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should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Council's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[65 FR 45852, July 26, 2000, as amended at 73 FR 4756, Jan. 28, 2008]

Subpart K—Management Measures for the Atlantic Herring Fishery

SOURCE: 72 FR 11277, Mar. 12, 2007, unless otherwise noted.

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for a period of 3 years 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), reserve (if any), and the amount to be set aside for the RSA (from 0 to 3 percent of the TAC from

any management area). 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 § 648.201(f). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

(1) The PDT shall meet with the Commission's PRT to review the status of the stock and the fishery and prepare a Stock Assessment and Fishery Evaluation (SAFE) report at least every 3 years. The Herring PDT will meet at least once during interim years to review the status of the stock relative to the overfishing definition if information is available to do so. When conducting a 3-year review and preparing a SAFE Report, the PDT/PRT will recommend to the Council/Commission any necessary adjustments to the specifications for the upcoming 3 years.

(2) If the Council determines, based on information provided by the PDT/PRT or other stock-related information, that the specifications should be adjusted during the 3-year time period, it can do so through the same process outlined in this section during one or both of the interim years.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; 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. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) OY must be equal to or less than the allowable biological catch (ABC), as adjusted by subtracting an estimate of the expected Canadian New Brunswick fixed gear and GB herring catch.

(2) OY must not exceed MSY, unless an OY that exceeds MSY in a specific year is consistent with a control rule

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that ensures the achievement of MSY and OY on a continuing basis.

(3) Factors to be considered in assigning an amount, if any, to the reserve shall include:

(i) Uncertainty and variability in the estimates of stock size and ABC;

(ii) Uncertainty in the estimates of Canadian harvest from the coastal stock complex;

(iii) The requirement to insure the availability of herring to provide controlled opportunities for vessels in other fisheries in the Mid-Atlantic and New England;

(iv) Excess U.S. harvesting capacity available to enter the herring fishery;

(v) Total world export potential by herring producer countries;

(vi) Total world import demand by herring consuming countries;

(vii) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(viii) Increased/decreased revenues to U.S. harvesters (with/without joint ventures);

(ix) Increased/decreased revenues to U.S. processors and exporters; and

(x) Increased/decreased U.S. processing productivity.

(4) Adjustments to TALFF, if any, shall be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(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 for a 3-year period. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate 3-year specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission, and publish notification in the FEDERAL REGISTER proposing 3-year specifications. 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 paragraph (b) of 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 until they are revised through the specification process.

(e) *In-season adjustments.* (1) The specifications and TACs established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the FEDERAL REGISTER stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(2) If a total allowable catch reserve (TAC reserve) is specified for an area, NMFS may make any or all of that TAC reserve available to fishers after consulting with the Council. NMFS shall propose any release of the TAC reserve in the FEDERAL REGISTER and provide an opportunity for public comment. After considering any comments received, any release of the TAC reserve shall be announced through notification in the FEDERAL REGISTER.

(f) *Management areas.* The specifications process establishes TACs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(1) *Management Area 1 (Gulf of Maine):* All U.S. waters of the Gulf of Maine (GOM) north of a line extending from a point at 70°00' W. long. and 41°39' N. to 42°53'14" N. lat., 67° 44'35" W. long., thence northerly along the Hague Line

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to the U.S.-Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

Point	N. lat.	W. long.
1	41°58'	70° 00'
2	42°38'	70° 00'
3	42°53'	69° 40'
4	43°12'	69° 00'
5	43°40'	68° 00'
6	43°58'	67° 22'(the U.S.– Canada Maritime Boundary)

(2) *Management Area 2 (South Coastal Area)*: All waters west of 70° 00' W . long., south of 41°39' N. lat., to include state and Federal waters adjacent to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.

(3) *Management Area 3 (Georges Bank)*: All U.S. waters east of 70°00' W. long. and southeast of the line that runs from a point at 70°00' W. long. and 41°39' N. lat., northeasterly to the Hague Line at 42°53'14" N. lat., 67°44'35" W. long.

[72 FR 11277, Mar. 12, 2007, as amended at 73 FR 4757, Jan. 28, 2008]

§ 648.201 Closures and TAC controls.

(a) If NMFS determines that catch will reach 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 vessels, 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. These limits shall be enforced based on a calendar day, without regard to the length of the trip.

(b) The percent of the TAC that triggers imposition of the 2,000-lb (907.2-

kg) limit specified in paragraph (a) of this section may be adjusted through the specification process described in §648.200. Any lowering of the percent of the TAC that triggers the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section must be accomplished through the framework adjustment or amendment processes.

(c) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by §648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(d) A vessel may land in an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by §648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(e) NMFS shall implement fishing restrictions as specified in paragraph (a) of this section by publication of a notification in the FEDERAL REGISTER, without further opportunity for public comment.

(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, including the specification of the seasonal periods, shall be set through the annual specification process described in §648.200.

(g) Up to 500 mt of the Area 1A TAC shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44° 36.2 N.