

(f) *Carryover*. Subject to the conditions described in this paragraph (f), unharvested catch in a herring management area in a fishing year (up to 10 percent of that area's sub-ACL) shall be carried over and added to the sub-ACL for that herring management area for the fishing year following the year when total catch is determined. For example, NMFS will determine total catch from 2013 during 2014, and will add carryover to the applicable sub-ACL(s) in 2015. All such carryover shall be based on the herring management area's initial sub-ACL allocation for the fishing year, not the sub-ACL as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring landed from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 500 mt of herring is added as carryover to a 5,000 mt sub-ACL, catch in that management area would be tracked against a total sub-ACL of 5,500 mt. NMFS shall add sub-ACL carryover only if the ACL, specified consistent with § 648.200(b)(3), for the fishing year in which there is unharvested herring, is not exceeded. The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified in this paragraph (f).

[76 FR 11380, Mar. 2, 2011, as amended at 76 FR 56999, Sept. 15, 2011; 78 FR 26169, May 3, 2013; 78 FR 61837, Oct. 4, 2013; 79 FR 52580, Sept. 4, 2014]

§ 648.202 Season and area restrictions.

(a) *Purse Seine/Fixed Gear Only Area*. Vessels fishing for Atlantic herring may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A limited access herring vessel with midwater trawl gear on board may transit Area 1A from June 1–September 30, provided such midwater trawl gear is stowed and not available for immediate use as defined in § 648.2. Vessels may use any authorized gear type to harvest herring in Area 1A from October 1 – May 31.

(b) *Fishing in Northeast Multispecies Closed Areas*. (1) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, may fish for, possess or land fish in or from the Closed

Areas, including Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, Western GOM Closure Area, as defined in § 648.81(a) through (e), respectively, unless it has declared first its intent to fish in the Closed Areas as required by § 648.11(m)(1), and is carrying onboard a NMFS-approved observer.

(2) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in the Closed Areas, may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(i) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(ii) A mechanical failure precludes bringing some or all of the catch on board the vessel for inspection; or,

(iii) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(3) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board.

(4) If fish are released prior to being brought aboard the vessel due to any of the above exceptions, the vessel operator must:

(i) Stop fishing and immediately exit the Closed Areas. Once the vessel has exited the Closed Areas, it may continue to fish, but may not fish inside the Closed Areas for the remainder of that trip.

(ii) Complete and sign a Released Catch Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought

§ 648.203

on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

[72 FR 11277, Mar. 12, 2007, as amended at 79 FR 8816, Feb. 13, 2014; 79 FR 52580, Sept. 4, 2014]

§ 648.203 Gear restrictions.

(a) Midwater trawl gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), and in the Nantucket Lightship Area as described in § 648.81(c)(1), provided it complies with the midwater trawl gear exemption requirements specified under the NE multispecies regulations at § 648.80(d), including issuance of a Letter of Authorization.

(b) Purse seine gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), provided it complies with the purse seine exemption requirements specified under the NE multispecies requirements at § 648.80(e), including issuance of a Letter of Authorization.

§ 648.204 Possession restrictions.

(a) A vessel must be issued and possess a valid limited access herring permit to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area in the EEZ, provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(1) A vessel issued an All Areas Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(2) A vessel issued only an Areas 2 and 3 Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3 as defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

50 CFR Ch. VI (10–1–14 Edition)

Such a vessel may fish in Area 1 only if issued an open access herring permit or a Limited Access Incidental Catch Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Limited Access Incidental Catch Herring Permit may fish for, possess, or land up to 55,000 lb (25 mt) of Atlantic herring in any calendar day, and is limited to one landing of herring per calendar day, from any management area defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area.

(4) A vessel issued an open access herring permit may fish for, possess, or land up to 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip, and is limited to one landing of herring per calendar day, provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(5) A vessel issued a herring permit may possess herring roe provided that the carcasses of the herring from which it came are not discarded at sea.

(b) Each vessel working cooperatively in the herring fishery, including vessels pair trawling, purse seining, and transferring herring at-sea, must be issued a valid herring permit to fish for, possess, or land Atlantic herring and are subject to the most restrictive herring possession limit associated with the permits issued to vessels working cooperatively.

[72 FR 11277, Mar. 12, 2007, as amended at 76 FR 11380, Mar. 2, 2011; 79 FR 8816, Feb. 13, 2014]

§ 648.205 VMS requirements.

The owner or operator of any limited access herring vessel or vessel issued an Areas 2/3 Open Access Permit, with the exception of fixed gear fishermen, must install and operate a VMS unit consistent with the requirements of § 648.9. The VMS unit must be installed on board, and must be operable before the vessel may begin fishing. Atlantic herring carrier vessels are not required to have VMS. (See § 648.10(m) for VMS notification requirements.)

[79 FR 8816, Feb. 13, 2014]