

C. Alternatives Considered

CMS considered alternatives to repealing the MCIT pathway and the definition of reasonable and necessary, such as maintaining the provisions of the MCIT/R&N final rule and further delaying the effective date. For the reasons described in detail in section II. of this final rule such as patient safety and need for further public engagement, we chose to repeal the provisions. We described the impact of these MCIT alternatives in Table 1. The alternative

considered for not codifying the definition of “reasonable and necessary” was to codify the definition. We describe the impact of codifying the definition in Table 2.

D. Accounting Statement and Table

We have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table addresses the costs that would have been incurred through implementing

the MCIT/R&N final rule, but, due to this final rule repealing that rule, reflects that those costs will not be incurred under the policies.

As required by OMB Circular A-4 (available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>), we have prepared an accounting statement in Table 3 showing the classification of the impact associated with the provisions of this final rule.

TABLE 3—ACCOUNTING STATEMENT

Category	Primary estimate	Minimum estimate	Maximum estimate	Unit rate			Source citation (RIA, preamble, etc.)
				Year dollar	Discount rate (%)	Period covered	
Transfers:							
Federal Annualized monetized transfers: “on budget” (\$millions/year)MCIT.		(34.0)	(1,044.1)	2022	7	2022–2025	RIA: This reflects the repeal of MCIT. We estimated a zero-cost scenario for each of the fiscal years 2022–2025.
MCIT		(34.9)	(1,071.7)	2022	3	2022–2025	RIA: This reflects the repeal of the reasonable and necessary definition.
Definition of “Reasonable and Necessary”.		(51.0)	(880.0)	2022	7	2022–2025	
		(51.0)	(880.0)	2022	3	2022–2025	
From whom to whom?.	From: Federal Government		To: Medicare Providers				

Note: Items in parentheses indicate negative numbers.

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on November 9, 2021.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Diseases, Health facilities, Health professions, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 405 as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority for part 405 continues to read as follows:

Authority: 42 U.S.C. 263a, 405(a), 1302, 1320b–12, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr, and 1395ww(k).

§ 405.201 [Amended]

■ 2. Section 405.201 is amended in paragraph (b) by removing the definition for “Reasonable and necessary”.

Subpart F—[Removed and Reserved]

■ 3. Remove and reserve subpart F, consisting of §§ 405.601 through 405.607.

Dated: November 9, 2021.

Xavier Becerra, Secretary, Department of Health and Human Services.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210325–0071; RTID 0648–XB583]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2021 Management Area 1A Closure Possession Limit

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

ACTION: Temporary rule; possession limit reduction.

SUMMARY: NMFS is implementing a 2,000-lb (907.2-kg) possession limit for Atlantic herring for Management Area 1A. This is required because NMFS projects that herring catch from Area 1A will reach 92 percent of the Area’s sub-annual catch limit before the end of the fishing year. This action is intended to

prevent overharvest of herring in Area 1A, which would result in additional catch limit reductions in a subsequent year.

**DATES:** Effective 00:01 hr local time, November 11, 2021, through December 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Maria Fenton, Fishery Management Specialist, (978) 281-9196.

**SUPPLEMENTARY INFORMATION:** The Regional Administrator of the Greater Atlantic Regional Office monitors Atlantic herring fishery catch in each Management Area based on vessel and dealer reports, state data, and other available information. Regulations at 50 CFR 648.201(a)(1)(i)(A) require that we implement a 2,000-lb (907.2-kg) possession limit for herring for Area 1A beginning on the date that catch is projected to reach 92 percent of the sub-annual catch limit (ACL) for that area.

Based on vessel reports, dealer reports, and other available information the Regional Administrator projects that the herring fleet will have caught 92 percent of the Area 1A sub-ACL by November 8, 2021. Therefore, effective 00:01 hr local time November 11, 2021, through December 31, 2021, a person may not attempt or do any of the following: Fish for; possess; transfer; purchase; receive; land; or sell more than 2,000 lb of herring per trip or more than once per calendar day in or from Area 1A.

Vessels that enter port before 00:01 hr local time on November 11, 2021, may land and sell more than 2,000 lb (907.2 kg) of herring from Area 1A from that trip, provided that catch is landed in accordance with state management measures. Vessels may transit or land in Area 1A with more than 2,000 lb (907.2 kg) of herring on board, provided that:

The herring were caught in an area not subject to a 2,000-lb (907.2-kg) limit; all fishing gear is stowed and not available for immediate use; and the vessel is issued a permit appropriate to the amount of herring on board and the area where the herring was harvested.

Also effective 00:01 hr local time, November 11, 2021, through 24:00 hr local time, December 31, 2021, federally permitted dealers may not attempt or do any of the following: Purchase; receive; possess; have custody or control of; sell; barter; trade; or transfer more than 2,000 lb (907.2 kg) of herring per trip or calendar day from Area 1A, unless it is from a vessel that enters port before 00:01 hr local time on November 11, 2021, and catch is landed in accordance with state management measures.

#### **Classification**

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

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for public comment because it is unnecessary, contrary to the public interest, and impracticable. Ample prior notice and opportunity for public comment has been provided for the required implementation of this action. The requirement to implement this possession limit was developed by the New England Fishery Management Council using public meetings that invited public comment on the measures when they were developed and considered along with alternatives. Further, the regulations requiring NMFS to implement this possession limit also were subject to public notice and opportunity to comment, when they were first adopted in 2014. Herring fishing industry participants monitor

catch closely and anticipate potential directed fishery closures as catch totals approach Area sub-ACLs. The regulation provides NMFS with no discretion and is designed for implementation as quickly as possible to prevent catch from exceeding limits designed to prevent overfishing while allowing the fishery to achieve optimum yield.

The 2021 herring fishing year began on January 1, 2021, and Area 1A opened to fishing on June 13, 2021. Data indicating that the herring fleet will have landed at least 92 percent of the 2021 sub-ACL allocated to Area 1A only recently became available. High-volume catch and landings in this fishery can increase total catch relative to the sub-ACL quickly, especially in this fishing year where annual catch limits are unusually low. If implementation of this closure is delayed to solicit prior public comment, the 2021 sub-ACL for Area 1A will likely be exceeded; thereby undermining the conservation objectives of the Herring Fishery Management Plan (FMP). If sub-ACLs are exceeded, the excess must be deducted from a future sub-ACL and would reduce future fishing opportunities. The public expects these actions to occur in a timely way consistent with the FMP's objectives. For the reasons stated above, NMFS also finds good cause to waive the 30-day delayed effectiveness in accordance with 5 U.S.C 553(d)(3).

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

Dated: November 8, 2021.

**Ngagne Jafnar Gueye,**

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

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