

specifications for consideration by the 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), 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 subarea identified in the FMP. As the basis for its recommendations, the PDT reviews available data pertaining to: Commercial and recreational catch; current estimates of fishing mortality; 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. Recommended specifications are presented to the Council for adoption and recommendation to NMFS. To the extent that these recommendations are adopted by NMFS, they serve as the basis for the allocations.

Proposed 2003 initial specifications were published on November 15, 2002 (67 FR 69181). Public comments were accepted through December 16, 2002. The final specifications are unchanged from those that were proposed.

2003 Final Initial Specifications

The following table contains the final initial specifications for the 2003 Atlantic herring fishery.

FINAL SPECIFICATIONS AND AREA TACS FOR THE 2003 ATLANTIC HERRING FISHERY

Specification	Final 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
TAC-Area 1B	10,000

FINAL SPECIFICATIONS AND AREA TACS FOR THE 2003 ATLANTIC HERRING FISHERY—Continued

Specification	Final Allocation (mt)
TAC-Area 2	50,000
	(Area 2 and 3 only)
TAC-Area 3	60,000

There are two changes from the specifications approved by NMFS for the 2002 fishery: A transfer of 10,000 mt from the Area 2 TAC reserve to the Area 3 TAC resulting in an Area 3 TAC of 60,000 mt and an Area 2 TAC reserve of 70,000 mt; and a restriction on USAP vessels to fish in Areas 2 and 3 only. A complete discussion of the development of these changes appears in the recommendations from the Council and the preamble to the proposed rule and is not repeated here.

Comments and Responses

Three members of the public submitted comments on the proposed specifications. One of the three commenters submitted general comments about Atlantic herring management, which is not the subject of this rulemaking and will not be responded to here.

Comment 1: One commenter supported the proposed restriction of USAP activity from Area 1, the proposed increase in Area 3 TAC, and the proposed USAP specification of 20,000 mt.

Response 1: This final rule implements the proposed measures.

Comment 2: One commenter opposed restricting USAP activity to Areas 2 and 3. He argued USAP should be allowed throughout the management area and that allowing USAP vessels in the area provides fishing opportunities for vessels that lack refrigerated sea water and holding tanks needed to deliver fish to shore.

Response 2: There are no expected biological impacts on the Atlantic herring stock from restricting potential USAP vessel activity to Areas 2 and 3. If a USAP vessel has the opportunity to operate in or near Area 1 at a lower cost (for fuel, maintenance, or other operational expenses) than it would incur from fishing in Area 2 or 3, and it is restricted from doing so, then the economic profitability of the USAP vessel would be reduced. However, there has been no USAP activity, so such concern is hypothetical at this time. The prohibition on harvesting Area 1 fish for delivery to USAP vessels would leave more fish available to

shoreside processors and bait dealers operating on the coasts of Maine, New Hampshire, and Massachusetts, the three states that border Area 1A (the inshore portion of Area 1). The quota in Area 1A was taken prior to the end of both the 2000 and 2001 fishing years, and the period 1 (January through June) quota implemented in 2002 was taken by April. Therefore, based on recent fishing activity in Area 1, restricting USAP activity from Area 1 seems to result in net benefits to the fishery.

As a result, the Council recommended, and NMFS is implementing, the restriction of USAP activity from Area 1.

Classification

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

This action establishes TACs and related management measures for the Atlantic herring fishery. If implementation of the TACs and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of the species. The Atlantic herring fishery will begin making landings on January 1, 2003. If a delay in effectiveness is required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. Of particular concern would be the impact if the Area 1A TAC allocated for the period January-June is overharvested. NMFS must close Area 1A when 95 percent of the TAC allocated to the first seasonal period is reached or exceeded. The quota in Area 1A was taken prior to the end of the 2000, 2001, and 2002 fishing years. The Period 1 quota for 2002 was taken earlier (April) than in 2001, and that trend might continue in 2003. If Period 1 is not closed prior to reaching 95 percent of the TAC allocated to this period, then there would be distributional effects on the fishery for the remainder of the fishing year and would likely reduce economic gains for some of the industry participants who traditionally harvest Atlantic herring in Area 1A during Period 2 (June through December). 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 quotas and other management measures.

NMFS prepared a FRFA for this action. The FRFA includes a summary of the analyses in support of these specifications. A copy of the FRFA is available from NMFS (see **ADDRESSES**).