

implementation of restrictions specified in a Settlement Agreement, which was ordered to be implemented by the Court.

Based on the May 23, 2002, Court Order, the management measures implemented by the August 1, 2002, interim rule and its extension, must remain in effect until implementation of Amendment 13 to the FMP, which is scheduled to be in effect no later than May 1, 2004. On January 22, 2003, NMFS published a Notice of Continuation of Regulations in the **Federal Register** (68 FR 2919) to inform the public of the continuance of the interim regulations for a second 180-day period. Under the Magnuson-Stevens Act, however, the authority to implement interim regulations is limited to two consecutive 180-day periods. The second 180-day period ended on July 27, 2003.

Because the schedule for implementation of Amendment 13 was extended until May 1, 2004, emergency Secretarial action was necessary to continue the current management measures from July 28, 2003, until the implementation of Amendment 13 (on or about May 2004). Due to the need to continue the regulations until May 1, 2004, a proposed emergency rule, soliciting public comment, was published on April 24, 2003 (68 FR 20096), and subsequently corrected on May 9, 2003 (68 FR 24914), followed by a final emergency rule (68 FR 38234), published on June 27, 2003, implementing emergency measures intended to reduce overfishing on species managed under the FMP and to continue most interim conservation measures specified in the Settlement Agreement until Amendment 13 is implemented. These measures included a freeze on days-at-sea (DAS) at the highest annual level used from fishing years 1996–2000 and a 20-percent cut from that level; a freeze on the issuance of new open access Hand-gear permits; gear restrictions for certain gear types, including gillnets, hook-gear and trawl nets; modifications and additions to the closure areas; and restrictions on yellowtail flounder catch. In addition, in response to public comment on the proposed rule, the final emergency rule implemented measures pertaining to haddock, including reducing the haddock minimum size limit for private recreational and party/charter vessels to 21 inches (52.5 cm), and relaxing the haddock trip limit (also known as bag limit) for charter/party and open access Handgear permit vessels.

Pursuant to section 305(c) of the Magnuson-Stevens Act, the June 27, 2003, emergency rule may remain in effect for 180 days and may be extended

through publication in the **Federal Register**, for one additional period of 180 days, provided the public has had an opportunity to comment on the emergency rule. The public was given such opportunity to comment in the form of a proposed rule before the final emergency rule was published. NMFS has determined that it is necessary to continue this emergency rule to reduce overfishing and to comply with the Court Order. Because the management measures implemented by the June 27, 2003, final emergency rule were written in such a way as to be effective indefinitely, no formal regulatory action is necessary. Instead, to comply with section 305(c) of the Magnuson-Stevens Act, it is necessary only to publish in the **Federal Register** a Notice of Continuation of Regulations to inform the public that NMFS has decided to continue these regulations. The impacts of continuing the Settlement Agreement measures, with some modifications, were analyzed in the Environmental Assessment completed for the June 27, 2003, final emergency rule.

The June 27, 2003, final emergency rule was determined to be significant for purposes of Executive Order 12866.

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

Dated: December 16, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 031015257–3308–02 ; I.D. 101603A]

RIN 0648–AQ79

#### Fisheries of the Northeastern United States; 2004 Fishing Quotas for Atlantic Surfclams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

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

**ACTION:** Final Rule - 2004 fishing quotas for Atlantic surfclams, ocean quahogs, and Maine mahogany ocean quahogs.

**SUMMARY:** NMFS is required pursuant to 50 CFR 648.71 to specify annual catch quotas for the Atlantic surfclam and ocean quahog fisheries. In order to meet

this regulatory requirement, NMFS issues this rule to set final quotas for the Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2004. These regulations specify allowable harvest levels of Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone and an allowable harvest level of Maine mahogany ocean quahogs from Atlantic waters north of 43° 50' N. lat. in 2004.

