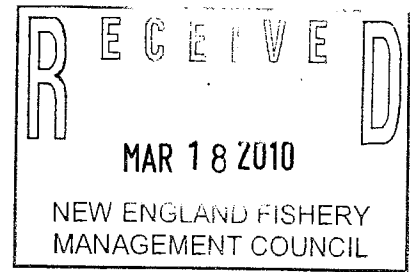


Correspondence



Coalition for the Atlantic Herring Fishery's Orderly, Informed and Responsible Long Term Development

March 17, 2010

Doug Grout, Chairman, Herring Oversight Committee
New England Fishery Management Council
50 Water St, Mill 2 Newburyport, MA 01950

Dear Doug,

I am submitting the following comments regarding Amendment 5 on behalf of CHOIR to request inclusion of a monitoring alternative or alternatives that meet **certain minimum standards** as outlined below, and that provides **actionable data** to inform solutions to the other priorities of the Amendment. CHOIR is an industry coalition made up of over 275 commercial and recreational fishing organizations, fishing and shore-side businesses, researchers and eco-tourism companies.

Monitoring Standards

CHOIR stands by the concept of Maximized Retention, in both the complete package originally contained in the former Alternative 3 or as a modular component of a new alternative. We believe it is the best, and most financially efficient, long-term solution for monitoring within the herring industry. However, we recognize that implementation of Maximized Retention may require more time and short-term investment than other options.

If the Council chooses to develop a more traditional alternative in addition to one with maximized retention it should meet the following minimum standards. These standards are based on sensible practices from other large-boat, high-volume U.S. fisheries, as well as other New England hard TAC fisheries. CHOIR recommends this program apply only to Category A and Category B vessels at this time, ensuring coverage of over 95% of the catch in the fishery.

- **Coverage:** An alternative based on the existing system would utilize NMFS At-Sea Observers as the functional core. 100% coverage is needed considering the size and fishing power of this fleet and its preponderance of rare but significant bycatch events. However, lower coverage rates could be considered provided there is a binding minimum level. CHOIR recommends that this be set at or above 50%. In addition, observers should be required on both vessels during pair trawling if the trip is targeted for observation.
- **Transparent Extrapolation:** A minimum coverage less than 100% should only be included if there will be fully transparent, near real-time fleetwide extrapolation of all catch. This would be no more restrictive than what NMFS currently provides to the public for hard TAC programs in the groundfish fishery (i.e. U.S./Canada Resource Sharing Area or Special Access Programs) and is set to provide for all groundfish sectors in fishing year 2010.

cc = LS, fb

- **Maximized Sampling:** At-sea discarding of unobserved catch on otherwise observed trips (dumping, slippage) should be explicitly minimized through regulation in order to allow for accurate data to be gathered by this monitoring system. CHOIR requests that an alternative be crafted that attaches accountability measures (trip termination, dumping caps, etc) to all dumping events. Safety is important but should not be used as an excuse to frustrate the development of new ideas that will help quantify true catch and discard rates.
- **Eliminate Reliance on Self-Reporting:** Third party observation and monitoring should be the backbone of this monitoring system in order to obtain the best data possible. Tools like the "Code of Conduct" will not work and should be removed from the Amendment. All catch (discard and landing) totals should be verifiable through actual weights or volumetric proxies and not based on captain's estimates alone.

Actionable Data

The new monitoring program should provide high quality, near real time data to inform the other priorities within Amendment 5: new measures to address river herring bycatch, herring vessel access to groundfish closed areas, and protection of spawning aggregations. Properly designed and paired with triggered time and area closures, the monitoring program can eliminate the need for predetermined and ineffective closures, benefitting the ecosystem and the herring industry at the same time. It will require coordinated development of all aspects of the Amendment.

Conclusion

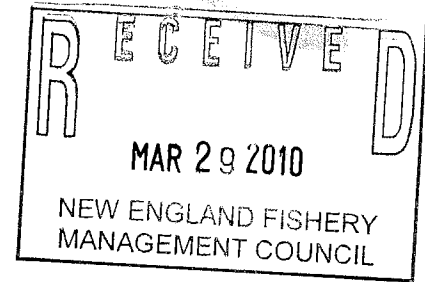
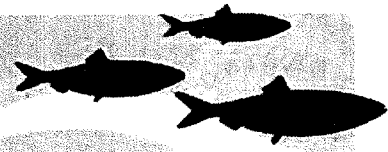
CHOIR seeks a monitoring program our stakeholders can have faith in, and one that will ultimately protect both the resource and the herring industry. While there was more to the recent cuts than scientific uncertainty, the bottom line is that better monitoring can lead to larger quotas and other benefits for the industry and the region. A recent enforcement memo revealed that 18 herring dealers and vessels of all gear types are entangled in reporting infractions and errors totaling approximately 36,000,000 pounds of herring. A new monitoring system based on third-party observer reports would not only meet the Amendment 5 objective of eliminating reliance on self-reporting, it would reduce scientific uncertainty and would also mean nearly every one of these expensive and divisive enforcement actions would never have been necessary.

We continue to believe that Maximized Retention represents the best option for building a comprehensive monitoring program in the herring fishery; however the ongoing process of restructuring the monitoring portion of Amendment 5 has fragmented the comprehensive program we designed. In light of this, and the resumption of work with new mandates from the Council, we present these additional ideas for potential inclusion in the range of alternatives.

