

**Proposed Atlantic Herring Specifications**  
**for the**  
**2003 Fishing Year**  
**including the**  
**Environmental Assessment (EA),**  
**Regulatory Impact Review (RIR), and**  
**Initial Regulatory Flexibility Analysis (IRFA)**

**Prepared by the**  
**New England Fishery Management Council**  
**in consultation with**  
**Atlantic States Marine Fisheries Commission**  
**Mid-Atlantic Fishery Management Council and**  
**National Marine Fisheries Service**

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## 1.0 Introduction

This document contains the New England Fishery Management Council's recommended specifications for the 2003 Atlantic herring fishery as required by the Magnuson-Stevens Act and the fishery management plan (FMP) approved by the National Marine Fisheries Service on October 27, 1999. It also contains information and the supporting analysis required under other applicable law, namely the National Environmental Policy Act (Environmental Assessment, EA), the Regulatory Flexibility Act (the Initial Regulatory Flexibility Analysis, IRFA) and Executive Order 12866. Appendix I contains the annual Stock Assessment and Fishery Evaluation (SAFE) Report for 2001 which provides the background for the Council's recommendations and much of the information for the Environmental Assessment and Regulatory Impact Review.

The specifications are for annual amounts of:

- allowable biological catch (ABC)
- optimum yield (OY)
- domestic annual harvest (DAH)
- total allowable level of foreign fishing (TALFF)
- domestic annual processing (DAP)
- total joint venture processing (JVpt)
- joint venture processing for management Areas 2 and 3 (JVP)
- internal waters processing (IWP)
- U.S. at-sea processing by vessels >165 feet or >750 GRT (USAP)
- border transfer (U.S.-caught herring transferred to Canadian vessels for export to Canada) (BT), and
- reserve

The Council, at its July meeting, voted that the 2002 specifications and management area TACs be carried forward to 2003, with two modifications. The modifications are:

1. that the USAP specification be limited to fish caught in Areas 2 and 3 only, and
2. that 10,000 mt of the Area 2 reserve TAC be shifted to the Area 3 TAC, reducing the Area 2 reserve to 70,000 mt and increasing the Area 3 TAC to 60,000 mt.

Management areas are shown in Figure 1. Table 1 and Table 2 show the Council's recommendations for the 2003 fishing year specifications and management area TACs, respectively, including alternatives that were not accepted .

| <b>Specification</b> | <b><u>Recommendation/</u></b><br><b>Alternatives</b> | <b>Tonnage (mt)</b>             |
|----------------------|--|---------------------------------|
| ABC                  | <u>Status quo</u>                                    | <u>300,000</u>                  |
|                      | 2002 Option 2  | >1,000,000                      |
| OY                   | <u>Status quo</u>                                    | <u>250,000</u>                  |
|                      | 2002 Option 2  | 300,000                         |
|                      | 2002 Option 3  | >1,000,000                      |
| DAH                  | <u>Status quo</u>                                    | <u>250,000</u>                  |
|                      | 2002 Option 1  | 230,000-245,000                 |
| DAP                  | <u>Status quo</u>                                    | <u>226,000</u>                  |
|                      | Committee recommendation                             | 236,000                         |
|                      | 2002 Option 1  | 176,000-221,000                 |
| JVPt                 | <u>Status quo</u>                                    | <u>20,000</u>                   |
|                      | Committee recommendation                             | 10,000 (Area 2 only)            |
| JVP                  | <u>Status quo</u>                                    | <u>10,000 (Area 2 &amp; 3)</u>  |
|                      | Committee recommendation                             | 5,000 (Area 2 only)             |
| IWP                  | <u>Status quo</u>                                    | <u>10,000</u>                   |
|                      | Committee recommendation                             | 5,000 (Area 2 only)             |
| USAP                 | Status quo   | 20,000 (All areas)              |
|                      | Committee recommendation                             | 15,000 (Areas 2 & 3)            |
|                      | <u>Council recommendation</u>                        | <u>20,000 (Areas 2 &amp; 3)</u> |
| BT                   | <u>Status quo</u>                                    | <u>4000</u>                     |
| TALFF                | <u>Status quo</u>                                    | <u>0</u>                        |
|                      | 2002 Option 1  | 5,000-20,000                    |

**Table 1 Atlantic herring specifications recommended by the Council for 2003. Recommendations and alternatives are shown (recommendations are underlined). The only proposed change from 2002 is to limit USAP to processing fish harvested in Areas 2 and 3 only. This document incorporates by reference the Environmental Analysis/Regulatory Impact Review/Final Regulatory Flexibility Analysis for the 2002 specifications (December 2001), with 2002 alternatives listed.**

| Area        | Recommendation/<br>alternatives | Amount (mt)           |
|-------------|---------------------------------|-----------------------|
| 0.041666667 | <u>Status quo</u>               | <u>60000</u>          |
| 1B          | <u>Status quo</u>               | <u>10000</u>          |
| 2           | <u>Recommendation</u>           | <u>50,000</u>         |
|             |                                 | (TAC reserve: 70,000) |
|             | Status Quo                      | 50,000                |
|             |                                 | (TAC reserve: 80,000) |
| 3           | <u>Recommendation</u>           | <u>6000050000</u>     |
|             | Status Quo                      |                       |

**Table 2 Atlantic herring management area TACs for 2003. Council recommendations are underlines. The only changes from 2002 are recommendations to decrease the Area 2 Reserve by 10,000 mt, and increase the Area 3 TAC by 10,000 mt.**

