

Subcontracts for Commercial Items (Mar 2001)

(a) Definitions. As used in this clause—

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(c)(1) The following clauses shall be flowed down to subcontracts for commercial items:

(i) 52.219–8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222–26, Equal Opportunity (FEB 1999) (E.O. 11246).

(iii) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)).

(iv) 52.222–36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247–64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUN 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005245–2012–02; I.D. 092401C]

RIN 0648–AP37

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2002 Specifications

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

ACTION: Final 2002 specifications for the Atlantic herring fishery.

SUMMARY: NMFS issues final specifications for the 2002 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. This rule

also corrects and clarifies the final rule implementing the FMP by clarifying the vessel owners' or operators' reporting requirements.

DATES: The amendment to § 648.7 is effective January 24, 2002; the specifications are effective January 24, 2002, through December 31, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Essential Fish Habitat Assessment, Final Regulatory Flexibility Analysis, and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2000 Atlantic Herring Fishing Year are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at <http://www.nefmc.org>.

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. The FMP requires the New England Fishery Management Council (Council), with the Atlantic States Marine Fisheries Commission (Commission), to develop and recommend the following specifications annually: 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 Council and Commission also recommend the total allowable catch (TAC) for each management area and sub-area identified in the FMP. A proposed rule to implement the 2002 Atlantic herring specifications was published in the Federal Register on October 29, 2001 (66 FR 54498), with a comment period ending November 28, 2001. The process used to develop the specifications was thoroughly described in the preamble to the proposed rule and is not repeated here.

Final 2002 Specifications

Specifications for the 2002 fisheries are provided below. The only changes from the 2001 specifications are an increase in estimated DAH/DAP by 5,000 mt and a resulting decrease in TALFF to zero. The impacts of this

change are discussed in the proposed rule and the EA/RIR for the 2002 herring specifications.

TABLE. SPECIFICATIONS AND AREA TACS FOR THE 2002 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPt	20,000
JVP	10,000
	(Area 2 & Area 3)
IWP	10,000
USAP	20,000
BT	4,000
TALFF	0
Reserve	0
TAC-Area 1A	60,000
TAC-Area 1B	10,000
TAC-Area 2	50,000
	TAC reserve:
	80,000
TAC-Area 3	50,000

This rule also implements a change to § 648.7(b)(1)(iii)(B) and adds § 648.7(b)(1)(iii)(C) to clarify the Council's intent concerning the reporting requirements for owners or operators of vessels who have been issued Atlantic herring permits but who are not required to have a Vessel Monitoring System (VMS) unit on board the vessel. This rule clarifies that only owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring on any one trip in a week must submit an Atlantic herring catch report via the Interactive Voice Response (IVR) reporting system by Tuesday of the following week. Even if the herring has not yet been landed, the operator must estimate the amount of herring on board the vessel and report that amount via the IVR system. As currently written, the regulations imply that this provision applies at all times to any owner or operator of a vessel issued a Federal permit for Atlantic herring who is not required to have a VMS unit on board the vessel. In addition, this rule clarifies that owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week. As currently written, the regulations require that the reporting provision also applies at all times to vessels catching herring in or from the EEZ. A review of the FMP and background material germane to the issue shows that this clarifying change is consistent with Council intent.

Changes from the Proposed Rule

While the amounts of the specifications remain the same as those found in the proposed rule, the restriction in the proposed rule on JVP to Area 2 only has been modified to retain the 2001 restriction of JVP to Areas 2 and 3. JVP remains prohibited in Areas 1A and 1B. This change to the proposed rule is a result of comments regarding the proposed restriction, and is based on a determination that, on balance, net benefits to fishing will be enhanced by continuing to allow JVP activity in both Areas 2 and 3.

Comments and Responses

Eight sets of public comments were received on the proposed rule from two vessel owners, a Maine fisheries association, the State of Connecticut, the Mid-Atlantic Fishery Management Council, the Russian Federation, a U.S. JVP partner, and a shoreside processor.

