

gillnet fishermen have significant control over turtle catch rates by their selection of fishing areas and other fishing parameters (e.g., amount of net and length of soak).

The specific details of any restrictions implemented pursuant to the procedure in this temporary rule will be announced on the NOAA weather channel, in newspapers, and other media.

Additional Conservation Measures

The AA may withdraw or modify any additional restriction on fishing activities if the AA determines that such action is warranted. The additional restrictions in this temporary rule will only become effective upon publication of a subsequent notification in the **Federal Register**. Notification of any additional sea turtle conservation measures, including any extensions of any closure, will be published in the **Federal Register** pursuant to 50 CFR 223.206(d)(4).

Classification

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

The AA has determined that this action is necessary to provide adequate protection for endangered and threatened sea turtles, primarily the loggerhead sea turtle, pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing this action in a timely manner to protect the listed sea turtles. Notification of and opportunity to comment on the procedures allowing the implementation of temporary measures to protect sea turtles was provided through the proposed rule which established these actions (57 FR 18446, April 30, 1992). For the same reasons, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. NMFS is making this rule effective from May 25, 2001, through June 30, 2001. Any closures implemented pursuant to this temporary rule will be effective upon filing with the Office of the Federal Register of a notification that additional sea turtle takes in the monkfish fishery are unauthorized. As stated earlier, the specific details of any

restrictions implemented pursuant to the procedure in this temporary rule will be announced on the NOAA weather channel, in newspapers, and other media.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring turtle excluder device use in shrimp trawls and creating the regulatory framework for the issuance of determinations of unauthorized takings and additional restrictions such as this. Copies of the EA and cited references are available (see **ADDRESSES**).

Authority: 16 U.S.C. 1531.

Dated: May 18, 2001.

Clarence G. Pautzke,

Acting Assistant Administrator for Fisheries.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 010220043-1132-02; I.D. 120400D]

RIN 0648-AN65

Foreign Fishing and Fisheries of the Northeastern United States; Final 2001 Specifications for the Atlantic Herring Fishery and Foreign Fishing Restrictions

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

ACTION: Final 2001 specifications for the Atlantic herring fishery.

SUMMARY: NMFS issues final specifications for the 2001 Atlantic herring fishery. The intent of the specifications is to conserve and manage the herring resource and provide for sustainable fisheries, and to comply with the provisions in the Fishery Management Plan for Atlantic Herring (FMP), which require annual specifications for the fishery.

DATES: Effective May 25, 2001 through December 31, 2001.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA is accessible via the Internet at <http://www.nero.gov/ro/doc/nr.htm>.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281-9104, e-mail at Myles.A.Raizin@noaa.gov, fax at (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Regulations implementing the FMP appear at 50 CFR part 648, subpart K. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. The FMP requires the New England Fishery Management Council's (New England Council's) 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 New England 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 sub-area identified in the FMP. A proposed rule to implement the 2001 Atlantic herring specifications was published in the **Federal Register** on March 5, 2001 (66 FR 13279) with a comment period ending April 4, 2001.

Final 2001 Specifications

The final 2001 specifications are contained in the following table. Changes from the 2000 specifications include increases in OY, DAH, TALFF, DAP, and the TAC reserve for Area 2. The impacts of these changes on the fishery were discussed in the preamble of the proposed rule and are not repeated here.

FINAL 2001 ATLANTIC HERRING SPECIFICATIONS

Specification	Amount (mt)
ABC	300,000
OY	250,000
DAH	245,000
TALFF	5,000
DAP	221,000
USAP	20,000
BT	4,000
JVPt	20,000
JVP- Area 2 and Area 3	10,000
IWP	10,000
Reserve	0
TAC-Area 1A	60,000
TAC-Area 1B	10,000
TAC-Area 2	50,000
TAC-Area 3	(80,000 TAC reserve) 50,000

The New England Council met in September 2000 and recommended conditions and restrictions for TALFF. Those recommendations include: A restriction on direct foreign fishing landward of 20 nautical miles from shore; a restriction limiting gear to midwater trawls; a condition that before foreign vessels can harvest more than 25 percent of their TALFF allocation, foreign vessels must receive 25 percent of its JVP allocation or provide proof for why this was not possible; a restriction on direct mealings by the foreign vessel; a restriction on fishing in regulated multispecies closed areas; and a prohibition on foreign fishing in Area 1 (Gulf of Maine). These conditions and restrictions are intended to strictly control any foreign fishing for TALFF for the benefit of the domestic fishery and in conformance with the objectives of the FMP. NMFS will consider these recommendations prior to authorizing TALFF. Such restrictions will be implemented within the authorization issued by NMFS to specific foreign vessels.