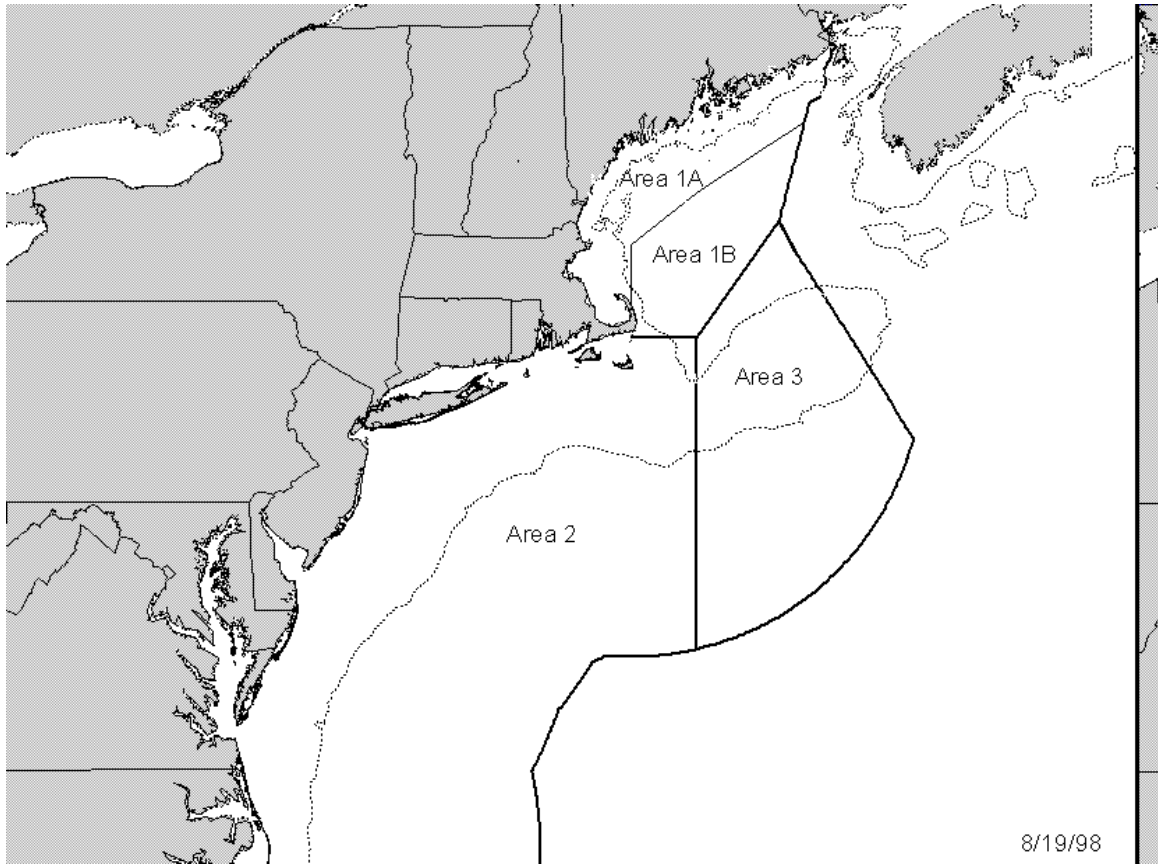


Figure 1 Atlantic herring management areas



As noted in the legend for Table 1, this Environmental Analysis/Regulatory Impact Review/SAFE Report incorporates by reference, as authorized by NOAA Administrative Order 216-6.03a4, the analyses of alternatives evaluated in the Environmental Analysis/Regulatory Impact Review/Final Regulatory Flexibility Analysis (2002 EA/RIR/FRFA) prepared for the 2002 specifications. The minor changes from the 2002 specifications are discussed below, but essentially the 2002 EA/RIR/FRFA provides the necessary analysis for the 2003 specifications. A new Finding of No Significant Impact (FONSI) is included in this document. The final version of the 2002 EA/RIR/IRFA (December 2001) may be obtained from either the Council or NMFS/Northeast Region.

## 2.0 Purpose and need

Section 303 of the Magnuson-Stevens Act requires the Council to:(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from the fishery, and include a summary of the information utilized in making such specifications;(4) assess and specify:

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

Furthermore, the FMP states that the NMFS Regional Administrator, after consultation with the Council will determine the annual specifications. The FMP requires the Council and the Regional Administrator to review annually the best available data on the fishery and to develop specifications. The Council has reviewed the SAFE Report for the 2001 Fishing Year, prepared by the Atlantic Herring Plan Development Team, and, after consultation with the Atlantic States Marine Fisheries Commission, submits the report (as Appendix I) to the Regional Administrator in conjunction with this recommendations package. After providing for public comment, the Regional Administrator publishes the final specifications in the *Federal Register*. The FMP also provides the Regional Administrator the authority to adjust the specifications in mid-season as necessary.

The FMP states that the total allowable catch (TAC) will be distributed to the management areas shown in Figure 1 on an annual basis. The Council uses the best information available, as provided in the SAFE Report, to estimate the proportion of each spawning component of the Atlantic herring stock complex in each area/season, and distributes the TAC so that no individual spawning component is overfished. The annual setting of management area TACs provides the Council the flexibility to respond to short-term changes in stock conditions and fish distribution,

as well as to incorporate updated scientific information about the distribution or status of spawning components.

### **3.0 Proposed action and alternatives**

On July 23, 2002, the Council considered alternatives and recommendations of the Plan Development Team (PDT), the Herring Oversight Committee and the Herring Advisory Panel (AP). The PDT recommended retaining the status quo for all specifications and management area TACs. These alternatives and recommendations were essentially the same alternatives and recommendations considered in the 2002 EA/RIR/FRFA. The AP supported by general consensus the statement that “until new domestic processing capacity is on line, it supports foreign joint ventures and internal waters processing activities at the status quo level, with fish coming from Areas 2 and 3.” The Committee recommendations for specifications and TACs, where different than the status quo are shown in Table 1 and Table 2, respectively.

#### **3.1 Rationale for the preferred alternative**

The 2002 specifications limit the JVP to fish caught in Areas 2 and 3 only, and the Council retains this limitation. The Council also recommends the area limitation for USAP for the same reasons, as discussed here. The Council heard comments at the July 23, 2002 meeting that allowing a large at-sea processor to take fish harvested in Area 1 would negatively impact the flow of herring to shoreside processing facilities that are providing herring to long-established, traditional markets (bait and sardine canneries). The Council also considered comments that allowing at-sea processing of herring in Area 1 would undermine the enforceability of the states’ effort controls and spawning area restrictions and tolerance provisions, especially if the vessel would be processing fish caught by vessels that do not have licenses issued by the Gulf of Maine states. Up to now, no vessel has availed itself of the USAP specification, and while one company representative indicated the intent to do so in 2003, there is no assurance that such an operation will materialize.