**DATES:** Effective from January 1, 2004, through December 31, 2004.

**ADDRESSES:** Copies of the surfclam and ocean quahog quota specifications document for 2004, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, and other supporting documents, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. A copy of the EA/RIR/IRFA is accessible via the Internet at <http://www.nero.gov/ro/doc/nr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Susan W. Chinn, Fishery Management Specialist, 978–281–9218, [susan.chinn@noaa.gov](mailto:susan.chinn@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), specify quotas for surfclams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP, published on May 19, 1998 (63 FR 27481), added Maine mahogany ocean quahogs (locally known as mahogany quahogs) to the management unit and provided that a small artisanal fishery for ocean quahogs in the waters north of 43° 50' N. lat. has an annual quota with

an initial amount of 100,000 Maine bu (35,240 hectoliters (hL)) within a range of 17,000 to 100,000 Maine bu (5,991 hL to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

Detailed background information regarding the development of these quotas was provided in the preamble to the proposed rule published at 68 FR 60324, October 22, 2003, and is not repeated here. The comment period for that rule ended on November 21, 2003. One comment was received during the comment period.

The final quotas for the 2004 Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries, which are unchanged from those in the proposed rule, are shown in the table below. The status quo level of 2003 for the surf clam fishery will be increased by 4.6 percent (from 3.25 to 3.4 million bu) and the ocean quahog quota will be increased by 11.1 percent (from 4.5 to 5.0 million bu). Finally, this rule makes no changes to the Marine ocean quahog quota from the 2003 level of 100,000 Maine bushels.

**FINAL 2004 SURFLAM/OCEAN QUAHOG QUOTAS**

Fishery	2004 final quotas (bu)	2004 final quotas (hL)
<sup>1</sup> Surfclam .....	3,400,000	1,810,000
<sup>1</sup> Ocean quahog	5,000,000	2,662,000
<sup>2</sup> Maine mahogany ocean quahog .....	100,000	35,240

<sup>1</sup> 1 bushel = 1.88 cubic ft. = 53.24 liters  
<sup>2</sup> 1 bushel = 1.2445 cubic ft. = 35.24 liters

**Comments and Responses**

The deadline for receiving comments on the proposed rule was November 21, 2003. One comment was received on the proposed rule during the comment period.

*Comment:* The commenter expressed concern that the determination of OYs is biased by industry and politics and that they are set too high; asserted that NMFS fails to protect the stocks; and voiced general support for establishing marine protected areas and reducing any quotas by at least 50 percent. The commenter also objected to NMFS not accepting comments via e-mail on this action.

*Response:* This rule implements measures designed to provide for improved utilization of the Federal commercial surfclam and ocean quahog resource, and to improve efficiency of this fishery. The OYs used to determine

the quotas for each fishery are based on the best scientific information available, and have been vetted through the SARC, NOAA's Northeast Fisheries Science Center (Center), and peer reviewers, without dispute. None of the stocks are overfished, and overfishing is not occurring. The areas most affected by the surfclam and ocean quahog industry operations are high-energy, sandy areas that are only temporarily impacted by fishing operations under this FMP; as such, there is no immediate need for MPAs as a result of this fishery. Finally, the recommended quotas will allow sustainable fishing to continue at these quota levels for at least 10 years for surfclams and 30 years for ocean quahogs.

**Classification**

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A delay in the effective date of this rule would cause a disruption in the ordinary commerce of the surfclam and ocean quahog fisheries. Individual Transferable Quota (ITQ) shareholders each receive a portion of the overall quota for these two species. An allocation holder receives an amount of cage tags equivalent to his/her share of the overall quota. Fishing for surfclams and ocean quahogs begins on January 1, regardless of the publication of the annual quota. Historically, allocations have been transferred either permanently or temporarily to meet changing economic circumstances in the fishery right from the commencement of these fisheries. For example, vessel owners who enter into a supply contract with a processor may experience vessel breakdowns that thwart performance of their contractual obligations. In this situation, it is imperative that the vessel owner have the ability to request that NMFS transfer temporarily part of his/her allocation to another harvester who is willing to fulfill the terms of the supply contract in time for the start of the 2004 fishing year. Further, and of more immediate concern is that five banks currently hold twenty-nine allocations between the surfclam and ocean quahog fisheries. These allocations are held by the banks as security for loans made by the banks to fishermen in these two fisheries. This entails the permanent transfer of the individual allocation to the bank as collateral for the pendency of the loan. The banks request NMFS on an annual basis to transfer the cage tags associated with the allocation back to the borrower. This transaction is characterized as a temporary transfer of the allocation pursuant to the regulations. This

