



St. Johns River Bridges Area

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Dated: April 22, 2005.

**Craig Manson,**

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05-8526 Filed 4-27-05; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 050112008-5102-02; I.D. 010605E]

RIN 0648-AS23

**Fisheries of the Northeastern United States; Atlantic Herring Fishery**

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

**ACTION:** Final rule, 2005 specifications.

**SUMMARY:** NMFS announces final specifications for the 2005 fishing year for the Atlantic herring (herring) fishery, which will be maintained through the 2006 fishing year unless stock and fishery conditions change substantially. This action includes one minor regulatory language change that reflects a previously approved measure in the Fishery Management Plan for Herring (FMP). The intent of this final rule is to promote the development and conservation of the herring resource.

**DATES:** Effective May 31, 2005, through December 31, 2006.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and Essential Fish Habitat Assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council (Council),

50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/FRFA is accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, 978-281-9259, e-mail at [eric.dolin@noaa.gov](mailto:eric.dolin@noaa.gov), fax at 978-281-9135.

**SUPPLEMENTARY INFORMATION:****Background**

Proposed 2005 specifications were published on January 31, 2005 (70 FR 4808), with public comment accepted through March 2, 2005. The final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

**2005 Final Initial Specifications**

The following specifications are established by this action: Allowable

biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPT), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and total allowable catch (TAC) for each management area and subarea.

#### SPECIFICATIONS AND AREA TACS FOR THE 2005 (AND 2006) ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	220,000.
OY	150,000.
DAH	150,000.
DAP	146,000.
JVPT	0.
JVP	0.
IWP	0.
USAP	20,000 (Area 2 and 3 only).
BT	4,000.
TALFF	0.
Reserve	0.
TAC - Area 1A	60,000 (January 1 - May 31, landings, cannot exceed 6,000.
TAC - Area 1B	10,000.
TAC - Area 2	30,00 (No Reserve).
TAC - Area 3	50,000.

These specifications will be maintained for 2006, unless stock and fishery conditions change substantially. The Council's Herring Plan Development Team (PDT) will update and evaluate stock and fishery information during 2005, and the Council and NMFS may determine, based on the review by the Herring PDT, that no adjustments to the specifications are necessary for the 2006 fishing year. Maintaining the specifications for 2 years would provide the Council with an opportunity to complete the development of Amendment 1 to the FMP, which may implement a limited access program for the herring fishery in addition to other management measures, including possible adjustments to the specification process.

This action also removes references to the dates by which the proposed and final rules for the annual specifications must be published, because it is not necessary to specify these dates in regulatory text. This regulatory language change is a matter of agency procedure and is consistent with previously approved measures.

#### Comments and Responses

There were 22 comments received. Similar comments have been grouped

together. Commenters included the Council, Maine Department of Marine Resources, Conservation Law Foundation, Ocean Conservancy, five recreational fishermen, three private citizens, three commercial fishermen, and one charter boat fisherman. Six industry members and associations submitted comments: Cape Seafoods, Inc.; American Pelagic Association; East Coast Pelagic Association; East Coast Tuna Association; the Coalition for the Atlantic Herring Fishery's Orderly, Informed and Responsible Long Term Development; and the Associated Fisheries of Maine.

*Comment 1:* Three commenters stated that NMFS improperly ignored the Canadian herring stock assessment in making its decision about the specifications. They noted that a recent meeting of the Transboundary Resource Assessment Committee (TRAC) did not produce an agreed-upon stock assessment. They also noted that stock size estimates are lower in the Canadian stock assessment, and they contend that NMFS ignored the Canadian estimate in favor of the more optimistic U.S. assessment.