Thanks for your time,



Steve Weiner, Chair



March 26, 2010

Doug Grout, Chairman
Herring Oversight Committee
New England Fishery Management Council
50 Water St, Mill 2
Newburyport, MA 01950

Re: Amendment 5 to the Herring Fishery Management Plan (FMP)

Dear Mr. Grout,

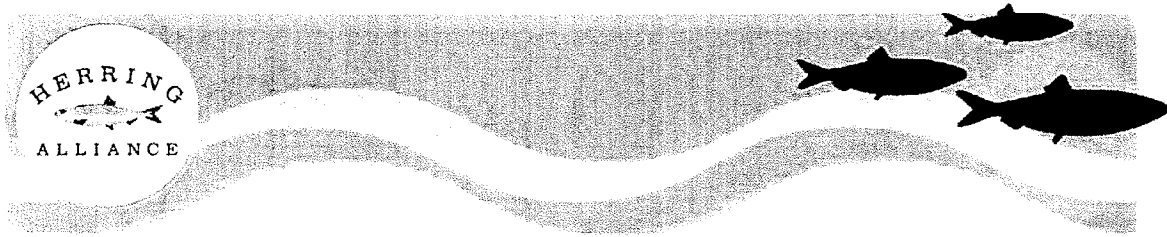
I am writing on behalf of the *Herring Alliance* to clarify and update our priorities for Amendment 5 to the Atlantic Herring Fishery Management Plan. The Herring Alliance consists of 15 regional, national and international organizations each with a particular interest in the Atlantic herring fishery and a strong new amendment that will improve data collection and assessments through monitoring, and help to reduce bycatch. Due to its critical role as a forage species for a great many other animals in the ecosystem, the management of Atlantic herring impacts a particularly diverse group of stakeholders, including those whose livelihoods depend upon groundfish, game fish such as striped bass and tuna, and those involved in whale watching and other wildlife dependent activities.

In November 2007, the Council made reforms to the Atlantic herring fishery a priority, including improved catch monitoring and measures to reduce bycatch. Eighteen months later, during 2009, the Herring Alliance opposed a Council decision to remove these critical issues from Amendment 4, placing them in a subsequent Amendment (Amendment 5). We opposed the decision to split the amendment because catch monitoring is essential to achieving the goals of Amendment 4 on annual catch limits and accountability.

That said, the Herring Committee is to be commended for persevering and continuing to pursue an enhanced monitoring program. The Herring Alliance and a number of other groups and individuals have put considerable effort into providing substantive comments over the past two years and we hope you will keep these efforts in mind as you work to complete Amendment 5.

We wish to emphasize that all of the issues currently prioritized in Amendment 5 are of critical importance and all must be addressed thoroughly yet expeditiously in order to achieve the goals identified by the Council and reinforced by public comments. In addition to monitoring this includes addressing river herring bycatch, herring vessel access to groundfish closed areas, interactions with the directed mackerel fishery, and protection of spawning herring aggregations.

Herring Alliance
59 Temple Place, Suite 1114, Boston, MA 02111
www.herringalliance.org | PewTrusts.org
A Project of the Pew Environment Group



As work resumes on Amendment 5, The Herring Alliance wishes to provide the Herring Oversight Committee with:

(1) **Educational video on midwater trawl monitoring challenges.** The Herring Alliance commissioned the production of a video animation to educate interested members of the public about midwater and paired midwater trawl fishing for Atlantic herring and the monitoring challenges associated with it. The video (*Tip of the Iceberg*) can be viewed at:
<http://www.herringalliance.org/images/stories/animationindex.html>

This video was created based on an analysis of the monitoring program and was carefully reviewed by fishermen who have used the gear featured in the video (see sources for video appended).

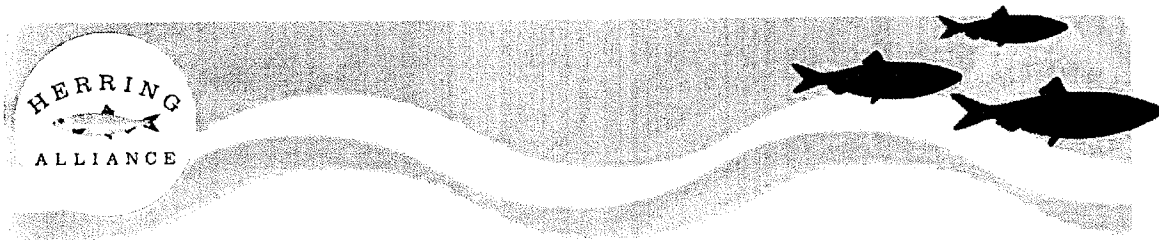
The Herring Alliance requests that the committee allow for the viewing of the 5 minute educational video during the meeting as part of our public comments on the Amendment 5 Discussion Document. Additionally, we are providing the video in electronic form as a formal part of our comments and request that it be placed on the Council web site together with this letter along with the other comments under the NEFMC's meeting materials link on the website.

(2) **Amendment 5 priorities for the Herring Alliance.** Below we outline our priorities and specific recommendations for Amendment 5. Reforms to the monitoring program for Atlantic herring is clearly a critical focus for next week's meeting. However, additional measures must be included in Amendment 5 to protect groundfish closed areas, reduce fishing impacts on river herring, and protect inshore and offshore spawning grounds for Atlantic herring. These matters are of great concern to the Herring Alliance and many stakeholders throughout the region.

