Fishery Management Report No. 33b of the

ATLANTIC STATES MARINE FISHERIES COMMISSION

Addendum II

To Amendment 1 to the Interstate Fishery Management Plan for Atlantic Sea Herring

Approved: February 28, 2002

Prepared by:

Atlantic Herring Plan Review Team

Addendum II to Amendment 1 to the Interstate Fishery Management Plan for Atlantic Sea Herring

INTRODUCTION

Amendment 1 to the Interstate Fishery Management Plan (FMP) for Atlantic Sea Herring was approved by the Commission's Atlantic Herring Section in January of 1999. Amendment 1 was developed in close cooperation with the New England Fishery Management Council (Council) as it prepared a plan for managing herring in federal waters. The two plans were designed to be complementary and contained many of the same management measures. The Council's FMP was partially approved by the National Marine Fisheries Service in October 1999 and implemented on December 11, 2000. Addendum II was developed in conjunction with the Council's Framework Adjustment 1, which allocates the Management Area 1A Total Allowable Catch (TAC) on a seasonal basis. Addendum II also specifies the procedures to be followed for Internal Waters Processing (IWP) requests and recommendations to the states. These measures will be effective upon approval by the Atlantic Herring Section and implemented by the states by March 1, 2002.

STATEMENT OF THE PROBLEM

Under the current management program implemented through Amendment 1 and the Council's Atlantic Herring FMP, the directed herring fishery in a given management area is closed when 95 percent of the TAC is reached. If a closure of Management Area 1A occurs before the end of the season (that is, end of November as determined primarily by the demand for herring as lobster bait), as it did in 2000 and 2001, some vessels will not be able to continue fishing in other management areas due to their size and vessel safety concerns. Also, some users or communities may not be able to obtain herring to meet the demand for bait. An additional concern regarding the implementation of Amendment 1 centered on the process for providing recommendations to the states for IWP applications. Although Amendment 1 and the Council's FMP provide for the determination of an overall specification for IWPs each year, there were no procedures identified for potential IWP applicants to follow, nor for the Section to evaluate and make recommendations.

Two potential causes for an early closure in Management Area 1A have been identified:

1. The harvest capacity exceeds the Area 1A TAC (Area 1A accounts for approximately 60% of the current market for herring); and
2. Since the cost of harvesting fish from Area 1A is generally lower than in other areas during the peak demand period, competition for the lowest cost fish creates harvester conflict and a "derby-style" fishery. In this situation, participants make capital investments to remain competitive in excess of what is needed to efficiently harvest the resource.

The Council is currently considering whether to develop a limited entry or controlled access program to limit or control capacity of vessels fishing in Area 1A. Such a program would require the Council to develop a plan amendment and would not address the problem in the immediate future. A number of other issues associated with implementation of a herring limited entry program exist that raise uncertainty about its efficacy in dealing with the problem. One of the main issues is that a limited entry program, even if limited to one area such as Area 1A, might inhibit the overall development of the fishery, which

on a stock-wide basis is not fully utilized, thereby reducing the fishery's ability to achieve its optimum yield. The Council will have to address this and other issues in the development of an amendment, which may further delay a resolution to the problem.

PURPOSE AND GOALS

The purpose of the proposed TAC allocation action is to cap the landings in Area 1A during the winter/spring season so that more of the annual quota will be available to vessels fishing during the peak summer/fall demand season. In doing so, this would presumably forestall an early closure of the Area 1A fishery. The purpose of clarifying the IWP procedures is to clearly identify the steps to be followed in both the application and evaluation/recommendation process.

CHANGES TO AMENDMENT 1

[Section numbering refers to Amendment 1]

4.2 COMMERCIAL FISHERIES MANAGEMENT MEASURES

4.2.7.5 Area 1A TAC Allocation

The TAC for Management Area 1A (Inshore Gulf of Maine), including state waters, shall be allocated on a seasonal basis as follows:

January 1 to May 31, 2002	6,000 metric tons
June 1 to December 31, 2002	54,000 metric tons plus any unused quota from immediately previous period

When 95% of the quota for either season is reached, the Regional Administrator may close the directed (herring) fishery in Area 1A by publication of a notice. States must prohibit the landing of Atlantic herring taken from a closed management area. When the fishery is closed, vessels may not possess or land on any trip more than 2,000 pounds of herring from Area 1A. An in-season adjustment to the seasonal allocation is possible following consultation with the New England Fishery Management Council (Council) and a recommendation from the Council to the Regional Administrator. Any in-season changes to the seasonal allocation would be made by publication of a notice by the Regional Administrator.

