

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

[Docket No. 011221308-1308-01; I.D. 112101A]

RIN 0648-AP44

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 1

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures contained in Framework Adjustment 1 to the Atlantic Herring Fishery Management Plan (FMP). This final rule modifies the annual specification of herring quota for Management Area 1A by establishing two quota periods. The intent of this final rule is to cap the landings of herring from Area 1A during the winter/spring (January through May) season so that more annual quota will be available to vessels fishing during the summer/fall (June through December) peak demand season.

DATES: Effective January 24, 2002.

ADDRESSES: Copies of Framework Adjustment 1 to the Atlantic Herring FMP, including the Environmental Assessment (EA), and Regulatory Impact Review (RIR) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR is also accessible via the Internet at <http://www.nero.nmfs.gov>.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Management Specialist, (978) 281-9103, fax (978) 281-9135, e-mail Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION: This final rule implements the measures contained in Framework 1 to the FMP. These measures require annual specification of herring quotas for two seasonal fishing periods for Management Area 1A (January - May and June - December). The annual quota (TAC) for each period will be established each year through the existing annual specifications' process outlined in 50 CFR 648.200. The annual Atlantic herring specifications for fishing year 2002 are published elsewhere in this edition of the Federal Register. This final rule also modifies

the 2002 Area 1A TAC of 60,000 mt by allocating 6,000 mt to the January - May period, leaving 54,000 mt for the June - December period. The annual 2002 TAC for Area 1A would remain unchanged. The intent of this final rule is to modify the 2002 Area 1A TAC upon implementation of the 2002 specifications. Complementary action is being proposed for implementation by the states through the Atlantic States Marine Fisheries Commission's Atlantic Sea Herring Interstate FMP (IFMP).

Prior to this modification, the FMP required NMFS to close the directed herring fishery in a management area when 95 percent of the TAC for that area is harvested. Management area TACs were established by the states under the IFMP for the 2000 fishing year, and by NMFS under the FMP for the 2001 fishing year (66 FR 28846). Therefore, 2000 was the first year landings from Area 1A were constrained by the TAC. The traditional peak demand for herring coming from Area 1A occurs during June - November, when the primary use is for lobster bait. In both 2000 and 2001, the TAC was attained prior to the end of November (October 27, 2000 under the ASMFC Plan; November 10, 2001 under the Atlantic Herring FMP (66 FR 56041), respectively).

Over the past year, the New England Fishery Management Council (Council) and its Herring Oversight Committee discussed at several meetings the various proposed alternatives to address the industry's concerns, including limited entry or controlled access in Area 1A. Causes of the early attainment of the TAC in Area 1A, include excessive harvesting capacity of the herring fleet given Area 1A TAC levels specified in recent years, and the lower cost for vessels from Maine, New Hampshire, and Massachusetts to harvest herring from Area 1A compared to other areas located farther offshore. These vessels are induced to concentrate their effort in Area 1A in order to maximize profits, provided the fish are available in sufficient quantities. As a result, the herring TAC is reached earlier than desired by the fleet as a whole. For several years, the Council has considered developing an amendment to the FMP to establish a limited entry or controlled access program to address the capacity issue. However, other fishery issues have been identified as having higher priority, at least through 2002. Therefore, the Council developed Framework 1 to address the problem for the near future.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR 648.206. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings, where comments are accepted. The Council must provide the public with advance notice of both the framework proposals and the associated analysis and provide an opportunity to comment on them, specifically prior to and at the second Council meeting. Upon review of the analyses and public comments, the Council may recommend to NMFS that the measures be published as a final rule, or as a proposed rule if additional public comment is necessary. For this action, the Council recommended, and NMFS concurred after review of current circumstances in this fishery as further explained in the classification section of the final rule, that the measures be published as a final rule.

The initial and final meetings for Framework 1 at which public comment was received were on July 24-26, 2001, and September 25-27, 2001, respectively. The Council's Herring Oversight Committee and Herring Advisory Panel also met in August, between the two Council meetings, to take public comments and to discuss the action under consideration. Documents summarizing the Council's proposals and the analysis of biological, economic and social impacts were available for public review one week prior to the final meeting, as is required under the framework adjustment process. Written comments were accepted up to and during the final meeting. The Council received no written comments on the proposed action.

