

applicable laws and regulations governing the transportation of explosives.

*Known train crew member* means an individual used to transport explosives from Canada to the United States who has been determined by the Governments of Canada and the United States to present no known security concern.

*Lawful permanent resident alien* means a lawful permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(2).

*Offeror* means the person offering a shipment to the railroad carrier for transportation from Canada to the United States, and may also be known as the "consignor" in Canada.

*Railroad carrier* means "railroad carrier" as defined in 49 U.S.C. 20102.

(c) *Prior approval of railroad carrier, offeror, and train crew member.* (1) No railroad carrier may transport in commerce any explosive into the United States from Canada via a train operated by a crew member who is not a United States citizen or lawful permanent resident alien unless the railroad carrier, offeror, and train crew member are identified on a TSA list as a known railroad carrier, known offeror, and known train crew member, respectively.

(2) The railroad carrier must ensure that it, its offeror, and each of its crew members have been determined to be a known railroad carrier, known offeror, and known train crew member, respectively. If any has not been so determined, the railroad carrier must submit the following information to Transport Canada:

(i) The railroad carrier must provide its:

- (A) Official name;
- (B) Business number;
- (C) Any trade names; and
- (D) Address.

(ii) The following information about any offeror of explosives whose shipments it will carry:

- (A) Official name;
- (B) Business number; and
- (C) Address.

(iii) The following information about any train crew member the railroad carrier may use to transport explosives into the United States from Canada who is neither a United States citizen nor lawful permanent resident alien:

- (A) Full name; and
- (B) Both current and most recent prior residential addresses.

(3) Transport Canada will determine that the railroad carrier and offeror are legitimately doing business in Canada and will also determine that the train crew members present no known problems for purposes of this section.

Transport Canada will notify TSA of these determinations by forwarding to TSA lists of known railroad carriers, offerors, and train crew members and their identifying information.

(4) TSA will update and maintain the list of known railroad carriers, offerors, and train crew members and forward the list to the Customs Service.

(5) Once included on the list, the railroad carriers, offerors, and train crew members need not obtain prior approval for future transport of explosives under this section.

(d) *TSA checks.* TSA may periodically check the data on the railroad carriers, offerors, and train crew members to confirm their continued eligibility and may remove from the list any that TSA determines is not known or is a threat to security.

(e) *At the border—*(1) *Train crew members who are not United States citizens or lawful permanent resident aliens.* Upon arrival at a point designated by the Customs Service for inspection of trains crossing into the United States, the train crew members of a train transporting explosives must provide sufficient identification to the Customs Service to enable that agency to determine if each crew member is on the list of known train crew members maintained by TSA.

(2) *Train crew members who are United States citizens or lawful permanent resident aliens.* If the Customs Service cannot verify that the crew member is on the list and the crew member is a United States citizen or lawful permanent resident alien, the crew member may be cleared by the Customs Service upon providing:

- (i) A valid United States passport; or
- (ii) One or more other document(s) including a form of United States federal or state government-issued identification with photograph, acceptable to the Customs Service.

(3) *Compliance.* If a carrier attempts to enter the United States without having complied with this section, the Customs Service will deny entry of the explosives and may take other appropriate action.

Issued in Washington, DC, on February 3, 2003.

**Stephen J. McHale,**  
*Deputy Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 021101264-3016-02; I.D. 101802D]

RIN 0648-AQ33

#### 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, 2003 specifications.

**SUMMARY:** NMFS announces final specifications for the 2003 Atlantic herring fishery. There are two changes from the 2002 specifications approved by NMFS for the 2003 fishery: A transfer of 10,000 mt from Area 2 total allowable catch (TAC) reserve to the Area 3 TAC resulting in an Area 3 TAC of 60,000 mt and an Area 2 TAC reserve of 70,000 mt; and a restriction on U.S. at-sea processing (USAP) vessels to fish in Areas 2 and 3, only. The intent of this final rule is to promote the development and conservation of the Atlantic herring resource.

**DATES:** Effective February 6, 2003, through December 31, 2003.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2001 Atlantic Herring Fishing Year are available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA/SAFE are accessible via the Internet at <http://www.nero.nmfs.gov>.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 978-281-9273, fax 978-281-9135, e-mail [paul.h.jones@noaa.gov](mailto:paul.h.jones@noaa.gov).

**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), 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. To the extent that these recommendations are adopted by NMFS, they serve as the basis for the allocations.

Proposed 2003 initial specifications were published on November 15, 2002 (67 FR 69181). Public comments were accepted through December 16, 2002. The final specifications are unchanged from those that were proposed.

**2003 Final Initial Specifications**

The following table contains the final initial specifications for the 2003 Atlantic herring fishery.

**FINAL SPECIFICATIONS AND AREA TACS FOR THE 2003 ATLANTIC HERRING FISHERY**

Specification	Final 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
TAC-Area 1B .....	10,000

**FINAL SPECIFICATIONS AND AREA TACS FOR THE 2003 ATLANTIC HERRING FISHERY—Continued**

Specification	Final Allocation (mt)
TAC-Area 2 .....	50,000 (Area 2 and 3 only)
TAC-Area 3 .....	60,000

There are two changes from the specifications approved by NMFS for the 2002 fishery: A transfer of 10,000 mt from the Area 2 TAC reserve to the Area 3 TAC resulting in an Area 3 TAC of 60,000 mt and an Area 2 TAC reserve of 70,000 mt; and a restriction on USAP vessels to fish in Areas 2 and 3 only. A complete discussion of the development of these changes appears in the recommendations from the Council and the preamble to the proposed rule and is not repeated here.