Comment 1: Two vessel owners and a Maine fisheries association opposed the elimination of JVP in Area 3 because they believe it would remove an opportunity for U.S. vessels to fish for herring at a time when fishing for other species is restricted or unavailable to them. The MAFMC, a representative of a canned sardine company, and the State of Connecticut specifically recommended that 10,000 mt of JVP should be made available in both Areas 2 and 3. The State of Connecticut believes that preventing JVP in Area 3 could leave fish unharvested in Area 3 because it is not certain that U.S. shoreside processors will fully utilize the Area 3 TAC.

Response: In 2001, 50,000 mt of TAC was allocated to Area 3. As of December 1, 2001, 28,700 mt, or 57 percent of the Area 3 TAC had been delivered to shoreside processors. While this figure represents a substantial increase in shoreside deliveries from 13,065 mt in 2000, it appears unlikely that shoreside processors will utilize the entire Area 3 TAC of 50,000 mt in 2002, as the Council believed. While the increase in shoreside deliveries reflects the addition of a new herring processing facility in Gloucester, MA, it is still uncertain that U.S. processing capacity is sufficient to utilize the full Area 3 TAC of 50,000 mt. NMFS agrees with the State of Connecticut that, while the export sector of the domestic industry has further developed over the past year, removing opportunities for U.S. vessels to participate in JVP operations in Area 3 would cause economic hardships of varying degrees to those vessels. Also, net benefits to the fishery will likely be enhanced by continuing to allow JVP

activity in both areas. Therefore, this final rule allocates JVP to both Area 2 and Area 3.

Comment 2: The Russian Federation commented that all products processed at sea by Russian vessels are sent to foreign markets in accordance with U.S. law. The Federation believes that allocating JVP and TALFF to Russia provides additional advantages to U.S. fishermen -- in particular, new possibilities for more profitable operations and full utilization of fishing capacities -- and also promotes rational use of marine resources. A U.S. partner of foreign fishing operations supported this view.

Response: Based on an increase of estimated DAH/DAP by 5,000 mt for Atlantic herring over last year's estimate, the estimated portion of 2002 OY not harvested by U.S. vessels is zero, and, therefore, TALFF is zero. The Council has concluded that TALFF, even in relatively small amounts, can compete with U.S. exports in limited global markets. The potentially negative economic impacts of competition with TALFF-caught fish is discussed in the RIR. However, an allocation of zero TALFF does not preclude opportunities for U.S. vessels to participate in JVP operations. NMFS accepts the Council's analysis and rationale; this final rule sets TALFF at zero.

Comment 3: A Maine fisheries association and a U.S. JVP partner suggested increasing JVP to 20,000 mt for Atlantic herring.

Response: NMFS believes that a JVP specification of 20,000 mt could potentially impact the development of shoreside processors and would not be consistent with the FMP. If the majority of a 20,000 mt JVP allocation is taken from Area 3, this would allow only approximately 30,000 mt of herring to be delivered to shoreside processors. Since those processors have almost taken this amount in 2001, this would not leave additional allocation for further development of shoreside processing capabilities. However, NMFS will continue to closely monitor harvest from the various sectors of the fishery throughout the year, and if shoreside production falls short of expectations, NMFS, in consultation with the Council, could increase JVP allocation at any time during the fishing year, if warranted.

Comment 4: A U.S. JVP partner recommended a separate herring allocation for the Maine purse seine fleet.

Response: A separate allocation for Maine purse seiners was not within the scope of this action and would require an amendment or framework to the

FMP. The commenter would have to convince the Council that such an action has enough merit to direct staff to develop a sufficient number of alternatives and supporting analyses, given the Council's current list of priorities.

Classification

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

This action establishes the annual and management area 2002 TACs for the Atlantic herring fishery, which are used for the purpose of closing the fishery when the quotas are reached.

Framework 1 to the FMP, as approved by the Secretary, is published elsewhere in today's Federal Register, effective immediately. That action gives NMFS the authority to divide the TAC for Management Area 1A into two seasons to preserve the much larger traditional fishery that has occurred from June through December. The fishing year begins on January 1, and the TAC for the January through May period is being set as a percentage of the annual quota allocation established by this rule, currently equating to only 6,000 mt for the 2002 fishing year. As such, unless this rule, which establishes the annual specifications for herring, is made effective prior to, or at the same time as, Framework 1, then there exists no basis upon which to determine the January through May TAC. Thus, the ability to implement Framework 1 is completely dependent upon the effectiveness of this action; without this rule in place, the basis upon which Framework 1 is predicated does not exist. Accordingly, the AA finds good cause, under 5 U.S.C. 553(d)(3), to waive the 30 day delayed effectiveness for these specifications, since doing so is likely to prove necessary in order to close Area 1A.