The Herring Oversight Committee has been working at reviewing alternative measures and developing an adequate monitoring program for midwater trawl vessels for two years. The industry has not availed itself to making the needed improvements so far and we see no indication that this will happen any time soon. Indeed, all indications are that the midwater trawl fishery for Atlantic herring is essentially unobservable. This is not acceptable and we have outlined a series of measures that will allow progress beyond this current situation. The package of measures set forth below not only enhances at-sea monitoring but establishes a suite of measures designed to protect critical areas of the ocean from depletion and bycatch. These measures will allow Atlantic herring to be caught within the established catch limits through a combination of purse seine gear and midwater trawl gear that is limited to offshore areas, thereby continuing to supply New England's important bait and food markets.

1) **Monitoring program – requirements for midwater trawl fishing**

The midwater trawl fishing operations for Atlantic herring (single and paired) represent a distinct class based upon the scale of their operations, the potential to impact many components of the marine ecosystem, and the challenges those operations pose for catch monitoring.



The recent Proposed Rule (<http://edocket.access.gpo.gov/2009/pdf/E9-21404.pdf>) for new requirements for midwater trawl vessels to access Groundfish Closed Area I provides a strong framework for reforms across the entire fishery, and with additional development should be incorporated into Amendment 5. NMFS has stated it believes the Council should further develop the concepts in the Proposed Rule in the Am 5 process.

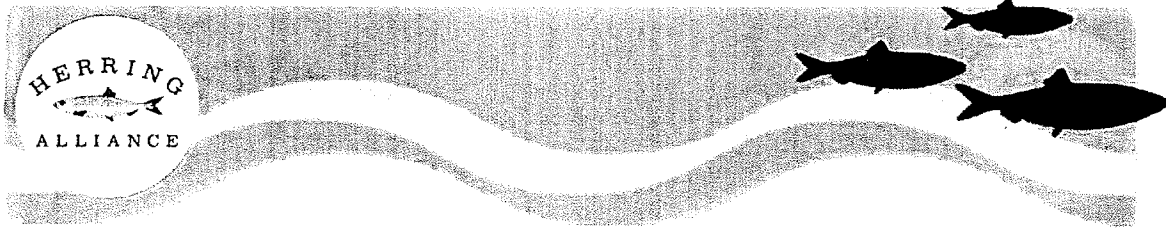
Therefore Amendment 5 should include an alternative for the whole fishery based closely on the following provisions:

- At least one independent NMFS certified observer on each midwater trawl vessel on every fishing trip (i.e., mandatory 100% observer coverage), or on any vessel that will take aboard fish caught by a midwater trawler. For instance, in paired trawls, both vessels must be observed; and carrier vessels taking aboard unsampled midwater trawl catch must also carry an observer
- No dumping of unobserved catch by midwater trawl vessels except under exceptional circumstances arising from mechanical failure or other situations jeopardizing vessel safety. If these situations arise, vessels are required to return to port following discharge of the net to the water;
- Operational discards (small amounts of fish remaining in the net at the conclusion of pumping operations) should not qualify for a dumping exception. This catch has been pre-sorted by the fish-pump intake grate and/or cod-end content stratification and is therefore of particular importance to bycatch estimates.¹
- Cod-ends of trawl nets must be brought on board for observer inspection and sampling of any remaining contents, or verification that the net is empty.

2) Coastal midwater trawl exclusion zone – 75 miles from shore line.

There is widespread support for protection of river herring. Most hotspots for river herring bycatch, as revealed by mapping of data from at-sea observers and shore side sampling, indicate that it is in the near-shore waters where most bycatch events are occurring. However, some have argued that it is too difficult to reliably identify river herring hotspots for long-term protection due to data limitations. A 75 mile buffer along the shore (i.e., *midwater trawl exclusion zone*) would address the major concerns with river herring bycatch. Additionally, such a buffer would help to mitigate known groundfish interactions and also serve to protect most known Atlantic herring spawning areas close to shore that are currently subject to heavy fishing effort, such as the Nantucket Shoals spawning event that is the subject of emerging concern. Such an exclusion zone is also likely to benefit the fishery in the same fashion as the inshore gulf of Maine purse seine/fixed-gear only area, which has proven to be a great success. In short, this proposed coast-wide buffer against midwater trawling provides the most effective solution to the conservation and bycatch reduction priorities of Am 5.

¹ See *Changes for Midwater Trawl Vessels Fishing in Groundfish Closed Area I*, dated November 3, 2009 <http://www.nero.noaa.gov/nero/nr/nrdoc/09/09MultiCAIHerringMidwaterTrawl2.pdf>



3) Off-shore protection of spawning areas for Atlantic Herring.

As a complement to the resource protections offered by an inshore exclusion zone (#2 above), known Atlantic herring spawning areas outside 75 miles, i.e. on offshore Georges Bank, must also receive protection through appropriate time-area closures.

4) Groundfish closed areas closed to midwater trawling.

Midwater trawling was permitted inside groundfish closed area on the mistaken belief that these fishing operations would not impact the groundfish that the closed areas are designed to protect. Recent history has shown that there is bycatch of groundfish in the closed areas – both because groundfish are not always on the bottom and because “midwater” trawls are not always in the midwater (i.e., they are near the bottom when the herring are). No herring or other pelagic fishery gear capable of catching groundfish should be permitted to access groundfish closed areas that are biologically critical to groundfish recovery. Thus, midwater trawl gear that clearly is capable of groundfish bycatch should not be allowed any access to groundfish closed areas.