The shifting of 10,000 mt of TAC from the Area 2 reserve to Area 3 will have no impact on the biological status of the Georges Bank/Southern New England stock component, but it will incrementally increase the opportunity for vessels to catch the optimum yield from the fishery. In recent years, the fishery has not taken half of the amount of fish specified as OY, in part due to the lack of markets and processing capacity. Based on information in the 2001 SAFE Report and numerous public comments, there is an increasing demand for herring, particularly during the summer fishery in Area 3. As overseas markets open and domestic processing capacity increases significantly, this fishery represents a profitable opportunity for some displaced groundfish vessels, as well as the established herring vessels seeking an alternative to fishing in Area 1 when the states’ effort controls and spawning area closures take effect in the summer months. In 2001, the catch from Area 3 nearly tripled from the previous year, to 35,000 mt, the highest level in recent years. With increasing demand for herring, it is very likely that the vessels will take the full 50,000 mt TAC in 2003.

Furthermore, the winter fishery in Area 2 is much less consistent and reliable as a resource to

feed the growing demand for herring. In 2001, vessels only harvested 15,000 mt (out of a TAC of 130,000 mt including reserve), well below the average of 20,000 mt of the past six years, despite the growing demand for herring and the 14 percent increase in total landings from 2000. Harvesters and processors have stated on numerous occasions that Area 3 represents the best opportunity for growth in the fishery. For these reasons, the Council recommends the incremental increase in the Area 3 TAC with a commensurate reduction in the Area 2 reserve TAC.

## **4.0 Environmental Consequences**

The following section is based on and refers to information contained in the Appendix I (SAFE Report) and the 2002 EA/RIR/FRFA.

### **4.1 Biological impacts**

The proposed action, which does not increase the total amount of herring that fishing vessels may harvest, will not likely have an impact on the target species, non-target species of fish or on the ecosystem biota. The shifting of 10,000 mt from the Area 2 reserve TAC to the Area 3 TAC will modestly increase the chances that the fishery will achieve optimum yield, but since the two TACs are from the same spawning component of the stock, there will be no significant impact on the entire stock or the Southern New England/Georges Bank spawning component. The biological impacts will not change for the 2003 specifications since there are no estimated changes in stock biomass or other biological reference points. An updated stock assessment is planned for 2003.

In its 2002 specifications package, the Council based its choice of ABC on the Atlantic herring 2001 Stock Assessment and Fishery Evaluation Report (SAFE). The Council considered the status quo ABC specification of 300,000 mt and an alternative that would have allowed over 1 million mt, based on applying the fishing mortality target to current estimates of biomass. The Council adopted the more conservative ABC because of uncertainty about current stock size and the need to retain stability in year-to-year estimates in ABC in the event of a significant change in the estimates of current biomass. In setting ABC conservatively, the Council also recognizes the importance of herring as a forage fish for a number of important recreational and commercial fish species and some species of cetaceans.

For its 2003 specifications package, the Council also used the Atlantic herring 2001 SAFE Report (a new stock assessment for Atlantic herring is planned by NMFS during 2003). The Council considered three options for OY, including the status quo of 250,000 mt, the preferred alternative for ABC (300,000 mt), and the non-preferred ABC option (>1,000,000 mt). Any option equal to or less than the preferred ABC option will probably not have an adverse biological impact, either on herring or other stocks that consume herring. Setting OY above 300,000 mt, however, may have an adverse impact that is difficult to quantify on the target species or on species that feed on herring. Given the uncertainty (lack of precision) in both stock size estimates and in the predator-forage role of herring in the ecosystem, the Council decided that such an option would have an unacceptable level of risk.

The Atlantic Herring FMP specifies that TALFF plus DAH equals OY. Since, by definition, DAH or TALFF cannot be greater than OY, and OY cannot exceed ABC, any changes to DAH or TALFF will have no adverse biological impacts on the stock of Atlantic herring. Therefore, no options for TALFF, including zero, will have a greater biological impact than that of OY. To the extent that conditions and restrictions placed on foreign fishing are different than those placed on domestic harvesters, the impacts of allowing foreign fishing may be different than if OY were harvested entirely by domestic vessels. However, since all of the alternatives the Council considered for TALFF are less than eight percent of OY, the impacts will not likely be significant or detectable.

The EIS prepared for the FMP fully examined the issue of bycatch in the Atlantic herring fishery. The available information indicates that the traditional purse seine and mid-water trawl herring fisheries are relatively “clean” fisheries, with limited bycatch of other species. The EIS also notes that there has been some concern about the potential for marine mammal interactions with the herring mid-water trawl fishery, based on experience with other mid-water trawl fisheries. As a result, NMFS has listed the fishery as a Category II fishery, which means the gear type is considered to have an occasional likelihood of causing incidental mortality and/or serious injury to marine mammals. The listing as a Category II fishery authorizes the placement of marine mammal observers on these vessels. Appendix I notes in Section 2.4.3 that there were no reported takes of marine mammals in the U.S. herring fishery in 1999 and 2000. In 2001, the only observed takes were four pilot whales in fishing operations conducted by vessels engaged in the foreign joint ventures. Thus far, there has been little interest expressed in joint ventures for the 2003 fishery.

## **4.2 Economic impacts**

### **4.2.1 Impacts of OY and DAH**

As noted, the Council decided to recommend no change to these specifications from the previous year. These levels of OY and DAH were analyzed in the 2002 EA/RIR/FRFA. As discussed in Appendix I, several new processing facilities are in development that may increase the utilization of DAH in 2003. Landings from the 2001 fishery are used as a proxy for 2002 landings since the fishery is still underway when the 2003 specifications package is produced. This presumes no significant change in production for the 2002 fishery. Note that as of August 3, 2002, overall landings reported in through the IVR system are about six percent below the level at the same date in 2001.

The current specification is designed to allow for incremental growth in the industry, while taking into consideration biological uncertainty. In 2001, the Council increased the OY specification from 224,000 mt to 250,000 mt largely to send a message to the industry that the biomass of herring is large and increasing, and that it can support an expansion of production. This level of OY has been continued for the 2002 fishery, and is recommended for the 2003 fishery. However, increased utilization of the resource is unlikely without expansion into foreign markets. Such expansion will occur incrementally, as U.S. businesses open and establish

overseas market relationships. At the June 11, 2002, joint meeting of the Herring Oversight Committee, ASMFC Section and Herring Advisory Panel, a representative of the herring canneries noted that efforts are underway to open European Union markets to U.S. sardines, which, if successful, will result in increases the demand for U.S. herring.