Comments and Responses

Fifty-two public comments were received on the proposed specifications prior to and during the comment period that ended on April 4, 2001. Specific comments related to the proposed annual specifications are discussed and responded to as follows:

Comment 1: A commenter supported the allocation of Atlantic herring JVP and TALFF.

Response: This final rule implements the proposed allocation of Atlantic herring JVP and TALFF.

Comment 2: Many commenters opposed the allocation of Atlantic herring TALFF. One stated that commercial fishers have been unable to harvest even a small percentage of the

TAC based on the current assessment of the herring fishery, leading fishers to believe that the assessments overestimate the actual stock size by orders of magnitude. The commenter concluded that NMFS does not have the data to support taking such a risk of exploiting such a valuable resource by establishing TALFF.

Response: The most recent stock assessment for Atlantic herring (the 27th Northeast Regional Stock Assessment Workshop, December, 1998 (SAW-27)) concluded that the stock is at a high level of biomass and is underexploited. The total biomass of Atlantic herring continued to increase in 1999, reaching the highest levels observed in the NMFS spring bottom trawl survey, and significantly above the biomass necessary to achieve maximum sustainable yield. The PDT concluded that biomass of the coastal stock component is at or near the theoretical carrying capacity. Projections based on SAW-27 indicate fishing mortality continues to be low. Landings of Atlantic herring increased in 1999, to approximately 90,000 mt, from about 82,000 mt in 1998, but were still below the levels of 1996 and 1997. Landings in the Gulf of Maine (Areas 1A and 1B) increased from 47,000 mt to 65,000 mt, while landings on Georges Bank (Area 3) declined from 18,000 mt to 5,500 mt. Landings in Southern New England and the Mid-Atlantic (Area 2) increased by 2,500 mt. The maximum harvest of 5,000 mt of TALFF specification would occur only in Areas 2 and 3 and is already credited as part of the OY, which represents the sum of DAH and TALFF. In addition, the preferred ABC specification of 300,000 mt was chosen over an alternative that would have utilized FTarget, yielding over 1 million mt of ABC. The conservative approach in setting the ABC takes into

account the uncertainty about current stock size, which may be overestimated (NEFSC 1998), and addresses the need to retain stability in the year-to-year estimate of ABC in the event of a downward shift in the biomass estimate. The potential harvest of 5,000 mt of TALFF would not result in a substantial incidental catch in Areas 2 and 3 of Atlantic herring or other non-targeted species.

Comment 3: A commenter raised the need for an ecosystem-wide, integrated approach to population assessments, and stated that removal of herring by the foreign fleets could dramatically affect the entire ecosystem food chain for both whales and certain species of finfish. The commenter concluded that any surplus of herring not harvested by domestic vessels should be reserved for the ecosystem and those species that depend upon them for food.

Response: In setting the harvest levels established by this action, both the New England Council and NMFS recognize that herring is a key forage resource for a number of finfish species, including recreationally important species such as striped bass and bluefish, and possibly some species of cetaceans. In response, the New England Council recommended that allowable catch levels be conservatively set. NMFS is implementing the New England Council recommendations. The TALFF specification represents only 1.6 percent of the conservatively set ABC and will have no adverse biological impact on the stock of herring or other forage species. While ecosystem approaches to fishery assessment and management are desirable, such approaches are not yet well developed. The current population assessment is consistent with the best available scientific information and scientific practices, complies with requirements of applicable law, and is

adequate to manage effectively the herring fishery.

Comment 4: A commenter argued that foreign vessels intending to operate under an allocation of TALFF would greatly exceed the restrictions of the law passed by Congress limiting the length, weight, and horsepower of vessels participating in the herring fishery.