*Response:* In setting these specifications, NMFS relied upon the best scientific information available, and neither NMFS nor the Council ignored the Canadian assessment. Because the TRAC process failed to develop a joint stock assessment for herring, the Council used a blended approach to develop a proxy for MSY, which could be used as the basis for setting OY. This approach was fully described in the EA submitted as part of the specifications package. In short, the models used by the U.S. and Canadian scientists agree on historical herring biomass estimates until about the mid-1980s, and then they diverge from about 1985 onward. At its June 19, 2003 meeting, some members of the Council's Scientific and Statistical Committee (SSC) suggested that a level of biomass consistent with the earlier period in the assessments may be the appropriate level on which to base an estimate of MSY. This is the approach that the Council utilized to develop the proxy for MSY proposed in Amendment 1.

The Council applied average herring biomass estimates from the 1960-1970 time period to form the basis for a  $B_{MSY}$  proxy (from which MSY is derived).  $B_{MSY}$  is the biomass level that would produce MSY. During this time period, biomass was still at a high level, and fishing mortality from foreign fishing activities had not reached peak levels. Fishing mortality from the foreign fisheries reached record-high levels in the early and mid-1970s, which is when

the herring stock declined rapidly on Georges Bank. The SSC agreed that estimates of  $F_{msy}$  (the fishing mortality rate consistent with producing MSY) from 0.2-0.25 are reasonable and do not appear to be sensitive to the differences between the two assessment models presented by the United States and Canada. The herring biomass averaged 1.13 million mt (1,130,000 mt) during the 1960-1970 time period. Both models agreed on this result. When developing the proposed MSY proxy of 220,000 mt, the Council rounded this historical average biomass down to 1.1 million mt. Applying the lower estimate of  $F_{msy}$  to the 1.1 million mt proxy for  $B_{MSY}$  results in the MSY proxy of 220,000 mt. The 220,000 mt proxy is currently proposed for inclusion in Amendment 1, which is under development by the Council, to serve as a temporary and precautionary placeholder for MSY until the next assessment for the herring stock complex is completed.

*Comment 2:* Eight commenters opposed setting the Area 1A TAC at 60,000 mt, arguing that it is not a precautionary approach, given their concerns about localized depletion of the inshore spawning component of the stock. Most of these commenters urged that the Area 1A TAC be set at 45,000 mt instead.

*Response:* Despite the current disagreement between the most recent U.S. and Canadian assessments for herring abundance, the best scientific information available indicate that the herring stock is healthy. The Council's EA noted that, despite some uncertainties regarding the total biomass of the inshore component of the stock (Area 1A), the best available data indicate that it is appropriate to maintain the Area 1A TAC at 60,000 mt. Specifically, the EA stated that,

"Available information does not provide a clear answer to the question of whether or not harvest at current levels will jeopardize the inshore component of the resource. However, harvest levels for the Atlantic herring fishery have been relatively consistent for many years, and available data suggest that the inshore component of the stock is stable and has not experienced significant declines in biomass under these harvest levels. Without any biological targets or benchmarks specifically for the inshore component of the resource, the Herring Plan Development Team/Technical Team (PDT/TC) cannot [state] with certainty that maintaining harvest of this stock component at or near current levels will not cause a decline in biomass. Nevertheless, given a long time series of relatively consistent catch and stable surveys, the PDT/TC is comfortable concluding that no significant declines in the inshore component of the resource should be expected under harvest

levels in 2005 similar to those observed in recent years.”

The SSC met on June 19, 2003, and came to a similar conclusion, which it reported to the Council:

“In general, for the stock complex as a whole, current catch levels appear to be producing a biomass that is at least stable, if not increasing over time. No severe declines in the stock complex should be expected by maintaining current levels of catches over the short-term; however, the current concentration of harvest in the inshore Gulf of Maine is of concern and may be excessive. The areal effects of the catch distribution and risks to individual stock components may overwhelm any potential risks to the resource as a whole. It is critical that the risk associated with overfishing a specific stock component be minimized. While there is little risk associated with maintaining current catch levels over the short-term, monitoring the movement of larger year classes through the fishery will be important to ensure sustainable catches over the long-term.”

