018 herring specifications became effective on December 1, 2016.

Because of the limited time between December 1 and the end of the U.S. herring fishing year on December 31, the delay associated with soliciting public comment would result in implementation of regulations after the effective end date of the fishing year, which would violate the intent of the regulation and would not benefit the public. Further, this is a nondiscretionary action required by provisions in the 2016–2018 Atlantic Herring Specifications and Management Measures (herring specifications), which previously provided notice to the public that this 1,000 mt allocation would occur if the Canadian catch level was sufficiently low, and offered full opportunity to comment on this. The adjustment required by the regulation is formulaic. This action simply effectuates these mandatory calculations. NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: December 22, 2016.

**Alan Risenhoover,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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