#### **4.22 Impacts of DAP**

Under the proposed alternative, DAP will remain at 226,000 mt. This level of DAP was analyzed in the 2002 EA/RIR/FRFA. As discussed above, harvest levels have been less than 50 percent of DAP, and if this continues for the 2002 fishery, then this specification for the 2003 fishery would produce the potential for a positive economic benefit to the herring fleet. This is also true of the Herring Committee's suggested DAP alternative of 236,000 mt and would apply to any alternative greater than 118,028 mt, the 2001 total harvest. 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.

A number of industry representatives commented to the Council and Herring Committee on their planned capacity expansion for 2003. As explained in Appendix I, the Herring PDT seeks to improve estimates of DAP by establishing a reliable annual survey of processor intent. The report of the June 11, 2002, joint meeting of the Herring Oversight Committee, ASMFC Section and Herring Advisory Panel, noted that such a survey was conducted by Dr. John Gates for use in the SAFE Report. The survey results were not relied upon because the survey was deemed to be incomplete by the PDT. However, the AP members and some of the public in attendance at the June 11<sup>th</sup> meeting noted that there is planned or under construction sufficient capacity to process a total of over 340,000 mt of Atlantic herring (including plans for 20,000 mt to be processed by an at-sea processing vessel). However, the Herring Advisory Panel agreed that rather than eliminating the JVpt allocation, DAP and JVpt should be held at status quo levels until the planned capacity expansion is on line. They noted that the status quo DAP specification still provides room for expansion in the U.S. domestic processing sector.

#### **4.2.3 Impacts of TALFF/JVP**

The Council recognizes that market development and expansion is a slow process and the ability for U.S. vessels to engage in JVP is important to the present economic well-being of the herring fleet. Overall, if the full amount of the JVP (10,000 mt) is harvested, revenues to the participating U.S. vessels would approximate \$1.2 million, based on an average price of \$120/mt.

In 2002, the Council also considered a JVP alternative of 5,000 mt. Any decreases in JVP could have a negative impact on revenues earned in aggregate by the herring fleet. Profits would be calculated by deducting the costs of participating in the JVP from revenues earned by selling over-the-side to foreign vessels. Assuming that optimal profits would be gained by participating in the JVP, the economic benefit of the JVP would have to take into account opportunity costs in the form of profits that could be earned in delivering herring to shoreside processors or participating in another fishery. Therefore, the calculation of economic value of the JVP to U.S. vessels requires a comparison of JVP and other alternatives. Though uncertain as to the

economic impact to shoreside processors from reduction in JVP, it is likely that shoreside processors would benefit if they could utilize any portion of a 5,000 mt reduction in JVP. Another, perhaps more important outcome of a reduction in JVP would be increased market opportunities for shoreside processors. Testimony from a major shoreside processor suggests that U.S.-produced herring could replace sales of foreign JVP vessels in certain markets. This would put JVP-caught fish in direct competition with U.S. herring produced shoreside, and a reduction in competition would benefit U.S. shoreside processors.

For the 2002 specifications, the Council recommended limiting JVP activity to Area 2 only for several reasons:

1. The Council felt that Area 3 represented the best alternative fishing area for domestic vessels supplying shoreside domestic processors, especially when those vessels are restricted from fishing in Area 1A under existing state and federal regulations. State regulations, implemented under the ASMFC Herring Plan, impose spawning closures, and days out of the fishery at various increments of the TAC. Federal and state regulations close the directed fishery when 95 percent of the TAC is projected to be reached.
2. The Council felt that Area 3 represented the best opportunity for growth in the harvesting sector to meet increasing demand for herring by shoreside processors.
3. Some Council members stated that eliminating joint ventures from Area 3 would improve the U.S. relationship with the Canadians regarding cooperative or coordinated management of the transboundary herring resource.

NMFS, based on comments received on the proposed rule to implement the 2002 specifications, did not approve the 2002 Council recommendation and specified that JVP operations could be conducted in both Areas 2 and 3. While shoreside deliveries reflected the addition of a new herring processing facility in Gloucester, MA, the Council had not submitted proof of increased shoreside capabilities that would lead NMFS to conclude that adequate U.S. processing capacity existed in the 2002 processing sector to utilize the full TAC of 50,000 mt. NMFS agreed with the State of Connecticut's assessment that although the export sector of the domestic industry further developed in 2001, removing opportunities for U.S. vessels to participate in JVP operations in Area 3 would cause economic hardships of varying degrees to those vessels. Furthermore, as discussed below an additional 10,000 mt has been proposed for Area 3 for the 2003 fishery which would accommodate, at least in part, any increase in 2003 shoreside production while allowing for JVP in Area 3. An underlying economic assumption is that vessels will participate in JVP operations because this represented their highest use in terms of profitability and forcing vessels into other uses, whether delivering herring shoreside or participating in alternative fisheries, would cause a decrease in economic profits. For 2003, the Council recommends that JVP operations should continue to be authorized in both Areas 2 and 3.

The Council recommends maintaining a TALFF of zero. The Council is aware that there are minimal losses to the nation from the loss of poundage fees collected from foreign vessels. As

discussed in the 2002 EA/RIR/FRFA, the Council noted that expanding U.S. processing capabilities are expected to result in increasing harvest by the U.S. fishery. The recommendation reflects the concern that fish caught under the TALFF allocation could compete directly with U.S. caught and processed herring in overseas markets.

However, other than poundage fees, the economic benefits of TALFF would be indirect, since TALFF produces no revenues for U.S. entities. The indirect benefit of TALFF would be offset by the indirect impact such activity might have on the competitiveness of U.S.-exported herring in world markets. Therefore, despite the reduction in economic gain for the Nation that could result by specifying TALFF at zero, the Council continues to believe the potential long-term benefits for U.S. Atlantic herring processors outweigh that loss. The Council remains concerned that the competition that TALFF represents to U.S. processors will impede future expansion of domestic processing facilities. This loss could far outweigh the short-term gains to the Nation that poundage fees collected through TALFF represent.

If U.S.-processed herring could be sold into global markets, the economic benefits would be greater than benefits derived from TALFF and TALFF-enhanced JVP. Eliminating TALFF would reduce foreign competition and increase the chances for market expansion, benefitting both U.S. processors and U.S. vessels delivering herring shoreside. If global markets purchase U.S. herring, the economic benefits would be far greater than if those fish were processed and exported by U.S. companies instead of by foreign ventures. Eliminating TALFF would reduce foreign competition and increase the chances for market penetration by U.S. herring exporters, and, therefore, increase overall economic benefits through both value-added production and overall market expansion.