5) Prohibition on pair-trawling

Paired midwater trawling has never undergone the rigorous analysis that is necessary for gear approval in New England; paired midwater trawling is therefore inappropriately classified as an approved gear in this region. Pair trawling should be prohibited through Am 5 until a careful, deliberate examination of whether the gear is compatible with the sensitive ecosystem of New England is completed, and the Council and NMFS, based on said analysis and if appropriate, approve the gear for use in the region. Such an analysis would establish that paired midwater trawling is too big and too powerful to be appropriate in New England waters because paired midwater trawling tows are of enormous capacity, they are conducted over long periods of time (i.e., several hours) and are not selective. Reliable monitoring of catch (kept and discarded) of these operations has proven to be effectively impossible. Due to their high volume (100 mt or more per tow), these methods disrupt schools of herring and leave local areas more depleted than traditional methods. The bycatch events can include marine mammals and not infrequently include hundreds of thousands of discarded dead fish. For all of these reasons, the Herring Alliance calls for consideration in Amendment 5 of a moratorium on paired-trawling until or unless it is approved through an appropriate analysis of its impacts.

6) Measures to regulate seafloor and other impacts of all pelagic gears

The following measures should be taken to ensure that the fishing practices minimize impact on sensitive resources:

- Establish appropriate limits on the maximum size of all pelagic gears
- Establish appropriate and enforceable restrictions on bottom contact for all pelagic gears

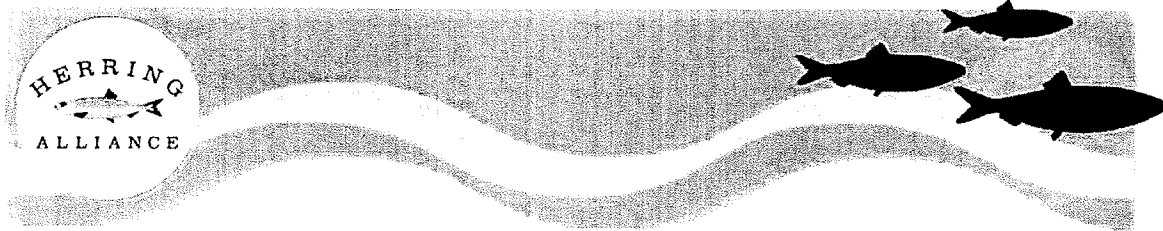


We look forward to continuing to work with the Committee to develop an appropriate set of alternatives for Amendment 5. The Herring Alliance has provided many documents with information in support of these measures and we are happy to provide any additional information upon request. Should you have any questions, please do not hesitate to ask.

Sincerely Yours,

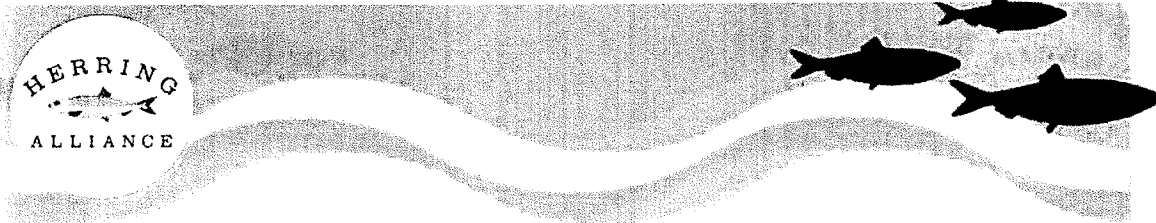
A handwritten signature in black ink, appearing to read "Roger Fleming", with a horizontal line extending from the end.

Roger Fleming Esq
EarthJustice

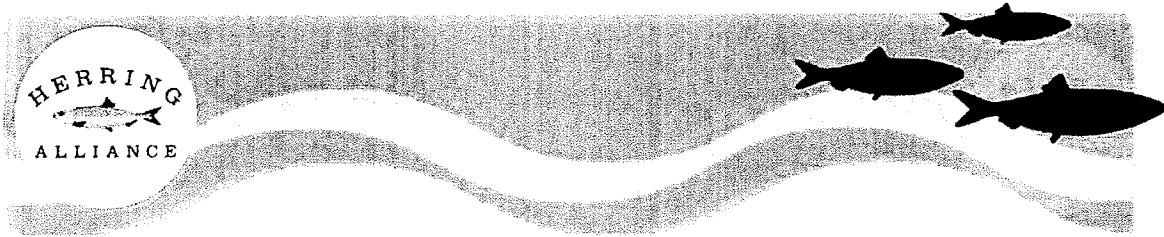


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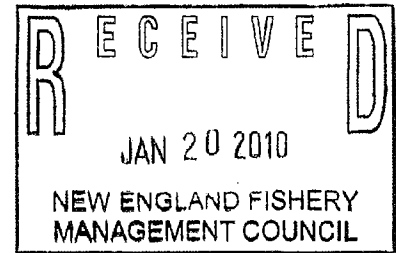


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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Law Enforcement
100 Middle Street, 2E
Portland, ME 04101

5



DATE: January 19, 2010

MEMORANDUM FOR: NEFMC Members

FROM: Andrew Cohen, Special Agent in Charge

SUBJECT: Executive Summary, Atlantic Herring FMP Enforcement

Following the NOAA/OLE Report of Recent Activity at the November 19, 2009 NEFMC Meeting, questions were raised concerning recent enforcement activity in the Atlantic herring fishery. I informed you at the time I would follow up with a more thorough briefing on this issue.