temporary transfer of allocation enables the borrower to begin fishing at the beginning of the fishing year in order to generate income with which to discharge the loan. NMFS has received several such requests from the banks holding allocations for the 2004 fishing year. More requests are expected in the near future. Without a quota in effect, NMFS cannot make a transfer of part or the entirety of an allocation either permanently or temporarily. This inability on the part of NMFS to make such transfers effective would preclude the intended recipients of such transfers from fishing, thereby engendering a negative economic impact on the surfclam and ocean quahog fisheries. Therefore, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the 2004 surfclam, ocean quahog, and Maine mahogany quahog quotas.

A description of the reasons why this action is being taken by the Agency and the objectives of this final rule are explained in the preambles of the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this final rule.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and the economic analyses completed in support of this action. A copy of the IRFA is available from the Council (*see ADDRESSES*).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

**Final Regulatory Flexibility Analysis**

*Statement of Objective and Need*

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

*Summary of Significant Issues Raised in Public Comments*

One comment was received during the comment period on the proposed rule, although it did not pertain to the

economic impacts of this rule. No changes to the proposed rule were required to be made as a result of public comments. For a summary of the comment received, refer to the section above titled "Comments and Responses."

#### *Description and Estimate of Number of Small Entities to which Rule Will Apply*

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is only summarized here.

All of the affected businesses (fishing vessels) are considered small entities under the standards described by the Small Business Administration because they have annual returns (revenues) that do not exceed \$3.5 million annually. This rule could affect any vessel holding an active Federal permit for either species. However, the commercial use of the permit is limited to vessels fishing under an individual fishing quota or fishing in the Maine mahogany fishery. In 2002, a total of 54 vessels reported harvesting surfclams or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. There were 35 vessels in 2002 that fished under the federal limited access Maine mahogany quahog permit for Maine ocean quahogs.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This rule would not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance would remain unchanged.

#### *Description of the Steps Taken to Minimize Economic Impact on Small Entities*

Economic impacts on small entities have been minimized within the constraints of the FMP. Specification of commercial quotas is constrained by the conservation objectives of the FMP, and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). It is not possible to further mitigate economic impacts on small entities because the Council selected the alternative with the most positive economic impacts relative to the other alternatives determined to achieve the biological objectives.

This rule establishes a 4.6-percent increase in the surfclam quota, an 11.1-percent increase in the ocean quahog quota, and no change in the 2004 quota for Maine mahogany ocean quahogs

from their 2003 quotas. Since 2002 harvest levels of 3.133 and 3.871 million bu (1.668 and 2.061 million hL) for surfclams and ocean quahogs, respectively, were below the 2004 proposed quotas, NMFS and the Council believe that the final 2004 quotas may yield a surplus quota available to vessels participating in all these fisheries. This is especially likely to occur in the ocean quahog fishery. In the case of a surplus quota, vessels would not be constrained from harvesting additional product, thus allowing them to increase their revenues.

The Council identified four surfclam quota alternatives in addition to the selected quota of 3.400 million bu (1.810 million hL), including 1.850, 3.135, 3.250, and 3.325 million bu (0.985, 1.669, 1.730 and 1.771 million hL). The Council and NMFS determined that the only alternative that would significantly negatively impact revenues to vessels is the 1.850-million bu (0.985-million hL) alternative for surfclams. The 3.135-million bu (1.669-million hL) and status quo alternative would be restrictive and have a slight to moderate impact on revenues. The 3.325-million bu (1.771-million hL) and 3.400 million bu (1.810 million hL) alternatives would yield increases relative to the actual 2002 landings, so increased revenues would be likely to occur. The industry believes it can utilize the additional product from the 4.6-percent increase in landings and thus have a beneficial impact for the Nation.