**Comments and Responses**

Three members of the public submitted comments on the proposed specifications. One of the three commenters submitted general comments about Atlantic herring management, which is not the subject of this rulemaking and will not be responded to here.

*Comment 1:* One commenter supported the proposed restriction of USAP activity from Area 1, the proposed increase in Area 3 TAC, and the proposed USAP specification of 20,000 mt.

*Response 1:* This final rule implements the proposed measures.

*Comment 2:* One commenter opposed restricting USAP activity to Areas 2 and 3. He argued USAP should be allowed throughout the management area and that allowing USAP vessels in the area provides fishing opportunities for vessels that lack refrigerated sea water and holding tanks needed to deliver fish to shore.

*Response 2:* There are no expected biological impacts on the Atlantic herring stock from restricting potential USAP vessel activity to Areas 2 and 3. If a USAP vessel has the opportunity to operate in or near Area 1 at a lower cost (for fuel, maintenance, or other operational expenses) than it would incur from fishing in Area 2 or 3, and it is restricted from doing so, then the economic profitability of the USAP vessel would be reduced. However, there has been no USAP activity, so such concern is hypothetical at this time. The prohibition on harvesting Area 1 fish for delivery to USAP vessels would leave more fish available to

shoreside processors and bait dealers operating on the coasts of Maine, New Hampshire, and Massachusetts, the three states that border Area 1A (the inshore portion of Area 1). The quota in Area 1A was taken prior to the end of both the 2000 and 2001 fishing years, and the period 1 (January through June) quota implemented in 2002 was taken by April. Therefore, based on recent fishing activity in Area 1, restricting USAP activity from Area 1 seems to result in net benefits to the fishery.

As a result, the Council recommended, and NMFS is implementing, the restriction of USAP activity from Area 1.

**Classification**

This final rule has been determined to be not significant for purposes of E.O. 12866.

This action establishes TACs and related management measures for the Atlantic herring fishery. If implementation of the TACs and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of the species. The Atlantic herring fishery will begin making landings on January 1, 2003. If a delay in effectiveness is required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. Of particular concern would be the impact if the Area 1A TAC allocated for the period January-June is overharvested. NMFS must close Area 1A when 95 percent of the TAC allocated to the first seasonal period is reached or exceeded. The quota in Area 1A was taken prior to the end of the 2000, 2001, and 2002 fishing years. The Period 1 quota for 2002 was taken earlier (April) than in 2001, and that trend might continue in 2003. If Period 1 is not closed prior to reaching 95 percent of the TAC allocated to this period, then there would be distributional effects on the fishery for the remainder of the fishing year and would likely reduce economic gains for some of the industry participants who traditionally harvest Atlantic herring in Area 1A during Period 2 (June through December). Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the quotas and other management measures.

NMFS prepared a FRFA for this action. The FRFA includes a summary of the analyses in support of these specifications. A copy of the FRFA is available from NMFS (see **ADDRESSES**).

A summary of the FRFA, which includes the IRFA and applicable sections of the 2003 specifications package, follows:

The reasons why this action is being taken by the agency, and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Three comments were submitted on the proposed rule, but none of them were specific to the initial regulatory flexibility analysis. However, one individual commented on the economic impacts of the measures on the fishing industry; NMFS has responded to the comment (Comment 2) in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

All of the affected businesses (fishing vessels and dealers) are considered small entities under the standards described in NMFS guidelines because they have profits that do not exceed \$3 million annually. The last full year of data available for the Atlantic herring fishery is for 2001. There were 146 vessels, 6 processors, and 190 dealers participating in the fishery in 2001. Given that vessels caught less than half

the OY in 2001, the status quo OY should not result in a negative economic impact on the revenues of vessels, producer surplus, or consumer surplus.

The increase in the Area 3 TAC from 50,000 to 60,000 mt, and concomitant decrease in the Area 2 TAC reserve from 80,000 to 70,000 mt, should have a positive impact on vessels and processors. Landings from Area 3 increased from 12,884 mt in 2000 to 34,510 mt in 2001. The Council thus sought to provide additional opportunity for the industry to increase its activity in Area 3. The Council did not consider transferring any TAC from Area 1 because that is the area in which the fishery has historically concentrated its activity. In fact, in 2001, landings from Area 1A and Area 1B totaled 68,130 mt, nearly attaining the combined TAC for both areas of 70,000 mt. Landings from Area 2 in 2001 were only 15,388 mt out of a combined Area 2 TAC and Area 2 TAC Reserve of 120,000 mt. Thus, the transfer of 10,000 mt from the Reserve will still leave a substantial amount of TAC for the fishery to expand its activity in Area 2. If the TAC transfer is fully utilized, an additional 10,000 mt would produce additional revenues of \$1.2M (assuming \$120/mt) to vessels and a proportionate increase in profits to processors.

As noted above, landings from Area 1 in 2001 neared the total TAC for the area. The Council was concerned that future USAP activity, if allowed in Area

1, would have a negative impact on firms that have historically harvested Area 1 fish for sale to shoreside processors. If the Area 1 TACs were attained, harvesting vessels that sell their catch to shoreside processors would have to fish farther offshore, increasing their operating costs and potentially reducing their profitability. The economic impact on USAP vessels from the prohibition on receiving fish harvested in Areas 1A and 1B cannot be directly measured since there is no history of over-the-side purchases upon which to base economic impacts.

The Council 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.

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

Dated: January 30, 2003.

**Rebecca Lent,**

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

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