#### **4.2.4 Impacts of an Area 3 TAC increase**

The proposed 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 potentially positive impact on vessels and processors. Harvest from Area 2 totaled 15,388 mt in 2001, well below the 50,000 mt TAC and 80,000 TAC reserve for that Area. However, landings from Area 3 totaled 34,510 lb in 2001, a large increase over the 12,884 mt landed from the Area in 2000. This would suggest that the Area 3 TAC could come under pressure in the near future, especially if shoreside processors are able to expand markets and processing capacity. If the entire increase were utilized, an additional 10,000 mt would produce additional revenues of \$1.2M (assuming \$120/mt) to vessels and a commensurate increase in profits to shoreside processors. The reduction in TAC reserve in Area 2 will have no economic impact since the difference between the Area 3 TAC and TAC reserve (120,000 mt) and actual landings (15,388 mt) is so large.

As explained above and in Appendix I, 2001 landings from Area 1B were 14,063 mt, exceeding the 10,000 mt TAC. This occurred because of location reporting errors by vessels calling in to the IVR system that were corrected when the VTR data were processed. This would suggest that vessels fishing in Area 1B could incur reductions of 4,063 mt compared to 2001 if constrained by the proposed TAC of 10,000 mt. Since there is some uncertainty about the exact location of the harvest (that is whether it came from Area 1B or Area 3, since vessels were fishing on the

boundary between the areas), even though revenues on the vessels fishing in Area 1B could be reduced by 30 percent (for that portion of their landings taken in Area 1B) compared to 2001, the net economic impact is expected to be minimal since opportunities exist to cross the boundary and fish on the Area 3 TAC, especially with the proposed increase in Area 3 TAC. Furthermore, landings from Area 1B did not exceed 10,000 mt in any of the previous five years. The vessels may be impacted economically to the extent that additional fuel and other operating costs may be incurred if the distance between fishing grounds in the two areas is significant. The proposed action does not have a disproportional effect on the profits, costs or revenues of small entities relative to large entities. The proposed action provides opportunity to small entities to increase profitability significantly through an increased TAC in an area where landings have been increasing over the past several years. If the 20 percent increase in TAC in Area 3 is utilized, this would represent an opportunity to harvest more than twice the level of product utilized in the 2001 fishery.

#### **4.2.5 Impacts of USAP**

There are no projected economic impacts on USAP vessels associated with the measure that prohibits them from receiving fish harvested in Areas 1. Vessels of the United States have not previously processed at sea. Therefore, there is no history of over-the-side purchases upon which to base an economic analysis of this measure in respect to impacts on USAP vessels.

Generally, if a USAP vessel has the opportunity to operate in or close to Area 1 to receive Area 1 fish at lower cost (for fuel, maintenance, or other operational expenses), and it is restricted from doing so, then the economic profitability of the USAP vessel would be reduced. Since the USAP vessel would not be constantly moving between fishing grounds and port to deliver fish, and would remain on the fishing grounds for perhaps weeks at a time, the increase in potential operational costs would not be as large as it would for a harvester vessel making several trips to deliver fish to a shoreside facility. Harvesters transferring fish over the side to a USAP vessel would have reduced operational costs (for fuel, primarily) and would have a higher ratio of fishing time to steaming time than if the vessel were to deliver the fish shoreside.

However, the prohibition on harvesting Area 1 fish for delivery to USAP vessels could leave more fish available to shoreside processors and bait dealers operating on the coasts of Maine, New Hampshire, and Massachusetts. This is especially important since the quota in Area 1A was taken prior to the end of both the 2000 and 2001 fishing years, and the period 1 (Jan through June) quota implemented in 2002 was taken by April. Therefore, the avoidance of an potential loss in profitability (resulting from increased operational costs) to those firms harvesting Area 1 fish for delivery shoreside, is viewed as an economic benefit of the prohibition. The size of the benefit depends on the amount the USAP vessels would have taken.

The Council considered a Committee recommendation to reduce USAP by 5,000 mt, but rejected it based on comments that a vessel may operate under this specification in 2003 and be able to utilize the full 20,000 mt. The specification of 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.



## **4.3 Social Impacts**

### **4.3.1 Impacts of OY and ABC**

The Council proposes no change to the specification of OY and ABC. The current specifications are more than twice the current level of harvest, and, therefore, allow for significant growth in the industry. Higher alternatives for OY and ABC are evaluated in the 2002 EA/RIR/FRFA. The options that the Council rejected at that time would not likely result in any short-term changes to social factors, given that the current lower specification already well exceeds the level of harvest. Over the long-term, however, increasing OY and ABC would raise the uncertainty about the sustainability of the fishery, with potentially negative social consequences.

### **4.3.2 Impacts of DAP, TALFF and JVPt**

The retention of status quo for DAP, TALFF and JVPt specifications at status quo levels will not have an impact on relevant social factors, given that the fishery is harvesting less than half of the allowable level. In the 2002 EA/RIR/FRFA, the Council considered alternatives for these specifications, including retaining the 5,000 mt of TALFF from 2001. The Council's proposed TALFF of zero will not have an impact on social factors, since there have been no directed foreign fishing operations in 2002. Indirectly, if the TALFF is set at zero, this will improve the ability for U.S. businesses to expand export capabilities, hence, the likelihood that OY will be achieved increases. As a result, there would be potentially positive social benefits in the form of increased revenues to vessels and processors, and increased employment at-sea and shoreside. The resulting change to DAH (from the elimination of TALFF) will not likely have an impact on social factors since landings are currently less than half of DAH, under any of the options for TALFF the Council considered (0 – 20,000 mt).

The recommended specification of JVPt is the same as the status quo (20,000 mt). Under the options allowing for increased TALFF above 5,000 mt, JVPt would have increased proportionally, up to 50,000 mt.

How changes to the allowable level of joint venture activity would impact social factors cannot be predicted. Whatever impacts would occur are closely tied to the economic effects of such changes. On the one hand, revenues to some vessels would increase or decrease in conjunction with increases or decreases in JV activity. On the other hand, the impact on shoreside operations would correlate negatively with adjustments to JVP because of disruptions to vessel-processor relationships and the effect of increased competition in overseas markets.

## **4.4 Habitat assessment**

This essential fish habitat (EFH) assessment is provided pursuant to 50 CFR 600.920 of the EFH Interim Final Rule to initiate EFH consultation with the National Marine Fisheries Service.

