

and three ANOs filed briefs with Judge McKenna and will participate on the scientific review committee.

#### List of Subjects in 50 CFR part 216

Administrative practice and procedure, Exports, Imports, Marine mammals, Transportation.

Dated: March 31, 2004.

**Rebecca Lent,**

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

■ For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

#### PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361, *et seq.*, unless otherwise noted.

■ 2. In § 216.23, add paragraph (f) to read as follows:

##### § 216.23 Native exceptions.

\* \* \* \* \*

(f) *Harvest management of Cook Inlet beluga whales.* (1) *Cooperative management of subsistence harvest.* Subject to the provisions of 16 U.S.C. 1371(b) and any further limitations set forth in § 216.23, any taking of a Cook Inlet beluga whale by an Alaska Native must be authorized under an agreement for the co-management of subsistence uses (hereinafter in this paragraph “co-management agreement”) between the National Marine Fisheries Service and an Alaska Native organization(s).

(2) *Limitations.* (i) *Sale of Cook Inlet beluga whale parts and products.* Authentic Native articles of handicraft and clothing made from nonedible by-products of beluga whales taken in accordance with the provisions of this paragraph may be sold in interstate commerce. The sale of any other part or product, including food stuffs, from Cook Inlet beluga whales is prohibited, provided that nothing herein shall be interpreted to prohibit or restrict customary and traditional subsistence practices of barter and sharing of Cook Inlet beluga parts and products.

(ii) *Beluga whale calves or adults with calves.* The taking of a calf or an adult whale accompanied by a calf is prohibited.

(iii) *Season.* All takings of beluga whales authorized under § 216.23(f) shall occur no earlier than July 1 of each year.

(iv) *Taking during 2001–2004.* The harvest of Cook Inlet beluga whales is

restricted during the four-year period of 2001–2004 as follows:

(A) *Strike limitations.* Subject to the suspension provision of subparagraph (C), a total of six (6) strikes, which could result in up to six landings, are to be allocated through co-management agreement(s).

(B) *Strike allocations.* Four strikes, not to exceed one per year, are allocated to the Native Village of Tyonek. The remaining two strikes will be allocated over the 4-year period through co-management agreement with other Cook Inlet community hunters, with no more than one such strike being allocated during every other year.

(C) *Emergency provisions.* Takings of beluga whales authorized under § 216.23 will be suspended whenever unusual mortalities exceed six (6) whales in any year. “Unusual mortalities” include all documented human-caused mortality (including illegal takings and net entanglements but excluding all legally harvested whales) and all documented mortality resulting from unknown or natural causes that occur above normal levels, considered for the purposes of this provision to be twelve beluga whales per year. The level of unusual mortalities shall be calculated by documenting mortality for the calendar year and subtracting twelve. The sum of this result and the carry over of unusual mortality from any previous year from which the population has not recovered is the level of unusual mortalities for the current year. If in any year the number of unusual mortalities exceeds six whales, no strikes will be allowed in that year or in subsequent years until the population has recovered from those mortalities through foregone future harvests and natural recruitment.

(v) *Taking during 2005 and subsequent years.* [Reserved]

[FR Doc. 04–7660 Filed 4–5–04; 8:45 am]

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 648

[Docket No. 031126296–4100–02; I.D. 111903B]

RIN 0648–AQ84

##### Fisheries of the Northeastern United States; Atlantic Herring Fishery

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

**ACTION:** Final 2004 specifications for the Atlantic herring fishery.

**SUMMARY:** NMFS announces final specifications for the 2004 Atlantic herring fishery. The intent of this action is to conserve and manage the Atlantic herring resource and provide for a sustainable fishery.

**DATES:** Effective May 6, 2004, through December 31, 2004.

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

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

##### SUPPLEMENTARY INFORMATION:

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) require the New England Fishery Management Council (Council) to 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 also recommends the total allowable catch (TAC) for each management area and subarea identified in the FMP. Details about the process through which the Council developed its recommendations were provided in the preamble of the proposed rule, and is not repeated here.

Proposed 2004 initial specifications were published on December 12, 2003 (68 FR 69373). Public comments were accepted through January 12, 2004. The final specifications are unchanged from those that were proposed.

##### 2004 Final Initial Specifications

The following table contains the final specifications for the 2004 Atlantic herring fishery.

## SPECIFICATIONS AND AREA TACS FOR THE 2004 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 and 3 only)
IWP	10,000
USAP	20,000 (Area 2 and 3 only)
BT	4,000
TALFF	0
Reserve	0
TAC Area 1A	60,000 (January 1 - May 31, landings cannot exceed 6,000)
TAC - Area 1B	10,000
TAC - Area 2	50,000 (TAC reserve: 70,000)
TAC - Area 3	60,000

**Comments and Responses**

One comment was received from a company that owns herring boats and a processing plant. Another comment came from an environmental group with an interest in the fishery. A third comment, which was very similar to that made by the environmental group, came from a fishermen's association.

*Comment 1:* The company said that it does not support any allocation to the JVPT, particularly for fish caught in Area 3. The company conceded that Area 2 might be able to support a JVP allocation at certain times of the year.

*Response:* The JVPT allocation for 2004 should not have a negative impact on domestic operations because the allocation is relatively limited. In recent years the allocation of JVPT has not been fully utilized. In 2003 there was no JVP harvest and only 182 mt of IWP. JVPT offers a potential economic opportunity for the domestic fleet. If the full amount of the JVP (10,000 mt) were harvested, revenues to the participating U.S. vessels would approximate \$1.4 million, based on an average price of \$143/mt.