Enforcement in the Atlantic herring fishery over the past few years has focused primarily, although not exclusively, on recordkeeping and reporting issues. As you know, the fishery is managed primarily by the mechanism of quotas. As such, compliance with recordkeeping and reporting requirements takes on enhanced importance.

Over the past 30 months, OLE has investigated and taken enforcement action against 11 vessels with limited access Atlantic herring permits. In total, these vessels were charged with the non-reporting, via the Interactive Voice Response system, of approximately 23,491,000 pounds (10,655 metric tons) of Atlantic herring. In addition, other violations have included the late submission of FVTRS, failing to report haddock bycatch on FVTRS, failure to possess valid Letters of Authorization, and failing to retain haddock bycatch at sea.

Furthermore, five Atlantic herring dealers have been issued violations during this time frame for failing to possess a valid dealer permit for the purchase of, or failing to report the purchase of, approximately 9,610,000 pounds (4,359 metric tons) of Atlantic herring.

Thus far, the above actions have resulted in \$1,100,000.00 in civil penalty assessments through the issuance of Notices of Violation and Assessment (NOVA) by NOAA General Counsel. Several cases remain pending.

Additionally, OLE has increased its coordination with the NMFS Sustainable Fisheries Division and the NMFS Statistics Division to better monitor the Atlantic herring harvest and to respond more timely to compliance issues as they arise. OLE continues to work with all parties in devising enforceable catch monitoring mechanisms for inclusion in Amendment 5 to the Atlantic Herring FMP.

The following Limited Access Category A Atlantic herring vessels have been determined to have, or alleged to have committed violations within the past 30 months:

FV Western Sea: Maine based purse seine vessel, forty-four counts issued, all relating to

recordkeeping and reporting-failing to submit IVR reports and FVTRS for 9,300,000 pounds of herring. \$510,000 NOVA issued along with a 2 year permit sanction on vessel and a 2 year permit sanction on Dan Fill, operator.

FV Ruth & Pat: Maine based purse seine vessel, seventeen counts issued, all relating to recordkeeping and reporting-failing to submit IVR reports and FVTRS for 1,900,000 pounds of herring. \$170,000 NOVA issued along with an 8 month permit sanction on vessel and an 8 month permit sanction on Mark Bichrest, operator.

FV Ocean Venture: Maine based purse seine vessel, fifteen counts issued, all relating to recordkeeping and reporting-failing to submit IVR reports and FVTRS for 6,200,000 pounds of herring. \$150,000 NOVA issued.

FV Flicka: New Jersey based Mid-water trawl vessel, eighteen counts issued, all relating to recordkeeping and reporting-failing to submit IVR reports and FVTRS for 949,000 pounds of herring. \$180,000 NOVA issued along with an 8 month permit sanction on vessel and an 8 month permit sanction on Lars Axelsson, operator.

FV Dyrsten: New Jersey based Mid-water trawl vessel, nine counts issued, all relating to recordkeeping and reporting-failing to submit IVR reports and FVTRS for 2,300,000 pounds of herring. \$90,000 NOVA issued along with a 4 month permit sanction on vessel and a 4 month permit sanction on Dan Axelsson, operator.

FV Enterprise: New Jersey based Mid-water trawl vessel, four counts issued, all relating to recordkeeping and reporting-failing to submit IVR reports and FVTRS for 472,000 pounds of herring. No NOVA or NOPS have been assessed as of yet.

FV Dona Martita: New Bedford, MA based mid-water trawl herring vessel, six counts issued, all relating to recordkeeping and reporting-failing to submit IVR reports and FVTRS for 2,400,000 pounds of herring. No NOVA or NOPS have been assessed as of yet.

FV Voyager: Gloucester, MA based mid-water trawl vessel, one count of failing to report haddock bycatch on a herring vessel. No NOVA or NOPS have been assessed as of yet.

FV Western Venture: Gloucester, MA based mid-water trawl vessel, one count of failing to report haddock bycatch and one count of failing to retain haddock bycatch on a herring vessel. No NOVA or NOPS have been assessed as of yet.

FV Carol Ann, FV Ruth & Pat, FV Western Hunter: These three vessels were issued written warnings for failing to have a valid LOA for small mesh gear in 2009.

J&K Lobster Bait: Maine based herring dealer, nineteen counts issued, all for failing to complete dealer reports related to the purchase of 2,500,000 pounds of Atlantic herring from federally permitted vessels. No NOVA or NOPS have been assessed as of yet.

Inland Seafoods: Maine based lobster and herring dealer, 24 counts issued, all for failing to have a valid dealer permit (no dealer reports as well), for the purchase of 3,400,000 pounds of Atlantic herring (also 284,000 pounds of lobster). No NOVA or NOPS have been assessed as of yet.

Casco Bay Bait: Maine based herring dealer, ten counts issued for purchasing herring from federally permitted vessels without a valid permit (no dealer reports as well). 800,000 pounds in total were purchased. No NOVA or NOPS have been assessed as of yet.

