

(c) * * *

(3) Subject to the exception in paragraph (c)(5) of this section, a State agency may not claim FFP as an allowable administrative cost on behalf of a child placed in an ineligible facility, including but not limited to the following facilities: a detention center, a hospital (medical or psychiatric), a public institution that accommodates more than 25 children, or a facility operated primarily for the detention of children who are determined to be delinquent.

(4) * * *

(5) Notwithstanding paragraph (c)(3) of this section, a State agency may claim administrative costs for up to one calendar month on behalf of a child in an ineligible facility, including but not limited to the following facilities: a detention center, a hospital (medical or psychiatric), a public institution that accommodates more than 25 children, or a facility operated primarily for the detention of children who are determined to be delinquent as the child transitions into a licensed foster family home or child care institution. The claims must be submitted after the child is in an eligible placement.

(6) Allowable administrative costs do not include costs claimed on behalf of a child placed in an unlicensed foster family home. Exception: A State agency may claim such costs on behalf of a child placed in an unlicensed relative foster family home while it is in the process of licensing that home in accordance with its standard procedures for licensing foster family homes. If the State agency does not license the foster family home within its standard time frame, the State agency must discontinue administrative cost claims on behalf of the child.

(7) Determinations of title IV–E foster care eligibility and foster care candidacy must be performed by an employee of the title IV–E State agency or an employee of another public agency that has entered into an agreement with the title IV–E State agency pursuant to section 472(a)(2) of the Act.

(i) The State agency must re-determine title IV–E foster care eligibility every 12 months.

(ii) The State agency must re-determine title IV–E foster care candidacy every 6 months.

(iii) Contract personnel may gather the necessary documentation, prepare the case plan, complete the steps necessary for an eligibility determination, and make a recommendation to the State agency

about a child's eligibility for title IV–E foster care or foster care candidacy.

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[FR Doc. 05–1307 Filed 1–28–05; 8:45 am]

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

[Docket No. 050112008–5008–01; 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: Proposed 2005 specifications for the Atlantic herring fishery; request for comments.

SUMMARY: NMFS proposes specifications for the 2005 Atlantic herring fishery, which would be maintained through 2006 unless stock and fishery conditions change substantially. 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. NMFS also proposes one clarification to the Atlantic herring regulations, which would remove references to the dates on which the proposed and final rules for the annual specifications must be published.

DATES: Comments must be received no later than 5 p.m., Eastern Standard Time, on March 2, 2005.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Essential Fish Habitat Assessment 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.gov>.

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–2005 Herring Specifications.” Comments may also be sent via facsimile (fax) to 978–281–9135. Comments on the specifications may be submitted by e-mail as well. The mailbox address for providing e-mail comments is Herr2005Specs@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: “Comments–2005 Herring Specifications.” Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, 978–281–9259, e-mail at eric.dolin@noaa.gov, fax at 978–281–9135.

SUPPLEMENTARY INFORMATION:**Background**

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. NMFS reviews the Council recommendation, and may modify it if necessary to insure

that it is consistent with the criteria in the FMP and other applicable laws. After the review of the Council submission, NMFS has modified the following Council recommendations, for reasons detailed below: The Council recommended setting OY at 180,000 mt, DAH at 180,000 mt, DAP at 176,000 mt, USAP at 0, the TAC for Area 2 at 50,000 mt, and the TAC for Area 3 at 60,000 mt.

Proposed 2005 Specifications

NMFS proposes the specifications and Area TACs contained in the following table.

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 Reserve	0.
TAC - Area 1A	60,000 (January 1 - May 31, landings cannot exceed 6,000).
TAC - Area 1B	10,000.
TAC - Area 2	30,000 (No Reserve).
TAC - Area 3	50,000.

In addition, the Council recommended, and NMFS proposes, to maintain the 2005 specifications for 2006, unless stock and fishery conditions change substantially. The Herring 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.

NMFS also proposes one change to the Atlantic herring regulations, which would remove references to the dates on 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.

An ABC of 220,000 mt is proposed, consistent with the MSY proxy recommended in Amendment 1 to the FMP, which is currently being developed. The 220,000 mt proxy recommended in Amendment 1 is intended to be a temporary and precautionary placeholder for MSY until the next stock assessment for the Atlantic herring stock complex is completed. Because of the importance of ABC as a means of determining the other values in the specifications, it is discussed in the specifications, even though it is not a value that is set by the specification process.

The FMP specifies that OY will be less than or equal to ABC minus the expected Canadian catch (C) from the stock complex. The estimate of the Canadian catch that is deducted from ABC will be no more than 20,000 mt for the New Brunswick weir fishery and no more than 10,000 mt for the Georges Bank fishery. With ABC set at 220,000, OY could be less than or equal to 190,000 mt if the maximum catch is assumed for the Canadian herring fishery. The FMP also states that the establishment of OY will include consideration of relevant economic, social, and ecological factors and that, for this reason, OY may be less than ABC C. In addition, the Herring PDT recommended that OY be specified at a level lower than ABC for biological and ecological reasons.