Furthermore, biological concerns are not the only basis for the decision to maintain the Area 1A TAC at 60,000 mt. The Council’s economic analysis predicted, “losses of \$25,000 to \$238,000 per year per vessel for the Maine purse seine fleet under an Area 1A TAC of 45,000 mt...Similarly, processing plants most reliant on fish from Area 1A would experience negative impacts associated with the loss of supply and/or market and employment effects resulting from inconsistent supply under a lower TAC in Area 1A.” NMFS agrees with the Council, “That impacts of such magnitude are [not] justified at this time, given the lack of conclusive biological information to support such reductions.”

In light of the SSC advice, NMFS is concerned about the possibility that maintaining an inshore harvest of 60,000 mt for the long term might be excessive for the inshore stock component. NMFS concludes that the Council’s specifications process, which will include the evaluation of the status of the stock and any new data in 2005, allows the Council and NMFS to ensure that the inshore stock is appropriately managed. This would provide an opportunity to reduce the Area 1A TAC if new biological information indicates that is necessary in 2006.

*Comment 3:* Twelve commenters were concerned that the herring fishery is eliminating forage that other species rely on. They contended that other important species, including cod, haddock and bluefin tuna, are likely being negatively impacted.

*Response:* Herring is an important forage species for a wide array of predators, but it is only one of many prey species that they rely on. Others,

some of which are quite abundant, include sand lance, Atlantic mackerel, Atlantic menhaden, silver hake, butterfish, Atlantic saury, and Illex and Loligo squid. Furthermore, despite the differences in the herring stock estimates produced by the recent U.S. and Canadian stock assessments, the best scientific information available indicate that the herring stock is abundant. Therefore, there is no basis for concluding that herring is being eliminated.

One of the specific concerns noted by the commenters is that there has been localized depletion of herring due to fishing activity, especially mid-water trawling. There is, however, no scientific evidence that suggests that mid-water trawling causes any long-term dispersal of herring or that it is problematic with respect to the health and sustainability of the herring stock in U.S. waters, either from a fishery or an ecosystem perspective. Countless observations during herring acoustic cruises conducted by NMFS during 1997–2001 indicate nothing more than short-term disturbance of herring during mid-water trawling and acoustic surveying operations. Fishing operations by at least a dozen large mid-water trawlers conducted over a several-month period during 2001 on Georges Bank caused no apparent changes in the distribution of pre-spawning herring as evidenced by hydroacoustic surveys conducted by NMFS. In addition, a recent study of the spatial dynamics of the Gulf of Maine-Georges Bank herring complex showed that herring maintained their school structure and interschool integrity during the 1970s, despite very large reductions in stock biomass. Another recent examination of data for the inshore (Gulf of Maine) herring resource suggests that this component of the overall resource is stable and much larger than it was in the 1970s and early 1980s. NMFS, nevertheless, is continuing to monitor the impacts of the fishery on herring behavior, and the results of such monitoring will inform future management of the resource. In addition, there will be a full discussion of the importance of herring as forage for other species in Amendment 1 to the FMP, which is currently being developed by the Council.

*Comment 4:* Two commenters wanted to put a halt to fishing in Area 1A until it can be established that there is a sufficient population of herring to support commercial catches of herring.

*Response:* The catch from Area 1A has been fairly steady since the implementation of the herring FMP in 1999. And, as stated above, there is no

evidence that maintaining the Area 1A TAC in the near term at 60,000 mt is inappropriate from a biological perspective.

*Comment 5:* One commenter supported the Council’s initial recommendation to maintain OY and DAH at 180,000 mt, and still set TALFF at zero. The commenter disagreed with NMFS’s rationale for specifying OY and DAH at 150,000 mt, arguing that the area TACs and potential increases in landings should be considered in terms of the seasonality of the fishery. The commenter contended that, in order to take this into account, the TACs for Area 1A, Area 1B, and Area 3 should be considered together, as the fish are available in these areas in the summer and fall. The Area 2 TAC should be considered separately, as that fishery takes place in the winter. The commenter believes that, if this is done, it demonstrates that the specifications proposed by NMFS would limit growth in the Area 3 fishery to 12 percent, when compared to landings in 2001. The commenter also contended that the Area 2 TAC of 30,000 mt provides little opportunity for growth in the Area 2 fishery when compared to the highest recent landings from that area of 27,198 mt in 2000.