Durkee Lobster Bait: Maine based herring dealer, nineteen counts issued for purchasing herring from federally permitted vessels without a valid permit. 1,600,000 pounds in total were purchased. No NOVA or NOPS have been assessed as of yet.

Cozy Harbor Seafoods: Maine based herring dealer, twenty seven count written warning issued for purchasing herring from federally permitted vessels without a valid permit. 970,000 pounds in total were purchased.

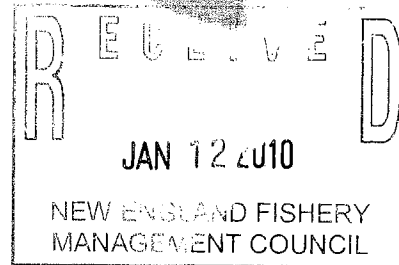
Owls Head Lobster: Maine based herring dealer, one count written warning issued for purchasing herring from federally permitted vessels without a valid permit. 2,100,000 pounds in total were purchased.

Please contact me if you have further concerns.



January 12, ~~2009~~ 2010

VIA ELECTRIC MAIL



Paul J. Howard, Executive Director
New England Fishery Management Council
50 Water Street
Newburyport
Massachusetts 01950

Re: Supplemental Notice of Intent for Atlantic Herring Amendments 4 and 5

Dear Mr. Howard,

We are writing on behalf of the Herring Alliance in response to the request for comments on the December 28, 2009 Supplemental Notice of Intent to Prepare an Environmental Assessment (EA) for Amendment 4 to the Atlantic Herring Fishery Management Plan (FMP) and an Environmental Impact Statement (EIS) for Amendment 5 to the Atlantic Herring FMP. Please include a copy of this letter in the records for both Amendments.

The Herring Alliance vigorously opposed the split of Amendment 4 into Amendments 4 and 5. The New England Fishery Management Council (Council) prioritized reform of the Atlantic Herring Fishery Management Plan (Herring FMP) in November 2007. At that time, the Council correctly recognized the vital importance of establishing a rigorous monitoring system, and other measures to ensure the long-term sustainability of the Atlantic herring resource, as a fundamental first step to meeting the MSA's requirements to implement Annual Catch Limits and (ACLs) and Accountability Measures (AMs). Such a monitoring system is necessary in order to develop reliable estimates of the catch (including discards) of Atlantic herring, along with reliable estimates of the bycatch of other species such as groundfish and river herring, all necessary to effectively implement ACLs and AMs.

Unfortunately, due to the delaying tactics and political pressure from the industrial trawl industry, the Council was forced to proceed in exactly the reverse sequence of steps for improving management of the fishery and meeting its legal obligations to implement ACLs and AMs. As a result, the Council recently completed its work on specifications for the fishery under a cloud of controversy as it attempted to establish Atlantic herring catch levels for the next three years that contained significant buffers below the estimated overfishing limit. This was due in large part to poor catch data resulting from the existing poor monitoring system. Further, such catch levels were set without the benefits of a control rule necessary for establishing the

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cc: 15, 46, CK

acceptable biological catch (ABC). The decision reflected in this NOI to parse-out the ACL and AM provisions from the needed reforms to the monitoring program will further undermine the long-term effectiveness of the new ACL and AM requirements and fail to meet the legal requirements of the MSA.

As described in several previous communications (*see e.g.*, Herring Alliance Letter to Paul Howard, Executive Director, New England Fishery Management Council, February 6, 2009), the decision to prepare an EA and not an EIS in connection with Amendment 4 demonstrates a fundamental misunderstanding of NEPA's requirements. An EA is an analysis conducted to determine whether or not an EIS is required. Predetermining that only an EA will be required for a federal action is prohibited by the National Environmental Protection Act (NEPA). We continue to strongly disagree with the characterization of the implementation of ACLs and AMs for this fishery as "primarily a process-oriented change" (*see e.g.* 74 Fed. Reg. 68577 (Dec. 28, 2009)), and as a result the decision to pre-judge whether an EIS would be necessary prior to the preparation of an EA and a finding of no significant impact (FONSI).

Amendment 4 was initiated in part to address the provisions of the Magnuson-Stevens Reauthorization Act of 2006 (MSRA) (P.L. 109-479) that require ACLs and AMs. As you know, on January 16, 2009, the National Marine Fisheries Service (NMFS) published the final rule revising the National Standard 1 Guidelines that provide final guidance on those provisions. 74 Fed. Reg. 3178 (January 16, 2009). It is plain from the changes contained in the MSRA and the revised Guidelines that implementing ACLs and AMs requires a strong monitoring and reporting system to provide the scientific foundation, data, and accountability necessary to meet Congressional intent. It will also require implementation of an ABC control rule that accounts for the scientific uncertainty in the estimate of the overfishing limit and any other scientific uncertainty. The ABC control rule should also include a mechanism reducing fishing mortality as stock size declines, as well as a stock abundance level below which fishing would not be allowed. Together, these tools are the foundation for managing a fishery sustainably and it is difficult to imagine actions taken by the Council and National Marine Fisheries Service that would be more likely to affect the quality of the marine environment than implementation of legally sufficient ACLs and AMs.

The assumption that an EA will suffice for these changes to Herring FMP is also without any practical basis. Substantial changes are necessary to implement the ACL and AM provisions that require an EIS. In addition to the creation of an ABC control rule, the herring fishery is currently managed under a total allowable landings limit (i.e., a TAL not an ACL) with a grossly inadequate monitoring program that, among other things does not allow for extrapolation of catch. The FMP also contains few, if any, measures that would qualify as AMs. The conversion of this fishery from being managed through a TAL to a MSRA-compliant, ACL- managed fishery requires dramatic and substantive changes to its monitoring program. Further, development and implementation of AMs for the fishery will also be a dramatic change.