Classification

The fishing year for the Atlantic herring fishery begins on January 1, and the TAC for the January - May period is being set at only 6,000 mt for the 2002 fishing year in this final rule. Because herring are currently plentiful in Area 1A and landings data from the fishery indicate that significant catches are being made, the TAC may be reached within a few weeks. Without this rule in place, NMFS would have no authority to close the directed herring fishery once 95 percent of the seasonal TAC is attained. Furthermore, NMFS needs some lead time before a closure is effected in order to notify industry of the closure. Therefore, it is essential that this action be implemented as quickly

as possible in order to avoid exceeding the TAC for the first quota period, which would defeat the purpose of the action, as described in the preamble to this final rule. Therefore, the Assistant Administrator for NOAA (AA) finds that the July 24-26, 2001, and the September 25-27, 2001, Council meetings provided adequate prior notice and opportunity for public comment and, because any further delay could result in the seasonal TAC for the first quota period being exceeded, further notice and opportunity for public comment are impracticable. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive additional opportunity for prior public comment.

The AA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this final rule. The TAC for the 2002 fishery for Management Area 1A implemented in the 2002 Atlantic Herring specifications (published elsewhere in this edition of the Federal Register) is 60,000 mt. This action modifies the annual specification for Management Area 1A by establishing two quota periods so that more annual quota will be available to vessels fishing during the summer/fall peak demand season. Because this action caps the landings of herring from Area 1A during the January - May season, state agencies and fishers must be notified of the new cap in order to plan accordingly. In order for industry to plan accordingly for the upcoming fishing year, this modification of the annual specifications for the herring fishery must be published on or about January 1. Further, as explained in the preceding paragraphs, the availability of herring in Area 1A in January 2002 and preliminary landings information from the industry indicate that the directed fishery in Area 1A may need to be closed within a few weeks. Without this final rule's measures in place, the authority to close the fishery at 95 percent of the 6000 mt TAC in Area 1A would not exist, and the expected benefits of this action would be lost in 2002. As such, it is contrary to the public interest and impracticable to delay effectiveness for 30 days.

Because a prior notice and opportunity for public comment is not required for this final rule under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

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

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 § 648.200, the first two sentences of paragraph (a) are revised to read as follows:

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least annually, but no later than July, 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 Fishery Management Council's Atlantic Herring Oversight Committee: 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 shall also recommend the total allowable catch (TAC) for each management area and sub-area, including seasonal quotas as specified at § 648.202(f). * * *

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3. In § 648.202, the first sentence of paragraphs (a) is revised, and paragraph (f) is added to read as follows:

§ 648.202 Total allowable catch (TAC) controls

(a) If NMFS determines that catch will reach or exceed 95 percent of the annual TAC allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A TAC allocated to the first seasonal period as set forth in paragraph (f) of this section, NMFS shall prohibit a vessel, beginning the date the catch is projected to reach 95 percent of the TAC, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip and/or >2,000 lb (907.2 kg) of Atlantic herring per day in such area pursuant to paragraph (e) of this section, except as

provided in paragraphs (c) and (d) of this section. * * *

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(f) The TAC for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal TACs for Area 1A shall be set through the annual specification process described in § 648.200.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 011702A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands

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

ACTION: Closures and openings.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District (Statistical Area (area) 541) and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2002 total allowable catch (TAC) of Atka mackerel in these areas. NMFS is also announcing the opening and closure dates of the first and second directed fisheries within the harvest limit area (HLA) in areas 542 and 543. These actions are necessary to prevent exceeding the A season HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the 2002 Atka mackerel TAC.

DATES: Prohibition of directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2002, until 1200 hrs, A.l.t., September 1, 2002. The first directed fisheries in the HLA in area 542 and area 543 are open as follows: Effective 1200 hrs, A.l.t., January 23, 2002, until 1200 hrs, A.l.t., January 28, 2002. The second directed fisheries in the HLA in area 542 and area 543 are open as follows: Effective 1200 hrs, A.l.t.,