*Response:* After reviewing the Council’s justification for setting OY and DAH at 180,000 mt, NMFS concluded that it did not provide a reasonable basis for an allocation of zero TALFF. As noted in the proposed rule, if OY were set higher than DAH, it could result in TALFF, which is the portion of the OY of a fishery that will not be harvested by vessels of the United States. While NMFS agreed with the Council that there are legitimate and legally defensible reasons to set OY at a level that can be harvested by the domestic fleet, NMFS concluded that it was not reasonable to assume that the domestic fleet would harvest 180,000 mt of herring in 2005. NMFS explained at length in the proposed rule why it concluded that it was reasonable to assume that the commercial fishery would harvest 150,000 mt of herring in 2005.

While the commenter contended that the TACs proposed by NMFS provide the potential for only a 12-percent increase in landings from Area 1 and Area 3 when compared to 2001, the commenter provided no evidence that landings from those areas are expected to increase beyond that level. In addition, NMFS is unable to duplicate this calculation. In 2001, the TAC was attained in Area 1 (1A and 1B combined), with landings of 70,432 mt and a combined TAC of 70,000.

Therefore, using that year as a basis, any growth in the summer/fall fishery would have had to have occurred in Area 3. In 2001, landings in Area 3 reached 35,079 mt. An increase of 12 percent above this level would be accommodated by a TAC of 39,288 mt, while NMFS is establishing the Area 3 TAC at 50,000 mt, allowing an increase of 42 percent in harvest from the area.

The commenter also expressed concern that the Area 2 TAC of 30,000 mt is only slightly higher than the highest recent level of landings from the area, 27,198 mt in 2000. NMFS notes that the TAC of 30,000 mt allows for considerable expansion in landings when compared to landings in more recent years. While the 2001 landings levels demonstrate that the fishery is able to harvest higher amounts from Area 3, landings have not exceeded 20,266 mt since 2001. NMFS concludes that the inseason adjustment provision provides a mechanism to address any problems that could arise for the industry if landings approach the 30,000-mt level in 2005.

*Comment 6:* Two commenters oppose the reduction in OY, DAH, and DAP to 150,000 mt, arguing that the U.S. harvesting and processing sectors have the capacity to utilize 180,000 mt. They argued that demand for herring is expected to be high, and that processing plants have expanded their capacity in recent years. One of these commenters also noted that NMFS provided no biological justification for reducing the OY or the TACs in Areas 2 and 3.

*Response:* NMFS agrees that there is capacity within both the harvesting and processing sectors to utilize more than 150,000 mt of herring. However, NMFS makes a distinction between the capacity within the industry and the performance of the fishery in recent years. NMFS concluded it could not continue to justify specifications greatly in excess of fishery performance solely on the basis of the industry's intention to expand. NMFS concluded that it was far better for the development of the U.S. industry to specify DAH at a level that could reasonably be attained by the industry; and further, to specify OY to equal DAH and TALFF at zero. NMFS notes that the reductions in OY, DAH and DAP, and the resultant reductions in the TACs for Areas 2 and 3, were not due to biological concerns.

*Comment 7:* Nine commenters supported reducing the OY to 150,000 mt. Seven of them supported a different allocation of the area TACs to reflect the 30,000-mt reduction in DAH, with reductions in Area 1A, as well as in Areas 2 and 3. Most of them expressed concern that the TAC for Area 1A is too

high. In addition, they noted that the reductions in TACs for Areas 2 and 3 appeared inconsistent with the PDT advice that future expansion of the fishery should be focused on offshore spawning components.

*Response:* NMFS has explained in the responses to Comments 2 and 4 why it concluded that it was appropriate to set the Area 1A TAC at 60,000 mt. The response to Comment 5 explains why NMFS concluded that TACs of 30,000 mt in Area 2 and 50,000 mt in Area 3 provide sufficient opportunities for the development of the fishery in those areas. NMFS reiterates that the inseason adjustment mechanism would allow those TACs to be increased up to the levels recommended by the Council, if it appears they will constrain the development of the fishery in those areas.