The Council analyzed four ocean quahog quota alternatives in addition to the selected quota of 5.000-million bu (2.662-million hL), including 4.000, 4.250, 4.500, and 6.000 million bu (2.129, 2.263, 2.396, and 3.195 million hL). Adoption of a 4.000-million bu (2.129-million hL) or a 4.250-million bu (2.263-million hL) quota would represent a 12-percent or a 10-percent decrease, respectively, from the 2003 quota level and would result in the fewest economic benefits available to the ocean quahog fishery. Given the current biological status of the quahog resource, the Council does not believe that a quota reduction is warranted at this time. Adoption of the 4.500-million bu (2.396-million hL) quota would most likely have a limited impact on small entities, since it results in no change from status quo. The 5.000-million bu (2.662-million hL) quota allows for an 11.1-percent increase in quota from 4.500 million bu (2.396 million hL), and a 29-percent increase to the 2002 ocean quahog landings. Adopting the maximum allowable quota of 6.000

million bu (3.195 million hL) for ocean quahogs would represent a 33-percent increase in allowable harvest and a 55-percent increase in landings from 2002, assuming all the quota were harvested. However, the industry does not have a market available to absorb such a large increase in landings and may not have the vessel capacity necessary to harvest a quota this large. Since all alternatives, including the selected quota, would yield increases relative to the actual 2002 landings, increased revenues would be likely to occur, albeit at various percentage differences.

The quota for Maine mahogany ocean quahogs is specified at a maximum 100,000 bu (35,240 hL). The FMP specifies that upward adjustments to the quota would require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. However, no survey or assessment has been conducted. The Council considered two alternative quotas for the Maine mahogany ocean quahog fishery, in addition to the preferred alternative of 100,000 bu (35,240 hL), including 50,000 bu and 84,700 bu (17,620 and 29,847 hL). Any quota the Council would have recommended below the 1999 landing level of 93,938 Maine bu (33,104 hL) would most likely have resulted in a decrease in revenues to individual vessels.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of commercial Federal Atlantic surfclam and ocean quahog fishery permits. The guide will also be available on the Internet at <http://www.nero.noaa.gov>. Copies of the guide can also be obtained from the Regional Administrator (see ADDRESSES).

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

Dated: December 16, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric  
Administration**

**50 CFR Part 679**

[Docket No. 991207325-0063-02; I.D.  
100699A]

**Fisheries of the Exclusive Economic  
Zone off Alaska; North Pacific Halibut  
and Sablefish IFQ Cost Recovery  
Program**

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

**ACTION:** Notice of standard prices and  
fee percentage for North Pacific halibut  
and sablefish Individual Fishing Quota  
(IFQ) cost recovery program.

**SUMMARY:** The National Marine  
Fisheries Service publishes IFQ  
standard prices and notification of  
adjustment of the IFQ fee percentage for  
the IFQ Cost Recovery Program in the  
halibut and sablefish fisheries of the  
North Pacific. This action is required by  
regulations and is intended to provide  
holders of halibut and sablefish IFQ  
permits information to calculate the  
payments required for IFQ cost recovery  
fees due by January 31, 2004.

**DATES:** Effective December 22, 2003.

**FOR FURTHER INFORMATION CONTACT:**  
Jennifer Hayes, Fee Coordinator, 907-  
586-7344.

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS, Alaska Region, administers  
the halibut and sablefish IFQ programs  
in the North Pacific. The IFQ Programs  
are limited access systems authorized by  
section 303(b) of the Magnuson-Stevens  
Fishery Conservation and Management  
Act (Magnuson-Stevens Act) and the  
Northern Pacific Halibut Act of 1982.  
Fishing under the IFQ Programs began  
in March 1995. Regulations

implementing the IFQ Program are set  
forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act  
was amended (by Pub. L. 104-297) to  
require the Secretary of Commerce to,  
among other things, “collect a fee to  
recover the actual costs directly related  
to the management and enforcement of  
any . . . individual fishing quota  
program” (section 304(d)(2)(A)). Section  
304(d)(2) of the Magnuson-Stevens Act  
specifies an upper limit on these fees,  
when the fees must be collected, and  
where the fees must be deposited.  
Section 303(d)(4) of the Magnuson-  
Stevens Act allows NMFS to reserve up  
to 25 percent of the fees collected for  
use in an IFQ loan program to aid in  
financing the purchase of IFQ or quota  
share (QS) by entry-level and small-  
vessel fishermen.