Beginning with the 2003 fishing season, the seasonal quotas for Management Area 1A will be set during the annual specifications process. This would allow the Atlantic Herring Section, in consultation with the Council, to modify the Area 1A seasonal quotas each year, which would allow for consideration of any future changes in the prosecution of the fishery. When 95% of the quota for either season is reached, the Regional Administrator may close the directed (herring) fishery in Area 1A by publication of a notice. States must prohibit the landing of Atlantic herring taken from a closed management area. When the fishery is closed, vessels may not possess or land on any trip more than 2,000 pounds of herring from Area 1A. An in-season adjustment to the seasonal allocation would also be possible following consultation with the Council and a recommendation from the Council to the Regional Administrator.

Any in-season changes to the seasonal allocation would be made by publication of a notice by the Regional Administrator.

Table 1. Atlantic herring management area TACs for 2002, including the seasonal allocation for Area 1A.

Area	TAC (metric tons)
1A	60,000 (Jan. - May: 6,000 June - Dec.: 54,000)
1B	10,000
2	50,000 (TAC Reserve: 80,000)
3	50,000

4.2.14 IWP Applications and Procedures

Internal Waters Processing (IWP) operations are permitted in all management areas, subject to an annual review, and the specification of IWP allocations by management area. States are required to prohibit the transfer of herring to an IWP operation that were caught from an area or sub-area closed to directed herring fishing, i.e. when the TAC for that area or sub-area is attained. If IWP allocations are specified by area or sub-area, all herring processed must be caught from that area or sub-area. IWP operations may not receive herring caught in areas closed to protect spawning concentrations of herring.

4.2.14.1 IWP Applications and Procedures

IWP permit applications shall be submitted to the individual states no later than May 1. The states' marine resources management agencies should review and cull the applications and provide the following information to the ASMFC no later than May 15:

(a) the quantity proposed to be processed and the processing methods to be used;
(b) the time period(s) for which permission is sought;
(c) the specific location(s) in the internal waters proposed for fish processing;
(d) the ultimate country of sale of the product;
(e) information showing how the fish processing will benefit development of the domestic fishing industry; and
(f) other information as needed.

In the review of IWP application information, the following criteria will be considered by the ASMFC:

- whether or not the cumulative amount requested by applicants will adversely impact the stock or the traditional fishery (advice specific to this issue will be solicited from the Atlantic Herring Section and Plan Review Team/Technical Committee); and
- whether or not the cumulative amount requested will cause catch levels from the management area to exceed the specified TAC.

The ASMFC should provide recommendations to the Governors of the individual states on or before August 15. Such advice may include:

(1) total IWP species allocation by state;
(2) time and area(s) of operation;
(3) observer coverage; and
(4) manner and method of harvest.

To assist the states in their review processes, the following information should be required of each applicant by each state:

(a) the reasons the applicant does not believe that U.S. fish processors in the region have adequate capacity, or will use such capacity, to process all of the U.S. harvested fish (herring) from the U.S. fishery of concern that are landed in the region, including any relevant documentation supporting such statement;
(b) whether or not the cumulative amount requested will cause catch levels from the management area to exceed the specified TAC;
(c) a description of the foreign fish processing vessel and other identification information;
(d) the name(s) and description(s) of the vessel(s) from which the applicant expects to purchase fish;
(e) the quantity proposed to be processed and the processing methods to be used;
(f) the time period(s) for which permission is sought;
(g) the specific location(s) in the internal waters proposed for fish processing;
(h) the existence of a governing international fisheries agreement or treaty as described in 16 U.S.C. 1801 et seq…, as amended;
(i) the ability to comply with all applicable laws and regulations of the United States and the states involved and any permit conditions;
(j) the ultimate country of sale of the product;
(k) information showing how the fish processing will benefit development of the domestic fishing industry;
(l) whether past over-the-side sales commitments, permit conditions, and other requirements have been met; and
(m) other information as needed or required by the state.

An application form has been prepared and is attached for reference.

5.0 COMPLIANCE

[Following adoption of Amendment 1, a number of typographical errors were noticed in the text of Section 5.0. The following language is meant to correct these minor errors]

Full implementation of the provisions of Amendment 1 (and subsequent addenda prepared under Adaptive Management) is necessary for the management program to be equitable, efficient and effective. States are expected to implement these measures faithfully under state laws. Although the ASMFC does not have authority to directly compel state implementation of these measures, it will continually monitor the effectiveness of state implementation and determine whether states are in compliance with the provisions of this fishery management plan. This Section sets forth the specific elements that the Commission will consider in determining state compliance with this fishery management plan, and the procedures that will govern the evaluation of compliance. Additional details of the procedures are found in the ASMFC Interstate Fisheries Management Program Charter (ASMFC 2001).