*Comment 8:* Four commenters stated that setting the Area 1A TAC at 60,000 mt violates at least two of the management objectives adopted by the Council during its current activities to develop Amendment 1 to the FMP. These are, "To prevent the overfishing of discrete spawning components of Atlantic herring," and "To provide for the orderly development of the offshore and inshore fisheries."

*Response:* The Area 1A TAC has been set at 60,000 mt since 2001, and, as stated above, there is no evidence that harvesting this amount from Area 1A has led to overfishing of the inshore spawning component of the stock. The TAC in Area 1A has been fully utilized in recent years, and the development of the fishery in that area has been orderly in the sense that it has enabled the participants in the fishery to operate during most of the fishing year. The TACs in Areas 1B, 2, and 3 are set such that they allow for an orderly expansion of the fishery, with controls to prevent overfishing the stock.

As noted by the commenters, the Council will be examining a range of alternatives in Amendment 1 that are intended to prevent overfishing of discrete spawning components, as well as provide for the orderly development of the offshore and inshore fisheries.

*Comment 9:* Three commenters supported setting USAP at 20,000 mt, noting that it would provide additional processing capability that can be utilized by vessels that are not configured to deliver herring to shoreside processing facilities.

*Response:* NMFS is setting the USAP at 20,000 mt specifically to provide additional opportunities for U.S. vessels.

*Comment 10:* Three commenters stated that USAP should be set at zero

because they believe that such an allocation could negatively impact shoreside processing operations and discourage their efforts to increase production. One commenter contended that a USAP vessel would exceed the vessel size limits that apply to herring fishing vessels, and stated that those size limits should apply to USAP vessels.

*Response:* NMFS reviewed the Council's justification for setting USAP at zero and concluded it would inappropriately favor one segment of the U.S. processing sector over another, without any justifiable reasons. Landings from Areas 2 and 3 (where USAP is being authorized, as in previous years) have been considerably lower than the allocated TACs for each of the past several years. USAP could provide an additional outlet for U.S. harvesters, particularly those who operate vessels that do not have refrigerated seawater systems (RSW) to maintain catch quality for delivery to onshore processors. Such vessels could offload product to USAP vessels near the fishing areas, increasing the benefits to the U.S. industry. Given the significant gap between the DAH and recent landings in this fishery, the allocation of 20,000 mt for USAP should not restrict either the operation or the expansion of the shoreside processing facilities.

NMFS notes that the FMP specifically allows USAP vessels to exceed the vessel size limits that apply to fishing vessels.

*Comment 11:* Six commenters supported NMFS's intention to use the inseason adjustment provision in the FMP to increase the allocations for TAC in Areas 2 and Area 3 if the landings approach the TACs being set in these specifications. Most of these commenters recommended establishing a trigger point at which the action would be initiated, with many suggesting that the adjustment should be triggered when landings reach 75 percent of the OY.

*Response:* NMFS agrees that it will be important to closely monitor herring landings in 2005 and 2006 so that an inseason adjustment, if necessary, can be implemented quickly. NMFS will utilize all available data sources and landings projection techniques to ensure that it can achieve that goal. NMFS sees no need to establish a pre-established landings trigger for initiating an inseason increase. The provision requires that NMFS consult with the Council and, through the Council process, the industry can provide additional information about activity in

the fishery to help determine the need for an inseason adjustment.

*Comment 12:* One commenter supports the use of the inseason adjustment, if necessary, but would like to broaden it to give the NMFS Regional Administrator the authority to do the following: Adjust OY, DAH, and area TACs downward if scientific information warrants it; implement bycatch control measures, including hard bycatch caps, for species including groundfish and marine mammals; and require mandatory levels of observer coverage on a seasonal and/or area basis if high amounts of bycatch are encountered.