Response: NMFS disagrees. In the NMFS appropriations bills for fiscal year 1999, Congress prohibited NMFS from using funds to issue permits or other authorization letters to domestic vessels only to fish for herring and mackerel that exceed the length, weight, and horsepower limit restrictions established by Congress until the New England and Mid-Atlantic Fishery Management Councils had the opportunity to develop appropriate management measures for herring and mackerel. Current herring regulations (§ 648.4(a)(10)(i)(B)) allow any domestic vessel to obtain a permit to fish for or retain herring in or from the EEZ, except for vessels that exceed either 165 ft (50.3 m) in length overall and 750 gross registered tons, or a shaft horsepower of 3000. These restrictions were put in place to control the harvest capacity of the domestic fleet and do not apply to foreign vessels in a JVP program or fishing for TALFF. In the case of foreign vessels, the harvest is strictly limited by the JVP and TALFF allocations.

Comment 5: One commenter expressed concern that increases in JVP, enhanced by the allocation of TALFF, could have serious consequences for the lobster fishery, which relies primarily on herring for bait. The commenter believed that herring fishing boats may opt to supply foreign boats, as opposed to landing their catch in New England communities.

Response: If vessels that participate in JVP operations would otherwise have landed herring in New England communities, it is possible that negative social and economic impacts from the reduced supply could result, including both higher prices for lobster bait and fewer onshore employment opportunities, such as stevedoring. However, it is not certain that JVP participants would otherwise have sold their catch in New England. But, even if vessels that would otherwise have sold their herring catch in New England participate in the JVP fishery, the magnitude of these impacts to communities will not be substantial, considering that the JVP allocation is only 4 percent of the total allowable harvest. This leaves 96 percent of the allowable harvest available to be sold as bait or for other domestic processing, including the entire TAC in Areas 1A

and 1B, where JVP and TALFF are prohibited under the FMP.

Comment 6: One commenter was concerned about the potential harvest of large amounts of river herring by foreign vessels fishing off North Carolina and Virginia.

Response: The Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) has recommended restrictions for the 2001 Atlantic mackerel fishery that prohibit directed foreign fishing for Atlantic mackerel south of 37° 30' N. lat. and that restrict river herring incidental catch to no more than 0.25 percent of the over-the-side transfers. Such restrictions are imposed by NMFS on a case-by-case basis as foreign fishing permits are issued. NMFS will consider placing the same restrictions on the 2001 Atlantic herring TALFF and JVP fishery as were recommended by the Mid-Atlantic Council, if it appears that potential catches of river herring would be a problem.

Comment 7: Two commenters questioned the conclusion in the FMP that 20 percent of the Area 2 harvest is composed of Area 1 herring that migrate to Area 2 in the winter. Based on this conclusion, the specifications for 2001 presume that 10,000 mt of the Area 2 TAC is Area 1 herring. One commenter stated that harvests in the Area 2 winter fishery yielded only 18,878 mt and 19,957 mt in 1999 and 2000, respectively. He also noted that preliminary landings through March 17, 2001, are only 10,970 mt from Area 2, compared to 15,669 mt for the same period in 2000. The commenters believed the correct estimate of Area 1 harvest from the Area 2 fishery should be 3,000–5,000 mt because the Area 2 TAC is unlikely to be fully harvested. They suggest this change would make available an additional 5,000–7,000 mt of Area 1 herring for harvest from Area 1A. One commenter estimated that an additional 7,000 mt would increase revenues to the herring fleet by \$770,000.

Response: The New England Council, in its 1999 Stock Assessment and Fishery Evaluation (SAFE) report, indicated that there is no new information on the distribution or relative size of herring spawning components that warrants a revision to the distribution of the TAC. The New England Council, in its September 8, 2000, submission of the recommended annual specifications, used the 1999 SAFE report and other information available in determining that a 50,000 mt TAC is appropriate for Area 2. The FMP, however, allows for an inseason adjustment of the TAC distribution if new information becomes available. If

the commenters have new information that would support an adjustment to the 2001 TAC distribution, they should present this information to the New England Council for further analysis. The New England Council could recommend an inseason adjustment to the Area 1 and Area 2 TACs, if it believes it is appropriate. Such an adjustment, which transferred TAC from Area 1B to Area 1A, was made in 2000 based on additional information that became available to the New England Council during the 2000 fishing year.