A short list of the specific deficiencies in the monitoring program that have been discovered during the past two years of Council deliberations and which illustrate the impossibility of

implementing adequate ACLs and AMs without significant reforms of the monitoring system is as follows:

- Significant evidence of at-sea dumping of unsampled catch on otherwise observed trips-up to 16% of the total tows on observed trips from 2005-2007
- Inability to extrapolate catch and bycatch up to fleetwide estimates
- Data from the Herring PDT that indicates very high levels of observer coverage, roughly 4 times the current coverage targets, would be needed to accurately estimate discards of the target species (Atlantic herring)
- Acknowledgement of the fact that catch and landings are heavily reliant on volumetric estimates provided by vessel captains and dealers, with no actual weights or verifiable substitutes to prevent and detect misreporting.

Fixing the problems necessary to implant the ACL and AM requirements alone will have a significant environmental impact requiring preparation of an EIS.

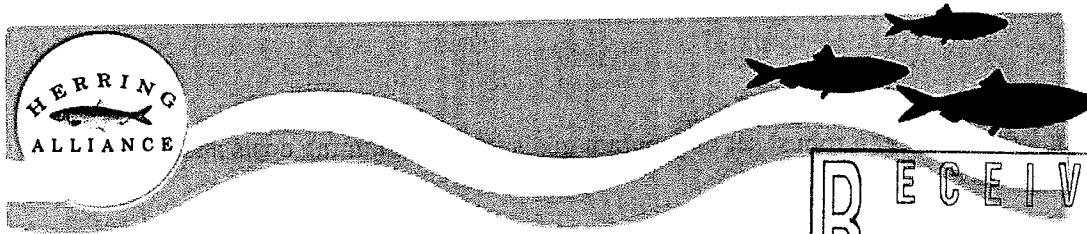
We again urge the Council and NMFS to reconsider its decision to split Amendment 4 and to complete its work on all of the measures proposed for inclusion in Amendment 5 through Amendment 4 and an accompanying EIS prior to the statutory deadline for implementing ACLs and AMs.

Sincerely yours,

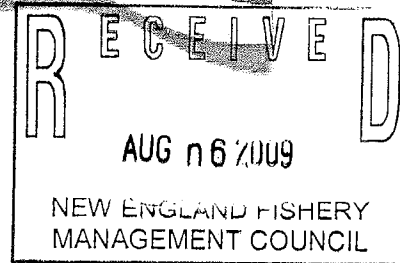
/s/ Roger Fleming
Roger Fleming, Esq.
Earthjustice

/s/ Sean Mahoney
Sean Mahoney, Esq.
Conservation Law Foundation

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August 5, 2009



VIA ELECTRIC MAIL

Frank Blount, Chairman, Herring Committee
Lori Steele, Chair, Herring Plan Development Team
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

RE: Developing At-Sea Catch Monitoring Alternatives for the Atlantic Herring FMP

Dear Frank and Lori:

I am writing on behalf of the Herring Alliance concerning the development of a robust set of at-sea catch monitoring alternatives for the Atlantic herring FMP. Although the Council voted to remove monitoring from amendment 4, we were encouraged by the Council's decision to formally commit to continuing work on monitoring during the summer and to deliver a fully developed set of monitoring alternatives this fall. As you well know, concerns about the way in which catch is monitored in this fishery abound, and the decision to remove monitoring from Amendment 4 has heightened these concerns. On behalf of the Herring Alliance, I ask that you take seriously your commitment to develop a strong set of monitoring alternatives this year, including at-sea monitoring. As you pursue this important work, we respectfully ask that the Committee strive to:

- 1. Provide clear goals for the monitoring program.** A clear set of monitoring goals is essential to both developing and evaluating all alternatives for monitoring. These goals should be framed in terms of the results that the program will provide, not in terms of practical details of administration or execution. Without such goals, there is no firm basis for selecting alternatives, or for developing a program that draws on elements from a number of alternatives. Although the draft document does identify *goals* in section 3.2, this section fails to identify the essential results that an adequate catch monitoring plan must achieve.
- 2. Develop strong at-sea monitoring alternatives with electronic technologies.** At-sea monitoring has not been adequately developed in amendment 4. Alternative 3 makes good use of at-sea electronic monitoring to ensure full retention for a well developed dock-side monitoring program but strong at-sea monitoring alternatives also need to be developed. In their present form, alternatives #1 and #2 are not strong alternatives. Electronic monitoring technologies (e.g., video, net and winch sensors, logbooks), combined with at-sea human observers, offer the best options for gathering the data

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cc: Corina L. US (8/14)

needed to support a robust set of program goals while containing costs and ensuring compliance.

A clear set of monitoring goals will serve as a useful aid while developing and selecting alternatives for catch monitoring. The alternatives should each describe a set of approaches for achieving the same essential monitoring goals. Thus, the goals need to be framed in terms of the results that the program will provide. As an example, a suitable monitoring program might:

- a. Allow catch estimation of the target species to within $\pm X\%$ (e.g., 20%, see SBRM)
- b. Allow catch estimation of key non-target species with resolution that is sufficient for implementation of species-specific bycatch caps (ACLs; e.g., $\pm 20\%$, see SBRM).
- c. Provide a comprehensive record of deck operations available for audit.
- d. Provide statistically representative sampling of all catch (kept and discarded).
- e. Ensure that observed trips are statistically representative of those that are not observed.