The Council recommended that the OY and the DAH for the 2005 Atlantic herring fishery be set at 180,000 mt. The determination of OY was based, in part, on meeting the FMP objectives of increasing economic benefits to the U.S. fishing industry through the expansion of U.S. herring into the world market. If OY were set at a higher level, it could result in TALFF, which is that portion of the OY of a fishery that will not be harvested by vessels of the United States. While NMFS agrees that there are legitimate and legally defensible reasons to set the OY at a level that can be harvested by the domestic fleet and that would thereby preclude the specification of a TALFF, NMFS does not find that the Council's analysis justifies the levels of OY and DAH that it recommended.

The allocation of TALFF would allow foreign vessels to harvest U.S. fish and sell their product on the world market, in direct competition with the U.S. industry. The Council expressed its concern, supported by industry testimony, that an allocation of TALFF would threaten the expansion of the domestic industry. The economic

benefits to the Nation from TALFF activity are limited to the payment of poundage fees. However, the Council's analysis also makes it clear that, despite the loss of poundage fees resulting from zero TALFF, the expansion of the U.S. industry would generate potential long-term economic benefits for U.S. Atlantic herring harvesters and processors that would outweigh that loss. For these reasons, the Council concluded, and NMFS agrees, that the specification of an OY at a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, will assist the U.S. Atlantic herring industry to expand and will yield positive social and economic benefits to U.S. harvesters and processors. NMFS, therefore, proposes that OY be specified at 150,000 mt.

The Council recommended that DAH be set at 180,000 mt. NMFS believes that this is too high for a number of reasons. First, the Council proposal presumes a dramatic increase in landings that is not justified in the Council's submission. From 1996–2003, herring landings averaged 102,000 mt. The highest level of landings in recent years was in 2001, when they reached 121,332 mt. To justify a DAH of 180,000, one would have to assume a roughly 80–percent increase in DAH as compared to average landings in recent years, and a 50–percent increase in DAH as compared to the highest year in the series. NMFS proposes setting DAH at 150,000 mt. This would allow a 23–percent increase in landings as compared to 2001, and would, therefore, better reflect fishery performance in recent years, while at the same time giving the fishery an opportunity to expand. Given the trends in landings, and the industry's testimony that the fishery is poised for significant growth, NMFS concludes that it is reasonable to assume that in 2005 the commercial fishery will harvest 150,000 mt of herring.

The Council's recommendation for TACs assumed an OY of 180,000 mt. With the OY being set at 150,000 mt, the proposed TACs, too, have to be modified. While the proposed Area 1A and 1B TACs would remain the same as they were in 2004, NMFS proposes reducing the Area 2 TAC from 50,000 mt to 30,000 mt, and the Area 3 TAC from 60,000 mt to 50,000 mt. These area allocations are intended to permit the fishery to increase landings above the highest levels achieved in recent years. The highest recent landings in Area 2 were 27,198 mt in 2000; thus, the allocation would allow the fishery to slightly exceed that level. The highest recent landings in Area 3 were 35,079 mt in 2001; thus, the allocation would

allow the fishery to exceed that level by a considerable amount because this is the area most likely to see expanded harvests.

The regulations, at § 648.200(e), allow for inseason adjustments of the herring specifications. Thus, if the herring fishery during the 2005 or the 2006 fishing year expands more than anticipated, the OY, the DAH, the DAP, and the area TACs could be increased to enable the fishery to perform to its fullest potential. Such increases would be constrained by the analysis that the Council included in this year's specification recommendations. That means that DAH and OY could be increased to a maximum of 180,000 mt, the DAP could be increased to a maximum of 176,000 mt, and the Area 2 TAC and the Area 3 TAC could be increased to 50,000 mt and 60,000 mt, respectively, which are the highest levels that the Council originally recommended and analyzed for each of these measures. NMFS invites the public to comment on the potential use of the inseason adjustment mechanism to set new levels for DAH, DAP, OY, and area TACs during the 2005 fishing year, should such changes be warranted based on the performance of the fishery. More specifically, NMFS invites the public to comment on the appropriateness of potentially increasing DAH and OY up to the maximum level of 180,000 mt, and the Area 2 TAC and the Area 3 TAC to 50,000 mt and 60,000 mt, respectively, through the inseason adjustment mechanism.

The Council argued that DAP equals 176,000 mt, and NMFS found its argument that current processing capacity is capable of handling that volume of fish persuasive. However, for the purposes of these specifications, DAP is determined not only by capability to process but also by whether domestic processors will utilize such capacity. Since DAH is proposed to be set at 150,000 mt (of which 4,000 mt would be allocated for BT), DAP would be limited to 146,000 mt. It is certainly possible, given the capacity of the current harvesting fleet, the potential for market expansion to occur, and the expressed intent (made clear through public testimony) of the U.S. industry to increase its participation in the Atlantic herring fishery, that processors will utilize the recommended DAP. Because the Council's recommended DAP is sufficient to process the entire DAH (minus the BT), the Council and NMFS proposes setting JVP at zero. Future JV operations would likely compete with U.S. processors for product, which

could have a substantial negative impact on domestic facilities in a market-driven fishery. This is consistent with the following relationship, which is specified in the FMP: DAH = DAP + JVPt + BT.