Comment 8: One commenter suggested that NMFS require foreign vessels to purchase JVP equal to its TALFF allocation.

Response: As discussed in the preamble to the proposed rule, the New England Council has recommended that a foreign vessel be allowed to harvest 25 percent of its TALFF allocation, but before release of additional TALFF, the vessel would be required to receive 25 percent of its JVP allocation or provide proof for why this was not possible, such as bad weather. This condition appears to strike an appropriate balance between creating an incentive for foreign vessels to participate in the JVP fishery and restricting foreign vessels from exploiting their TALFF allocation to the detriment of U.S. interests. NMFS, nevertheless, will consider the commenter's suggestion and the New England Council's recommendation when it issues authorization to commence JVP or TALFF operations, including conditions and restrictions for individual foreign fishing vessels.

Classification

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

Because this final rule only establishes either year-long quotas for Atlantic herring to be used for the sole purpose of closing the fishery when the quotas are reached and does not establish any requirements for which a regulatory entity must come into compliance, it is unnecessary to delay for 30 days the effective date of this final rule. 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 2001 Atlantic herring specifications.

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland,

Virginia, and North Carolina. This determination was submitted for review by the responsible state agencies on November 14, 2000, under section 307 of the Coastal Zone Management Act. Rhode Island, Delaware, and Pennsylvania concurred with this determination. New Jersey disagreed with NMFS' determination for Atlantic herring and advocated that the specification of TALFF is inconsistent with the economic protection provisions of their coastal management program vis-a-vis employment and financial opportunities for commercial, charter, and party vessels. NMFS and the New England Council disagree. The TALFF allocation is intended to foster JVPs which could involve vessels from New Jersey. This will move the fishery toward achieving the OY from the fishery. Further, the administrative record underlying this proposal reasonably supports the conclusion that foreign-caught Atlantic herring will not compete with Atlantic herring processed and exported by domestic businesses. Because no response was received from Maine, New Hampshire, Massachusetts, Connecticut, New York, Maryland, Virginia, and North Carolina, state concurrence on consistency is inferred.

NMFS prepared an FRFA for this action, which includes comments on the IRFA, responses contained herein, and a summary of the analyses done in support of these specifications. A copy of the FRFA is available from NMFS (see ADDRESSES). The preamble to the

proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A summary of the FRFA follows:

A description of the reasons why action by the agency is being considered and the objectives of the action are explained in the preamble to the proposed rule and are not repeated here. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 648.

Public Comments

Fifty-two public comments were received on the proposed rule to implement the 2001 herring specifications, but none of them were specific to the IRFA. Commenters were concerned with possible economic impacts to the American lobster fishery (Comment 5), which are discussed below, and with the potential of foregone revenue to the herring fleet associated with a potential increase in Area 1A TAC (Comment 7). NMFS addressed these comments in the Comments and Responses section of the preamble to the rule.

Number of Small Entities

All of the affected businesses (fishing vessels and dealers) qualify as small

entities under the standards described in NMFS guidelines. There were 2,215 vessels, 6 known processors, and 72 known dealers participating in the fishery in 1999.

Minimizing Economic Impacts on Small Entities

The FRFA and Comment 5 in the Comments and Responses section of this rule discuss potential economic impacts on the lobster bait market that could result from vessels supplying JVP operations, as opposed to domestic shoreside processors and bait dealers. The magnitude of any economic impact to shoreside processors due to the specification of JVP (enhanced by a specification of TALFF) is uncertain. A reduction in supply of herring to shoreside processors could result in an increase in the cost of herring to shoreside processors or bait dealers. However, as noted in the response to Comment 5, the JVP allocation is only 4 percent of the allowable harvest, leaving 96 percent of the allowable harvest available to be sold as bait or otherwise processed shoreside, including the entire TAC in Areas 1A and 1B, where JVP and TALFF are prohibited under the FMP.

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

Dated: May 22, 2001.

John Oliver,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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