A.

Description of the proposed action -- See Section 3.0 for a description of the proposed action.

The activity described by this proposed action, Atlantic herring fishing, occurs throughout the U.S. EEZ. The area affected by the proposed action in the Atlantic herring fishery has been identified as EFH for species managed by the FMPs for Atlantic Surf Clam and Ocean Quahog; Northeast Multispecies; Atlantic Sea Scallop; Summer Flounder, Scup and Black Sea Bass; Atlantic Mackerel, Squid and Butterfish; Bluefish; Atlantic Billfish; Spiny Dogfish; Monkfish; and Atlantic Tunas, Swordfish and Sharks.

Analysis of the effects of the proposed action – The proposed action will not directly impact current levels of fishing activity in the U.S. EEZ, given that vessels are currently fishing at less than half of the allowed level. Fishing gear utilized to harvest Atlantic herring has not been shown to have an adverse impact to the EFH of any species (see Section 4.0 of the Omnibus EFH Amendment). The nature of the annual specifications proposed herein is to simply set catch levels and to allocate portions of the catch and processing among the various categories (e.g., DAP, JVPt, IWP, USAP, etc.). This allocation will not have any adverse impacts on the EFH of any managed species.

C. Conclusions -- The annual specifications proposed under this action have no potential adverse effects on the EFH of any species managed by the New England, Mid-Atlantic or South Atlantic Fishery Management Councils. Because there are no potential adverse impacts associated with this action, no EFH consultation is required.

D. Proposed mitigation -- None required.

#### **4.5 Endangered Species and Marine Mammal Protection Acts**

The Council most recently reviewed the impacts of the herring fishery and herring management measures in the Atlantic Herring Fishery Management Plan on threatened and endangered species in the 2001 SAFE Report (Appendix I, Section 2.4.3).

The Atlantic herring fishery generally follows the northerly migration of the herring resource. From December-March, the fishery operates in the coastal waters south of New England. Spring fishing is primarily in offshore areas of the Gulf of Maine, such as Jeffreys Ledge. In late summer/early fall, most fishing is in the coastal waters of Maine, New Hampshire, Massachusetts, and, in recent years, on Georges Bank and an area east of Nantucket Shoals. Landings from these areas begin to decline again in November and the fishery moves south of New England again. Mid-water trawl gear and purse seines are the primary gear types for the Atlantic herring fishery. Purse seines obtain most of their catch in July-August while trawl catches are highest in early spring and late fall to early winter. The herring fishery has typically used pump-out operations to transfer the catch to processing vessels.

ESA-listed cetaceans may occur in areas where the Atlantic herring fishery operates. ESA-listed cetaceans may be present in Mid-Atlantic and New England waters year round but most animals move in the late fall to more southern locations for mating and/or calving or disperse farther offshore. Mid-Atlantic waters are used as a migratory pathway in the spring as right whales and

humpback whales return from their wintering calving areas in the south. Most species of ESA-listed cetaceans, including right, humpback, fin and sperm whales are observed in southern New England waters by March-April. Right, humpback, and fin whales are also observed in Gulf of Maine waters throughout the summer. Of these species, humpback and fin whales are most likely to be affected by the Atlantic herring fishery since both species are known to prey on Atlantic herring, and have the greatest spatial and temporal overlap with the fishery. Effects may include interaction between these cetaceans and herring fishing gear and/or competition with the fishery for the resource. However, there are no records of any endangered cetacean becoming entangled in gear used in the herring fishery, and there has been no conclusive demonstration of the existence of competition given the limited information available on these trophic relationships, the complexity of ecosystem interactions and the logistical difficulties of conducting necessary sampling.

Sea turtles may also overlap with portions of the herring fishery. Sea turtles typically occur in southern waters or at the southern limit of Mid-Atlantic waters throughout the winter, and migrate up the coast to southern New England waters in the spring as water temperatures increase. Most of these species, including green, Kemp's ridley and loggerhead sea turtles, do not typically travel farther north than the Cape Cod Bay area. The Atlantic herring fishery is most likely to overlap with sea turtle distribution in coastal waters of Massachusetts during the late summer through early fall when effort in the fishery is concentrated in these waters as well as waters of Maine and New Hampshire. Most of Massachusetts waters fall within Management Area 1A. This is the only area where the TAC is likely to be reached.

A Section 7 consultation under the ESA was conducted on October 6, 2000. Results of the consultation indicate that the proposed specifications for the 2003 Atlantic Herring Fishery Management Plan (FMP) fall within the scope of consultations on previous Atlantic Herring FMP actions. None of these measures is expected to result in the addition of adverse impacts to ESA-listed cetaceans or sea turtles, which would change the basis for the determinations in those consultations. Should activities under this action change, or new information become available that changes the basis for this determination, the consultation should be reinitiated.

Although non-ESA listed marine mammals are not included in Section 7 consultations, the effect of a proposed action on these species is also considered by Protected Resources, since all marine mammals are protected by the Marine Mammal Protection Act (MMPA). The Atlantic herring fishery is currently listed in Category II of the MMPA List of Fisheries. The category listing also applies to any directed foreign fishing conducted under the Atlantic herring TALFF. Listing of the fishery in Category II requires fishery participants to register and report per MMPA Section 118 as well as comply with requirements for observer coverage when the vessel is engaged in the fishery.

#### **4.6 Coastal Zone Management Act**

The Council initially determined that the proposed 2003 Atlantic herring specifications are consistent to the maximum extent practicable with the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey,

Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. The Council submitted this determination for review by the responsible state agencies under §307 of the Coastal Zone Management Act simultaneously with submission of this document to NMFS.

#### **4.7 Paperwork Reduction Act**

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

#### **5.0 Environmental Assessment (EA)**

This section addresses the requirements of the National Environmental Policy Act (NEPA) that Federal agencies consider all reasonably foreseeable environmental effects of their proposed actions and involve and inform the public in the decision making process. The Council submitted an Environmental Impact Statement (EIS) with the FMP in March 1999, and prepared an EA for the 2002 specifications. Because the 2003 specifications are essentially the same as the 2002 specifications this document incorporates by reference, as allowed in section 5.09d of NOAA Administrative Order 216-6, the information and analysis of alternatives included in the 2002 EA/RIR/FRFA, including references to the original EIS completed for the FMP. The purpose of this EA is to determine whether significant environmental impacts will occur as a result of the proposed changes to the specifications.