The Council recommended setting USAP at zero, arguing that current shoreside capacity is sufficient to process U.S. landings, therefore eliminating the need for alternative processing capacity (USAP). The Council also argued that the FMP provides discretion to favor certain segments of the processing industry, and that to allow USAP would economically hurt shoreside processors/communities. The Council expressed concern that, once utilized, USAP allocations would become permanent. Finally, the Council argued that the fact that there was USAP allocated from 2000–2004 that was not used demonstrates that there is no interest in USAP.

NMFS believes that the Council's rationale for setting USAP at zero is insufficient because it would favor one segment of the U.S. processing sector over another, without any justifiable reasons based on conservation objectives. On average, large amounts of the TAC in Areas 2 and 3 (where USAP was authorized in previous years) have not been taken each year. During the development of the specifications, at least one industry member expressed interest in pursuing USAP operations in 2005. When the Council discussed the possibility of allocating 10,000 mt to USAP, this individual stated that USAP operations would not be feasible at that level. For these reasons, NMFS proposes setting USAP at 20,000 mt in Areas 2 and 3 only. USAP could provide an additional outlet for harvesters and, therefore, increase the benefits to the U.S. industry. As for the Council's concern that USAPs will become permanent, there is no basis for this concern. The specification process allows the Council to modify its recommendations in the future, provided there is justification.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, which describes the economic impacts this proposed rule, if adopted, would have on small entities. A copy of the IRFA can be obtained from the Council or NMFS (see **ADDRESSES**) or via the

Internet at <http://www.nero.noaa.gov>. A summary of the analysis follows:

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 this 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

Impacts were assessed by the Council and NMFS by comparing the proposed measures to the Atlantic herring landings made in 2003. The proposed specifications are not expected to produce a negative economic impact to vessels prosecuting the fishery because, while it reduces the current (2003/2004) TACs for herring in Areas 2 and 3 (while keeping Areas 1A and 1B the same), it still allows for landings levels that are significantly higher than the average landings achieved by the fishery in recent years. The proposed 2005 specifications should allow for incremental growth in the industry, while taking into consideration biological uncertainty.

The specification of 150,000 mt for OY and DAH is proposed for the 2005 fishery, and for the 2006 fishery if stock and/or fishery conditions do not change significantly during 2005. At this level, there could be an increase of up to 50,000 mt in herring landings, or \$7,150,000 in revenues, based on a market price of \$143/mt. This could allow individual vessels to increase their profitability under the proposed 2005 specifications, depending on whether or not new vessels enter the fishery (the herring fishery will remain an open-access fishery for the 2005

fishing year). The magnitude of economic impacts related to the 146,000–mt specification of DAP will depend on the shoreside processing sector's ability to expand markets and increase capacity to handle larger amounts of herring during 2005 and 2006.

The potential loss associated with eliminating the JVPT allocation (20,000 mt for 2003 and 2004) could approximate \$2.9 million (based on an average price of \$143/mt) if all of the 20,000–mt allocation would have been utilized (10,000 mt for JVP and 10,000 mt for IWP). However, very little of the 10,000–mt JVP allocation was utilized in 2002 and 2003 and, as of August 2004, no JVP activity for herring had occurred during the 2004 fishing year. The Council received no indication that demand for the JVP allocation will increase in 2005 and 2006. As a result, no substantial economic impacts are expected from reducing the JVP allocation to 0 mt in 2005 and possibly 2006, as vessels that sold fish in the past to JV processor vessels could sell to U.S. processors.

The Area 1A and 1B TACs of 60,000 and 10,000 mt, respectively, have been unchanged since the 2000 fishery. In 2002 and 2003, the Area 1A TAC for the directed herring fishery was fully utilized and is expected to be fully utilized for the 2005 fishery. Therefore, no change is expected in profitability of vessels from the 2005 Area 1A specification. Since only 4,917 mt of herring were harvested in Area 1B in 2003, the proposed 2005 specification of 10,000 mt should allow for increased economic benefits to individual vessels prosecuting the fishery in this management area. The potential economic gains associated with allocating 20,000 mt for USAP could approximate \$2.9 million (based on an average price of \$143/mt) if all of the 20,000–mt allocation were utilized in 2005.

The Council analyzed four alternatives for OY and the distribution of TACs. One alternative would have retained the specifications implemented during the 2003 and 2004 fishing years, 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. The three other alternatives considered by the Council would 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 would not pose a constraint on the fishery. Each of 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 2003/2004 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 2001–2003 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 fishing season could end before the end of the year, creating a potential economic constraint on the fishery, especially if vessels are forced to travel farther (increased steaming time) to harvest in Area 3.

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 option 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. An Area 2 TAC of 35,000 mt proposed under this alternative should 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 very similar to the impact of the prior alternative, although not as severe. An Area 2 TAC of 30,000 mt proposed under this alternative should not be constraining given recent landings history.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 25, 2005.

Rebecca Lent,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out above, 50 CFR part 648 is proposed to be 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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