*Comment 2:* Two comments concerned observer coverage and bycatch. The environmental group noted that, during the scoping process for Amendment 1, questions were raised about the adequacy of current observer coverage in the herring fishery and the related estimates of bycatch. The group argued that National Standard 9 requires all conservation measures, including annual specifications, to minimize bycatch to the extent practicable, and to the extent that bycatch cannot be avoided, minimize the mortality of incidentally caught species. The environmental group urged NMFS to

immediately obtain an accurate and precise estimate of bycatch in the herring industry, and they stated that recent science suggests that 50-percent observer coverage on herring vessels might be the proper amount. The group questioned the legality of NMFS promulgating specifications without adequate observer coverage. Similarly, the fishermen's association argued that observer coverage has not been adequate in the herring fishery, and that current coverage levels are not sufficient to assess the bycatch associated with the trawl fleet.

*Response:* Observer coverage and bycatch are important issues to be considered in relation to the herring fishery. However, current information does not suggest that bycatch is a significant problem in the herring fishery. There are occasionally relatively small catches of groundfish or sportfish, but, overall, the herring fishery appears to be relatively clean. In 1997, the State of Maine contracted for 50 observed trips in the purse seine and mid-water trawl herring fishery. During these trips the bycatch was minimal, consisting primarily of mackerel, river herring, spiny dogfish and silver hake, as well as very small amounts of groundfish such as cod and white hake. In an effort to add to the data on bycatch in the fishery, NMFS recently placed observers on herring pair-trawlers in the Gulf of Maine. From the beginning of October 2003 through the middle of December 2003, a total of 22 trips were observed. The data generated during these trips are very similar to that generated on the trips observed under the Maine contract. NMFS notes that both of these issues--bycatch and observer coverage in the herring fishery--will be fully evaluated during the development of Amendment 1 to the FMP.

NMFS disagrees that these specifications are inconsistent with National Standard 9, based on best available data concerning bycatch as described above. Further, these data do not suggest that a 50-percent level of observer coverage is necessary to assess bycatch adequately.

**Classification**

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

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the IRFA and other analyses completed in support of this action. A copy of the

IRFA is available from the Regional Administrator (see **ADDRESSES**).

**Final Regulatory Flexibility Analysis***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 the proposed rule and is not repeated here.

*Summary of Significant Issues Raised in Public Comments*

Three sets of comments were submitted on the proposed rule, but none were specific to the IRFA. However, one comment addressed potential economic impacts of an allocation of JVPT, and is addressed in the response to comment 1.

*Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

All of the affected businesses (fishing vessels) are considered small entities under the standards described in NMFS guidelines because they have gross receipts that do not exceed \$3.5 million annually. There were 140 vessels that landed herring in 2002, 37 of which averaged more than 2,000 lb (907 kg) of herring per trip.

*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*

The annual setting of the specifications is a relatively limited process that focuses on the allocation of herring to various groups and for various purposes. The limited nature of this process, in turn, necessarily limits the alternatives available for minimizing significant economic impacts on small entities. Alternatives that were considered to lessen the impacts on small entities are summarized below.

One group of alternatives considered for the Atlantic herring fishery would have significantly increased the OY. For the 2003 specifications, the Council considered non-preferred OY alternatives of 300,000 and  $\leq 1,000,000$  mt. At these OY levels there would be increased potential revenues in comparison to the selected 2004 OY alternative of 250,000 mt. However, the Council determined that setting OY at

the ABC (300,00 mt) or above may have adverse impacts on the herring stock. Therefore, the Council decided that these greater OY options would pose an unacceptable level of risk to the sustainability of the herring stock.

Another alternative considered involves DAP. Based on the proposed 2004 DAP specification of 226,000 mt, there could be an increase of up to 134,169 mt in herring landings, or \$19,186,167 in revenue based on \$143/mt. Revenues to the fleet may also increase under the Council's non-preferred 2003 DAP alternative of 236,000 mt. However, the magnitude of economic impact of the DAP would depend on the processing sector's ability to expand markets and increase capacity to handle larger amounts of herring in 2004. Given the current capacity of the processing sector, the Council concluded that setting the DAP at 226,000 mt would provide sufficient allocation for expansion of the U.S. domestic processing sector and that setting the DAP at 236,000 mt was unlikely to result in additional expansion.

#### *Small Entity Compliance Guide*

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 rulemaking process, a small entity compliance guide 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 may be found at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

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

Dated: March 30, 2004.

#### **Rebecca Lent,**

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

[FR Doc. 04-7661 Filed 4-5-04; 8:45 am]

**BILLING CODE 3510-22-S**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 031124287-4060-02; I.D. 032904B]

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole in the Bering Sea and Aleutian Islands**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for rock sole in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of rock sole in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2004, until 2400 hrs, A.l.t., December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC specified for rock sole in the BSAI is 34,850 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC specified for rock sole will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 31,850 mt, and is setting aside the remaining 3,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for rock sole in the BSAI.

## **Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of rock sole fishery in the BSAI.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 30, 2004.

#### **John H. Dunnigan,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04-7648 Filed 3-31-04; 3:50 pm]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 031124287-4060-02; I.D. 033104A]

#### **Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season allocation of the 2004 total allowable catch (TAC) of Pacific cod specified for catcher vessels using trawl gear in this area.