Additionally, waiving the 30 day delayed effectiveness for these specifications will relieve a restriction on JVP operations (i.e., U.S. harvesters delivering to foreign processors) who are currently waiting to deliver herring. Some of the foreign vessels who received herring from domestic fishermen in 2001 intend to engage in herring JVP operations in 2002, and are currently waiting to do so. However, until the herring specifications are finalized and these foreign vessels are permitted, they are prohibited from doing so. Thus, a delay in the effectiveness of this action would prolong a restriction upon those vessels, while making these specifications immediately effective will serve to relieve the existing restriction. Therefore, there exists authority under 5

U.S.C. 553(d)(1) to waive the 30-day delayed effectiveness period for this rule.

NMFS prepared a final regulatory flexibility act analysis (FRFA) for this action. A copy of the FRFA, which incorporates the IRFA, is available from the Council (see **ADDRESSES**). 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 new reporting and recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Public Comments

Eight sets of public comments were received on the proposed rule. None of the comments directly addressed the results of the IRFA. However, comments 1 through 3 addressed economic impacts to vessels and shoreside processors. Responses to those comments are provided in the preamble of this final rule.

Number of Small Entities

All of the affected businesses (fishing vessels and dealers) are considered small entities. The last full year of data available for the herring fishery is the year 2000. There were 169 vessels, 6 processors, and 104 dealers participating in the fishery in 2000.

Minimizing Economic Impacts on Small Entities

The only change from the 2001 specifications is an increase in estimated DAH/DAP by 5,000 mt and a resulting decrease in TALFF to zero. The impacts of this change in DAP could benefit domestic processors because domestic shoreside processing has increased recently. The impacts were discussed in the proposed rule published on October 29, 2001 (66 FR 54498) and in the EA/RIR/IRFA for the 2002 herring specifications. The Regulatory Flexibility Act requires an agency to consider alternative measures that would mitigate adverse economic impacts to small businesses. While this action would eliminate TALFF fees to the Nation and decrease the profitability of foreign fishing vessels that previously participated in JVP/TALFF operations, it would not have an adverse economic impact on U.S. herring processors or other U.S. small businesses as compared to the status quo, which allocates 5,000 mt of TALFF and would have a negative

impact on U.S. processors who are attempting to penetrate emerging markets for herring. The Council also considered a specification of 20,000 mt of TALFF and concluded that this level of TALFF would also cause significant negative impacts on U.S. processors by competing directly with the U.S. export market for herring. NMFS did not adopt the recommendation of the Council to limit JVP to Area 2, because it is likely there would be significant negative economic impacts to several vessels in 2002 that participated in Area 3 JVPs in 2001. However, NMFS did not adopt Council non-preferred alternatives that would have increased JVP up to 50,000 mt because amounts over the 10,000 mt preferred specification of JVP could limit the supply of herring going to U.S. processors while providing foreign nations with additional amounts of herring to sell into emerging markets in direct competition with U.S. exports.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a permit holder letter that also serves as a small entity compliance guide was prepared. The guide (i.e., permit holder letter) will be sent to all holders of permits issued for the Atlantic herring fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and are also available at the following web site <http://www.nero.nmfs.gov/ro/doc/nero.html>.

This action clarifies a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under control number 0648-0212. Public reporting burden for this collection of information is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget,

Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing.

Dated: January 18, 2002.

William T. Hogarth,

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

For the reasons set out in the preamble, 50 CFR part 648 is 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 § 648.7, paragraph (b)(1)(iii)(B) is revised, paragraph (b)(1)(iii)(C) is redesignated as paragraph (b)(1)(iii)(D), and a new paragraph (b)(1)(iii)(C) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board and that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) An owner or operator of any vessel that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

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