The 2001 SAFE Report (Appendix I) provides much of the data used in the analyses in Section 4.0 of this document. Additional information is drawn from the analysis of alternatives in the 2002 EA/RIR/FRFA. The EIS prepared for the FMP and submitted to NMFS in 1999 contains a description of the fishery and discussions of biological, economic, social and community factors which are referenced in this document. The purpose and need for the action is discussed in Section 2.0, and a description of the proposed action and alternatives is provided in Section 3.0 of this document.

#### **5.1 Determination of significance**

Based on guidance in Section 6.01(b) of NOAA Administrative Order NAO 216-6, May 20, 1999, and the analysis of impacts and alternatives in the 2002 EA/RIR/FRFA and the additional analysis of the minor changes in the 2003 specifications in Section 4.0 of this document, the proposed 2003 specifications are deemed not significant. The proposed action, which does not increase the total amount of herring that fishing vessels may harvest, will not likely have an impact on the target species, non-target species of fish or on the ecosystem biota. The shifting of 10,000 mt from the Area 2 reserve TAC to the Area 3 TAC will modestly increase the chances that the fishery will achieve optimum yield, but since the two TACs are from the same spawning component, there will be no significant impact on the entire stock or the Southern New England/Georges Bank spawning component. None of the other alternatives considered by the Council would affect the amount of fish harvested from the entire stock or individual spawning components.

The proposed 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 potentially positive

economic impact on vessels and processors. The prohibition on harvest of fish for USAP from Area 1 would economically benefit current users (processors and end users) of Area 1 fish by protecting against the loss of, or disruptions to the flow of available product as discussed above. There are no public health or ecological impacts of these specifications. Risks associated with these specifications are minimized due to the ability to do inseason actions if required. These specifications would not impact physical structures or the habitat of any endangered species. They do not threaten or violate a Federal, State, or local law or requirements imposed for the protection of the environment. Based on the public comments the Council received when considering the specifications, the action is also not deemed to be controversial.

## 5.2 Finding of no significant impact (FONSI)

National Oceanic and Atmospheric Administration Order (NAO) 216-6 (revised May 20, 1999) provides nine criteria for determining the significance of the impacts of a proposed action. These criteria are discussed below:

1. *Can the proposed action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?*

The proposed action is not expected to jeopardize the sustainability of any target species that may be affected by the action. This action will allow the removal of 250,000 mt of herring, well below 900,000 mt, the amount associated with  $F_{MSY}$  for the Atlantic herring stock..

2. *Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in FMPs?*

The proposed action is not expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in the FMP. In general, EFH that occurs in areas where the fishery occurs is designated as the bottom habitats consisting of varying substrates (depending upon species) within the Gulf of Maine, Georges Bank, and the continental shelf off southern New England and the Mid-Atlantic south to Cape Hatteras. The primary gears utilized to harvest Atlantic herring are purse seines and mid-water trawls which typically do not impact bottom habitats. NOAA fisheries has concluded that a consultation under the Magnuson-Stevens Act's EFH provisions is not required.

3. *Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?*

The proposed action is not expected to have a substantial adverse impact on public health or safety.

4. *Can the proposed action be reasonably expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat of these species?*

The proposed action is not reasonably expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat for these species. The activities to be conducted under the proposed action are within the scope of the FMP and do not change the basis for the determinations made in previous consultations.

5. *Can the proposed action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?*

The proposed action is not expected to result in cumulative adverse effects that could have a substantial effect on target or non-target species. The proposed action allows for a conservative

quota based on a portion of the potential allowable biological catch estimated at 900,000 mt. The purse seine and mid-water trawl have a minuscule bycatch of non-target species. Therefore, the proposed action is not expected to result in any increased impacts that have not been previously analyzed, nor is it expected to result in any cumulative adverse effects to target or non-target species.

6. *Can the proposed action be reasonably expected to jeopardize the sustainability of any non-target species?*

As discussed above, the purse seine and mid-water trawl have a minuscule bycatch of non-target species. Of note is that these gears do not retain species that are biologically fragile such as cod, haddock, summer flounder, and spiny dogfish. The proposed action is not expected to jeopardize the sustainability of any non-target species.

7. *Can the proposed action be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?*

The proposed action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area. The stock of Atlantic herring is large enough to accommodate all predators including Atlantic bluefish, Atlantic striped bass, and several other pelagic species such as shark and tunas. The Atlantic herring itself is not known to prey on other species of fish but prefers Chaetognaths and Euphausiids. The proposed action will likely ensure biodiversity and ecosystem stability over the long term.

8. *Are significant social or economic impacts interrelated with significant natural or physical environmental effects?*

A discussion of the economic impacts is found in Section 4.2 of the EA. There are no significant social or economic impacts interrelated with significant natural or physical environmental impacts.

9. *To what degree are the effects on the quality of the human environment expected to be highly controversial?*

The measures contained in this action are not expected to be highly controversial. All industry participants favor increasing the Area 3 TAC. The prohibition on USAP vessels from accepting fish in Area 1 should not be contentious because no U.S. vessel has taken a USAP allocation to date. No vessels have utilized the USAP specification since the inception of the FMP. The restriction would leave more fish available to bait dealers and shoreside processors who are attempting to broaden export markets.

## FONSI Statement

In view of the analysis presented in this document, the EA/RIR/IRFA for the 2002 specifications, and in the EIS for the Atlantic Herring Fishery Management Plan, the 2003 specifications will not have a significant effect on the human environment, with specific reference to the criteria contained in Section 6.02 of NOAA Administrative Order NAO 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999. Accordingly, the preparation of a Supplemental Environmental Impact Statement for the proposed action is not necessary.

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Assistant Administrator for            Date  
Fisheries, NOAA

## **6.0 Regulatory Impact Review and Initial Regulatory Flexibility Analysis**

This section provides the analysis and conclusions to address the requirements of Executive Order 12866 and the Regulatory Flexibility Act (RFA). Since many of the requirements of these mandates duplicate those required under the Magnuson-Stevens Act and NEPA, this section contains references to other appropriate sections of this document. The following sections provide the basis for concluding that the proposed action is not significant under E.O. 12866 and will not have a significant economic impact on a substantial number of small entities under the RFA.

### **6.1 Regulatory Impact Review (E.O. 12866)**

This section contains the required elements for determination of whether the proposed action is significant under E.O. 12866.