5.1 MANDATORY COMPLIANCE ELEMENTS FOR STATES

A state will be determined to be out of compliance with the provisions of this fishery management plan and amendments/addenda, according to the terms of Section 7 of the ISFMP Charter if:

- its regulatory and management programs to implement *Section 4* have not been approved by the Atlantic Herring Section; or
- it fails to meet any schedule required by *Section 5.1.2*, or any addendum prepared under Adaptive Management (*Section 4.5*); or
- it has failed to implement a change to its management program when determined necessary by the Atlantic Herring Section; or
- it makes a change to any compliance measure required under *Section 5.1.1.1* without prior approval of the Atlantic Herring Section.

5.1.1 Mandatory Elements of State Programs

To be considered in compliance with this fishery management plan, all state programs must include a regime of restrictions on Atlantic herring fisheries consistent with the requirements of *Sections 4.1* and *4.2*, except that a state may propose an alternative management program under *Section 4.4*, which, if approved by the Atlantic Herring Section, may be implemented as an alternative regulatory requirement.

5.1.1.1 Regulatory Requirements

States may begin to implement Amendment 1 after final approval by the Commission. Each state must submit its required Atlantic herring regulatory program to the Commission through the ASMFC staff for approval by the Section. During the period from submission, until the Section makes a decision on a state's program, a state may not adopt a less protective management program than contained in Amendment 1 or subsequent addenda.

1. Each jurisdiction must enact spawning area restrictions that are at least as restrictive or more than those in *Section 4.2.1*.
2. Each jurisdiction shall prohibit the landing of herring from a management area or sub-area when the TAC has been attained in that area or sub-area (*Section 4.2.7.2*).
3. Each jurisdiction shall prohibit directed fishing for herring in state waters when the TAC has been attained in that area or sub-area (*Section 4.2.7.2*).
4. Each jurisdiction shall prohibit the landing of herring to an Internal Waters Processing (IWP) operation, which were harvested from an area or sub-area closed to directed herring fishing (*Section 4.2.14*).
5. Each jurisdiction shall require that (daily) herring landings from fixed gear fisheries be reported on a weekly basis, in order to monitor progress toward attaining the TAC (*Section 4.2.12*).
6. Each jurisdiction shall annually provide a report on any mealing activity of herring occurring in their state, specifically, the amount in weight of herring processed into meal or meal-like product, biological sampling results, and location of catch by NMFS statistical area or Management Area.

Once approved by the Atlantic Herring Section, states are required to obtain prior approval from the Section of any changes to their management program for which a compliance requirement is in effect. Other measures must be reported to the Section but may be implemented without prior Section approval. A state can request permission to implement an alternative to any mandatory compliance measure only if that state can show to the Section's satisfaction that its alternative proposal will have the same conservation value as the measure contained in Amendment 1 or any addenda prepared under Adaptive Management (*Section 4.6*). States submitting alternative proposals must demonstrate that the proposed action will not contribute to overfishing of the resource. All changes in state plans must be submitted in

writing to the Section and to the Commission either as part of the annual FMP Review process or the Annual Compliance Reports.

5.1.2 Compliance Schedule

States must implement the management measures set forth in Addendum II by March 1, 2002.

Reports on compliance should be submitted to the Commission by each jurisdiction annually, no later than February 1st of each year, beginning in 2001. All states, including those states granted *de minimis* status, are required to submit an annual compliance report. States should include requests for *de minimis* status as part of their annual compliance report.

Atlantic States Marine Fisheries Commission

Atlantic Herring Section

Atlantic Herring Technical Committee/Plan Review Team

Atlantic Herring Internal Waters Processing Application

State requesting IWP operation: _____

State Government Official: _____

title/position: _____

State Agency: _____

Address: _____
Phone: ( ) - Fax: ( ) -

Target species scientific name: ***Clupea harengus*** _____
Requested allocation (metric tons): _____
Proposed fishing period: from _____ to _____

Processing method to be used: _____

_____

Number of vessels in the operation: _____
Storage capacity of the vessel(s): _____
Ultimate country(s) of sale for the products: _____
_____

Additional comments:

I hereby certify that to the best of my knowledge the above information is accurate.

_____ _____
Signature of State Official Date

Please send completed application to :
Executive Director
Atlantic States Marine Fisheries Commission
1444 "Eye" Street, NW, Sixth Floor
Washington, DC 20005
phone: (202) 289-6400; fax: (202) 289-6051