On March 20, 2000, NMFS published  
regulations implementing the IFQ Cost  
Recovery Program (65 FR 14919), which  
are set forth at 50 CFR 679.45. Under the  
regulations, an IFQ permit holder incurs  
a cost recovery fee liability for every  
pound of IFQ halibut and IFQ sablefish  
that is landed on his or her IFQ  
permit(s). The IFQ permit holder is  
responsible for self-collecting the fee  
liability for all IFQ halibut and IFQ  
sablefish landings on his or her  
permit(s). The IFQ permit holder is also  
responsible for submitting a fee liability  
payment to NMFS on or before the due  
date of January 31 following the year in  
which the IFQ landings were made. The  
dollar amount of the fee due is  
determined by multiplying the annual  
IFQ fee percentage (3 percent or less) by  
the ex-vessel value of each IFQ landing  
made on a permit and summing the  
totals of each permit (if more than one).

**Fee Percentage**

Three percent of the ex-vessel value of  
IFQ halibut and IFQ sablefish harvested  
is the maximum fee amount allowed by  
section 304(d)(2)(B) of the Magnuson-  
Stevens Act. Regulations at § 679.45(d)  
allow the Administrator, Alaska Region,  
NMFS (Regional Administrator) to  
reduce the fee percentage if actual  
management and enforcement costs  
could be recovered through a lesser  
percentage. In this event, the Regional  
Administrator will publish a  
notification of any adjustment of the  
IFQ fee percentage in the **Federal  
Register** pursuant to § 679.45(d)(4).

For 2003, the Regional Administrator  
has determined that a fee of 1.4 percent  
is necessary to recover the actual  
management and enforcement costs.  
Therefore, the Regional Administrator is  
adjusting the cost recovery fee  
applicable to year 2003 IFQ landings  
from 3.0 percent to 1.4 percent.

**Standard Prices**

The fee liability is based on the sum  
of all payments of monetary worth made  
to fishermen for the sale of the fish  
during the year. This includes any retro-  
payments (e.g., bonuses, delayed partial  
payments, post-season payments) made  
to the IFQ permit holder for previously  
landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost  
recovery fees, NMFS distinguishes  
between two types of ex-vessel value:  
“actual ex-vessel value” and “standard  
ex-vessel value.” “Actual ex-vessel  
value” is the amount of all  
compensation, monetary or non-  
monetary, that an IFQ permit holder  
received as payment for his or her IFQ  
fish sold. “Standard ex-vessel value” is  
the default value on which to base fee  
liability calculations. However, IFQ  
permit holders have the option of using  
“IFQ actual ex-vessel value” if they can  
satisfactorily document those values.

Regulations at § 679.45(c)(2)(i) require  
the Regional Administrator to publish  
IFQ standard prices during the last  
quarter of each calendar year. These  
standard prices are used, along with  
estimates of IFQ halibut and IFQ  
sablefish landings, to calculate standard  
values. The standard prices are  
described in U.S. dollars per IFQ  
equivalent pound for IFQ halibut and  
IFQ sablefish landings made during the  
year. IFQ equivalent pound(s) means the  
weight amount, recorded in pounds, for  
an IFQ landing and calculated as round  
weight for sablefish and headed and  
gutted (“net”) weight for halibut. NMFS  
calculates the standard prices to reflect,  
as closely as possible, by month and  
port or port-group, the variations in the  
actual ex-vessel values of IFQ halibut  
and IFQ sablefish landings. The  
standard prices for IFQ halibut and IFQ  
sablefish are listed in the following  
table. Data from ports are combined as  
necessary to protect confidentiality of  
data submissions.

**REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2003 IFQ SEASON**

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX- VESSEL PRICE	SABLEFISH STANDARD EX- VESSEL PRICE
CORDOVA	March 31 .....	\$2.72	\$2.34
	April 30 .....		