#### **6.1.1 Description of management objectives**

The goals and objectives of the management plan are stated on Section 2.3 of the Atlantic Herring FMP. The proposed action is consistent with, and does not modify those goals and objectives.

#### **6.1.2 Description of the fishery**

Section 4.0 of the FMP contains a detailed description of the fishery. The 2001 SAFE Report (Appendix I of this document) contains an updated description of the fishery using the best and most current data available.



### 6.1.3 Statement of the problem

The purpose and need for this action is described in Section 2.0 of this document.

### 6.1.4 Description of the alternatives

The 2002 EA/RIR/FRFA and Section 3.0 of this document contain a description of the alternatives considered, including a “no-action” alternative.

### 6.1.5 Economic analysis

The 2002 EA/RIR/FRFA and Section 4.2 of this document contain the economic analysis of the proposed action and alternatives.

### 6.1.6 Determination of significance under E.O. 12866

NMFS Guidelines provide criteria to be used to evaluate whether a proposed action is significant. A “significant regulatory action” means any regulatory action that is likely to result in a rule that may:

1. *Have an annual effect on the economy of \$100 million or more, or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.*

The proposed action will not have an effect on the economy in excess of \$100 million. The total value of herring landed, including fish sold to foreign joint ventures was less than \$16 million. A shifting of a small portion of the Area 2 TAC reserve to Area 3 may increase economic benefits to those vessels and processors that rely on herring harvested from Area 3. The proposed action is not expected to have any adverse impacts on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities.

2. *Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.*

The proposed action will not create a serious inconsistency with or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect the Atlantic herring fishery in the EEZ.

3. *Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.*

The proposed action will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs, or the rights and obligations of their participants.

4. *Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.*

The proposed action does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

## **6.2 Initial Regulatory Flexibility Analysis**

The following sections contain analyses of the effect of the proposed action on small entities. Under §603(b) of the RFA, each initial regulatory flexibility analysis is required to address:

1. reasons why the agency is considering the action
2. the objectives and legal basis for the proposed rule
3. the kind and number of small entities to which the proposed rule will apply
4. the projected reporting, record-keeping and other compliance requirements of the proposed rule, and
5. all Federal rules that may duplicate, overlap or conflict with the proposed rule.

### **6.2.1 Reasons for considering the action**

The purpose and need for this action to implement annual specifications for the herring fishery is described in Section 2.0 of this document.

### **6.2.2 Objectives and legal basis for the action**

The objective of the proposed rule is to implement specifications for the 2003 Atlantic herring fishery, as required under the regulations implementing the Atlantic Herring FMP, found at 50 CFR 648.

### **6.2.3 Description and number of small entities to which the rule applies**

All of the affected businesses (fishing vessels and wholesalers of herring) qualify as small entities under the standards described in NMFS guidelines. Section 2.2.1 of the 2001 SAFE Report (Appendix I) describes and enumerates the number of vessels in the herring fishery. Section 2.2.2 and 2.2.3 describe the dealers and processors, respectively. The proposed action will only materially impact a subset of the herring vessel fleet, namely those vessels that have and will utilize herring from Area 3 and U.S. vessels that will process at sea.

### **6.2.4 Reporting, record-keeping and other compliance requirements**

The action does not introduce any new reporting, record-keeping or other compliance requirements.

### **6.2.5 Duplication, overlap or conflict with other Federal rules**

The proposed rule does not duplicate, overlap or conflict with any other Federal rules.

### **6.2.6 Economic impacts on small entities resulting from the proposed action**

Section 4.2 of this document contains the economic analysis of the proposed action and alternatives. As noted, an increase of TAC in Area 3 may potentially yield positive economic benefits to those harvesters and processors who rely on Area 3 herring, provided catches exceed the current 50,000 mt TAC. If the entire proposed increase to 60,000 mt is utilized, this could produce additional revenues of approximately \$1.2M to the aggregate of vessels harvesting fish

from the Area and a proportional increase in profits of U.S. shoreside processors and at-sea processors. Approximately 20 vessels, primarily mid-water trawl and pair trawl vessels, participated in the Area 3 fishery in 2001. The restriction on USAP vessels to operate in Areas 2 and 3 only should have minimal economic impact. To date, no vessels have processed fish under the USAP specification, although one vessel owner has indicated the intent to do so in 2003. On that basis, the Council rejected an alternative to reduce the USAP specification by 5,000 mt.

## 7.0 References

National Marine Fisheries Service (NMFS) 2000. Endangered Species Act Section 7 consultation in accordance with Section 7(a) of the Endangered Species Act Regarding the 2001 Specifications for the Atlantic Herring Fishery, October 6, 2000. NMFS, Northeast Regional Office, Gloucester, MA.

NMFS 2000. Final Rule Implementing the Atlantic Herring Fishery Management Plan. Published in the Federal Register, on December 11, 2000 (65 FR 77450). NMFS, Northeast Regional Office, Gloucester, MA.

NMFS 2001. Final 2001 Specification for the Atlantic Herring Fishery. Published in the Federal Register, on May 25, 2001 (66 FR 28846). NMFS, Northeast Regional Office, Gloucester, MA.

New England Fishery Management Council (NEFMC) 1998. Omnibus Essential Fish Habitat Amendment (Amendment 11 to the Northeast Multispecies Fishery Management Plan (FMP), Amendment 9 to the Atlantic Sea Scallop FMP, Amendment 1 to the Monkfish FMP, Amendment 1 to the Atlantic Salmon FMP, and Sections of the Atlantic Herring FMP). NEFMC, Newburyport, MA.

NEFMC 1999. Atlantic Herring Fishery Management Plan, Volume I. Final draft submitted for Secretarial approval March 8, 1999. NEFMC, Newburyport, MA.

NEFMC 2001. Proposed Atlantic Herring Specifications for 2002. Submitted to NMFS on June 21, 2001 with a supplement on June 26, 2001. NEFMC, Newburyport, MA.

NEFMC/DOC 2001. Final Atlantic Herring Specifications for 2002 including the Environmental Assessment (EA), Regulatory Impact Review (RIR) and Final Regulatory Flexibility Analysis (FRFA), December 10, 2001. NMFS, Northeast Regional Office, Gloucester, MA..



**APPENDIX I**

**Stock Assessment and Fishery Evaluation (SAFE) Report**

**for the**

**2001 Fishing Year**

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