*Response:* The inseason adjustment regulations at § 648.200(e) give the Regional Administrator the authority to adjust the specifications and TACs either upward or downward, assuming that new information warrants such an adjustment. However, the regulations do not allow the Regional Administrator to implement bycatch control measures or to require mandatory levels of observer coverage. Such management measures must be addressed through the framework process or through an amendment to the FMP.

*Comment 13:* One commenter suggested that, because NMFS can close the herring fishery through a notification in the **Federal Register**, it should be able to take the same abbreviated action to increase OY, DAH, DAP, and area TACs, if necessary.

*Response:* NMFS does not have legal authority to adjust the specifications through the mechanism proposed by the commenter. Applicable laws and regulations require that NMFS go through notice and comment rulemaking to increase OY, DAH, DAP and area TACs.

*Comment 14:* Seven commenters opposed setting the specifications for a period of 2 years, with some arguing that because it is a dynamic fishery, the specifications need to be reconsidered and reestablished annually.

*Response:* This action does not automatically establish these specifications for 2 years. The Council intended, however, that the specifications for 2005 will be maintained in 2006, if appropriate. The herring PDT will evaluate updated stock and fishery information during 2005, and will make a recommendation to the Council and NMFS concerning whether or not to maintain these specifications for 2006. If new data require it, the Council will initiate the process to establish new specifications for the 2006 fishing year. NMFS has used this rulemaking to ensure that the public understands the Council's intent.

*Comment 15:* One commenter stated that the system thorough which the specifications were developed was not fair, in large part because it did not adequately reflect the concerns and interests of recreational fishermen.

*Response:* The process used by the Council to develop these specifications was open to the public, and public notice was given well in advance of all meetings of the Council's Herring Advisory Panel and Herring Oversight Committee. In addition, the specifications were debated at Council meetings, during which public comment was solicited. Furthermore, the publication of the proposed rule for the specifications provided an additional opportunity for any interested individuals or groups to submit comments on the measures being considered, as was done by this commenter.

*Comment 16:* One commenter opposed the removal of the regulatory text that specifies the dates by which the proposed and final rules for the annual specifications must be published.

*Response:* This change is being made because it is unnecessary to specify such dates in regulatory text. NMFS believes that the requirement to issue specifications for each fishing year is sufficient to assure that the appropriate regulatory action will be taken. Furthermore, the timing of the Council process, and date of the Council's submission of its recommendations, determines whether NMFS is able to publish the proposed and final rules by a specific date. The dates themselves are not sufficient to control the process.

*Comment 17:* One commenter suggested that all quotas be cut by 50 percent this year, and by 10 percent each succeeding year, but provided no basis for these recommendations.

*Response:* The TACs established by this action are based on the best scientific information available and extensive analyses conducted by the Council and reviewed by NMFS. There is no information to support the reductions suggested by the commenter.

#### Classification

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the initial regulatory flexibility analysis (IRFA) and other analyses completed in support of this action. No comments were received on the IRFA. A copy of

the IRFA is available from the Regional Administrator (see **ADDRESSES**).

#### Final Regulatory Flexibility Analysis Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated here.

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

During the 2003 fishing year, 154 vessels landed herring, 38 of which averaged more than 2,000 lb (907 kg) of herring per trip. There are no large entities, as defined in section 601 of the RFA, participating in this fishery. Therefore, there are no disproportionate economic impacts between large and small entities.

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

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

#### Minimizing Significant Economic Impacts on Small Entities

The annual setting of the specifications focuses on the allocation of herring to various groups and for various purposes. Impacts were assessed by the Council and NMFS by comparing the proposed measures to the herring landings made in 2003. Alternatives that were considered to lessen the impacts on small entities are summarized below.

The Council analyzed four alternatives for OY and the distribution of TACs. One alternative would have retained the specifications implemented during the 2003 fishing year, which would have maintained the OY at 180,000 mt. This OY is still roughly 80 percent greater than the average historical landings for this fishery, and therefore that level of OY would not pose a constraint on the fishery. This alternative was rejected because it would have set OY at a level that is too high in light of the historic performance of the fishery. An allocation of this level could have resulted in an allocation of TALFF, resulting in negative impacts on the U.S. industry.

