

The procedures must be in effect one year from the publication date of the Final Rule.

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**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 031126296-3296-01; I.D. 111903B]

RIN 0648-AQ84

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

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

**ACTION:** Proposed 2004 specifications for the Atlantic herring fishery; request for comments.

**SUMMARY:** NOAA Fisheries proposes specifications for the 2004 Atlantic herring fishery. The regulations for the Atlantic herring fishery require NMFS to publish specifications for the upcoming year and to provide an opportunity for public comment. The intent of the specifications is to conserve and manage the Atlantic herring resource and provide for a sustainable fishery.

**DATES:** Comments must be received no later than 5 p.m., Eastern Standard Time, on January 12, 2004.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Essential Fish Habitat Assessment, and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2001 Atlantic Herring Fishing Year are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov/ro/doc/nero.html>.

Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 1

Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope: "Comments--2004 Herring Specifications." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

**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:

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) require the New England Fishery Management Council's (Council) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the Council's Atlantic Herring Oversight Committee: 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 reserve (if any). The PDT and PRT also recommend the total allowable catch (TAC) for each management area and subarea identified in the FMP. As the basis for its recommendations, the PDT reviews available data pertaining to: Commercial and recreational catch; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. Recommended specifications are presented to the Council for adoption and recommendation to NMFS.

#### Proposed 2004 Specifications

Taking into account existing scientific data and the ongoing activity to develop Amendment 1 to the Atlantic Herring Fishery Management Plan, the Council recommended at its May 2003 meeting that the 2003 specifications should be maintained for 2004, consistent with the PDT's recommendation. Based on the Council's recommendations, NMFS proposes the specifications and Area TACs contained in the following table.

#### SPECIFICATIONS AND AREA TACs FOR THE 2004 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPT	20,000
JVP	10,000
	(Area 2 and 3 only)
IWP	10,000
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	50,000
	(TAC reserve: 70,000)
TAC - Area 3	60,000

Maintaining the 2003 specifications for the 2004 fishing year is prudent and is unlikely to have significant biological consequences to the herring stock or its subcomponents in the short term. The Transboundary Resource Assessment Committee (TRAC) met in St. Andrew's, New Brunswick, from February 10-14, 2003. Both a U.S. and a Canadian assessment of the herring resource were presented and reviewed at the meeting. The two assessments diverged greatly and no consensus was reached regarding which assessment was more accurate or how the two could be reconciled. Because of this discrepancy, the TRAC information cannot be utilized at this time to support the development of different specifications for the 2004 fishing year. The expectation is that the analysis and evaluation of the TRAC results will continue and that the resulting information will inform the development of Amendment 1.

#### Classification

This proposed rule has been determined to be exempt from review under E.O. 12866.

The Council and NMFS prepared an initial regulatory flexibility analysis (IRFA) as required under section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

A description of the reasons why this action is being considered, and the objectives of this proposed rule can be found in the preamble to this proposed rule and are not repeated here. This action does not contain any collection-

of-information, reporting, or recordkeeping requirements. It would not duplicate, overlap, or conflict with any other Federal rules.

All of the affected businesses (fishing vessels) are considered small entities under the standards described in NOAA Fisheries guidelines because they have gross receipts that do not exceed \$3.5 million annually. Based on 2002 data, there are an estimated 140 vessels prosecuting the fishery, 37 of which average more than 2000 lb of herring per trip. In assessing economic impacts for the 2004 specifications, landings from the 2002 fishery were used as a proxy for 2003 landings since 2002 was the last year in which a complete set of data was available. In addition, landings in the 2002 fishery are utilized as a baseline to determine impacts of the 2004 fishery. This presumes no significant change in production between the 2002 and 2003 fisheries. Since vessel level data are not readily available, changes in revenue are viewed as a proxy for changes in vessel profitability.

The specification of 250,000 mt for OY and DAH was approved for the 2003 fishery and is recommended for the 2004 fishery. At this level, there could be an increase of up to 158,169 mt in herring landings or \$22,618,167 in revenue based on a market price of \$143/mt, thus, allowing individual vessels to increase their profitability under the 2004 specifications. For the 2003 specifications, the Council also considered OY alternatives of 300,000 and  $\leq 1,000,000$  mt. At these OY level there would be increased potential revenues to a greater extent than the proposed 2004 alternative of 250,000 mt. In addition, at these levels there could be risks to the health of the herring stock. An additional alternative for DAH of 230,000 mt would also increase potential profits for the herring fleet although not to the extent of the proposed DAH.

Based on the proposed 2004 DAP specification of 226,000 mt, there could

be an increase of up to 134,169 mt in herring landings or \$19,186,167 in revenue based on \$143/mt as compared to 2002 actual landings and revenue. Revenues to the fleet would also increase under the Council's proposed 2003 DAP alternatives of 236,000 mt and 176,000 mt. This would be true of any alternative greater than 91,831 mt, the total harvest for the 2002 fishery. However, the magnitude of economic impact of the DAP will rely on the processing sector's ability to expand markets and increase capacity to handle larger amounts of herring in 2004.

Overall, if the full amount of the JVP (10,000 mt) is harvested, revenues to the participating U.S. vessels would be approximately \$1.4 million, based on an average price of \$143/mt. However, little of the 10,000 mt JVP allocation was utilized in 2002, and the JVP allocation in 2003 is not expected to be fully utilized. As of June 2003, no JVP activity for herring has occurred during the 2003 fishing year. There is no indication at this time that demand for the JVP allocation will increase in 2004. As a result, no substantial economic impacts are expected in 2004 from continuing the 2003 specification of 10,000 mt for JVP. The Council also considered a JVP alternative of 5,000 mt for the 2003 specifications. This specification could yield an increase in revenue to participating US vessels since the specification is greater than what was actually harvested in the 2002 fishery. However, potential benefits would be far less than those estimated for a 10,000 mt JVP.

Approximately 6,132 mt of the 10,000 mt allocation of IWP was utilized in 2002. There is no indication at this time that demand for the IWP allocation will increase in 2004. As a result, no significant economic impacts are expected in 2004 from continuing the 2003 specifications for IWP.

The rollover of 2003 specifications should allow vessels to continue to expand into Areas 2 and 3, resulting in economic gains for individual vessels.

The Area 1A and 1B TACs of 60,000 and 10,000 mt, respectively, have remained unchanged since the 2000 fishery. In 2002, the Area 1A TAC for the directed herring fishery was fully utilized and is expected to be fully utilized for the 2004 fishery. Therefore, no change is expected in profitability of vessels from the 2004 Area 1A specification, all other things being equal. Since only 7,416 mt of herring were harvested in Area 1B in 2002, the proposed 2004 specification of 10,000 mt should allow for increased economic benefits to individual vessels prosecuting the 2004 specification. Since the allocation of 20,000 mt to USAP has never been utilized, continuing to keep it at 20,000 mt in 2004 (or to keep it as a separate category) will not result in economic impacts in the short-term. The long-term implication of keeping USAP as a separate specification that gets an allocation, even though the allocation has never been utilized, is that it discourages investment in a form of processing that may be better able to respond to changing market and stock conditions, and it may have encouraged investment in more permanent onshore processing capacity.

The Council, in its 2003 EA/RIR/IRFA document, considered a Committee recommendation to reduce USAP by 5,000 mt, but rejected it based on comments that a vessel may enter the fishery in 2003 that could fully utilize the 20,000 mt specification. The reduction of the specification to 15,000 mt would reduce potential profits of USAP operations when compared to the status quo specification of 20,000 mt, although as yet, no part of USAP has been utilized.

Dated: December 8, 2003.

**Rebecca Lent,**

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

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