The three other alternatives considered by the Council would have set the OY at 150,000 mt. Although the OY of 150,000 mt is lower than that proposed by the Council, it is still

roughly 50 percent greater than the average historical landings for this fishery, and therefore that level of OY is not expected to pose a constraint on the fishery.

The alternatives that would set the OY at 150,000 mt would establish varying levels for the area TACs. One alternative would have established the following TACs: Area 1A, 60,000 mt; Area 1B, 10,000 mt; Area 2, 20,000 mt; and Area 3, 60,000 mt. The only area TAC that would be lower than the 2003 TAC under this option is the Area 2 TAC. The most recent year in which the landings from this area were greater than 20,000 mt (the proposed TAC) was 2000 (27,198 mt). The average landings from 2001 to 2003 were 14,300 mt, with 2003 landings at 16,079 mt. Under current market conditions, the new TAC may become constraining if the fishery in 2005 (and possibly 2006) is similar to that in 2000. If this is the case, then the Area 2 TAC fishery season could end before the end of the year, creating a potential economic constraint on the fishery, especially if vessels were forced to travel farther (increased steaming time) to harvest herring in Area 3. Because of this potential for economic costs, this alternative was rejected.

Another alternative considered would have established the following TACs: Area 1A, 45,000 mt; Area 1B, 10,000 mt; Area 2, 35,000 mt; and Area 3, 60,000 mt. With a 15,000-mt decrease in the combined Area 1 TACs, the economic impact of this alternative could be relatively large on vessels in the fishery that depend on herring in Area 1A, especially if those vessels are not able to move to other areas to obtain fish. Even if vessels could fish in other areas, their operating costs would be increased because of increased steaming time. Because of this potential for economic costs, this alternative was rejected. An Area 2 TAC of 35,000 mt proposed under this alternative would not be constraining given recent landings history.

The final alternative considered would have established the following TACs: Area 1A, 55,000 mt; Area 1B, 5,000 mt; Area 2, 30,000 mt; and Area 3, 60,000 mt. With a 10,000-mt decrease in the combined Area 1 TACs, the impact of this alternative would be very similar to the impact of the prior alternative, although not as severe. Because of this potential for economic costs, this alternative was rejected. An Area 2 TAC of 30,000 mt proposed under this alternative would not be constraining given recent landings history.

### 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 actions 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 will be sent to all holders of permits issued for the herring fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may be found at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 21, 2005.

**Rebecca Lent,**

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

For the reasons set out above, 50 CFR part 648 is amended as follows:

### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.200, paragraphs (c) and (d) are revised to read as follows:

#### § 648.200 Specifications.

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(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission, and shall publish notification in the **Federal Register** proposing specifications and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the Council, the

reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in this section.

(d) NMFS shall make a final determination concerning the specifications for Atlantic herring. Notification of the final specifications and responses to public comments shall be published in the **Federal Register**. If the final specification amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section. The previous year's specifications shall remain effective unless revised through the specification process. NMFS shall issue notification in the **Federal Register** if the previous year's specifications will not be changed.

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### DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

[Docket No. 050216041-5105-02; I.D. 020705C]

RIN 0648-AS87

### Fisheries of the Northeastern United States; Recordkeeping and Reporting Requirements; Regulatory Amendment to Modify Seafood Dealer Reporting Requirements

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to amend the electronic reporting and recordkeeping regulations for federally permitted seafood dealers participating in the summer flounder, scup, black sea bass, Atlantic sea scallop, Northeast (NE) multispecies, monkfish, Atlantic mackerel, squid, butterfish, Atlantic surfclam, ocean quahog, Atlantic herring, Atlantic deep-sea red crab, tilefish, Atlantic bluefish, skate, and/or spiny dogfish fisheries in the NE Region. This action reduces the submission schedule for dealer reports from daily to weekly, eliminates duplicate reporting of certain species, and clarifies existing reporting requirements. This action will also