As you work to develop strong at-sea monitoring alternatives, we hope that you will continue take full advantage of the valuable information that is available from a variety of sources including the recent the *International Fisheries Observer and Monitoring Conference* (IFOMC), held in Portland, Maine, reports from groups that design monitoring program such as Archipelago, and stakeholder input. Examples from the US Pacific shore-side hake fishery and Canadian Groundfishery in British Columbia, appear to be particularly valuable.

The Herring Alliance responded to your request for stakeholder proposals last fall by detailing some components of a comprehensive at-sea monitoring system (December 5, 2008). The proposal discussed the important role that new techniques for video-based monitoring could play, as well as other forms of electronic monitoring. The importance of improving observer sampling protocols was also discussed. The efficacy of at sea monitoring that is supported by various electronic technologies was recently reinforced at the IFOMC where successes with electronic monitoring from around the world were discussed.

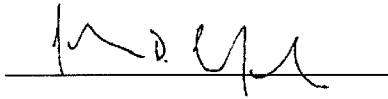
There are important uses for video-based monitoring, even in situations where video records may not allow species identification for major components of the catch (e.g., for classifying herring species in a high-volume fishery). For example, video records can be used to document large-scale discarding (i.e., slippage), to ensure that catch is not discharged to the sea without sampling during observed trips, and to record bycatch of larger animals, including fish, mammals, birds, and reptiles. Other electronic technologies can be deployed to estimate the weight of the hauled net prior to pumping or discarding, useful for full accounting of the catch.

The monitoring section (3) of the draft Amendment 4 document (12 June 2009) remains under-developed, particularly where at-sea data collection is concerned. The draft is

relatively strong on dockside monitoring approaches. Of the three alternatives provided so far, only alternative 3 provides a well developed section on the appropriate use of video for at-sea monitoring to ensure retention of catch for dockside sampling. While alternatives #1 and #2 both include important elements, neither is yet developed enough to stand as a strong alternative. Alternative #1 depends upon near-full retention of catch but does not provide a developed plan for ensuring full retention. Alternative #2 is weak on protocols to ensure reliable sampling of all catch, particularly discarded catch (see section on this issue 3.7.7.3).

Thank you for your attention to these concerns and your hard work on developing strong at-sea monitoring alternatives for the Atlantic herring fishery. A strong monitoring program will clearly be essential to the success of the ACL program that you are now focusing on in Amendment 4.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Crawford", is written over a horizontal line.

John D. Crawford, PhD
Pew Environment Group

cc

Paul Howard, Executive Director - NEFMC
John Pappalardo, Council Chair

Streamlined Alternative 2 With Analysis

I. Amendment 5's two primary goals (paraphrased from Amendment 5): Two important elements of the fishery (*i.e.*, at-sea and dockside) must be adequately documented to improve catch monitoring and ensure that data are as complete and accurate as possible. The objective is to improve reporting and to ensure real-time TAC monitoring of the area TACs.

1. Improve at-sea catch monitoring: Focus on both total catch and bycatch – everything that enters the net and is either pumped aboard the fishing vessel or discarded at sea.

2. Dockside landings monitoring: Focus on accurate and real-time accounting of landings and incidental catch – all fish brought to port and offloaded from the vessel, either to a processing plant, a bait truck/dealer, other fish dealers, or to be disposed of as bycatch.

It should be noted that most of the included elements assist in achieving both goals.

II. Options for Improving Quota Monitoring, Reporting, and Compliance

1. Proposal to Improve Accounting of Landed Catch

A. Vessel-Based Requirements:

- i. Certification of volumetric capacity of vessel holds on mid-water trawls, pair trawls, purse seiners, Atlantic herring carrier vessels, otter trawl vessels; or**
- ii. NMFS-approved catch weighing alternative.**

This applies to all Category A and B herring permit holders and any registered herring carrier vessels. Any Category A or B vessel without hold capacity, or which chooses not to hold or land Atlantic herring during the course of the fishing year, may apply for a Letter of Exemption from the NMFS Regional Administrator.

Sub-Option: Apply requirement to all limited access vessels (Category A, B, & C).

[Details discussed below. The Letter of Exemption is proposed to accommodate purse seine vessels that do not carry or land any fish.]

B. Notification to NMFS within six hours of landing of time and place of landing (current requirement for Category A & B vessels, would be a new requirement for Category C vessels, if included, and Atlantic herring carrier vessels). [**Note:** Options for altering pre-trip and pre-landing reporting requirements are found in **Alternative 2.3.3** in the Draft Amendment 5 document.]

C. Verification of catch weights upon landing.

Vessels would utilize volumetric catch weights, or other authorized method, to report final landed weight in the VTR.

Sub-option: Independent verification of landed catch weights to meet a Council-established target level of precision for overall catch (e.g., a 90 or 95 percent confidence interval). Independent catch weighing would be conducted by:

- i. **Observers** (on observed trips);
- ii. **Port Agents/Sea Samplers** (in ports where NMFS agents are stationed)
- iii. **State agents** (such as state agents participating in dockside sampling programs)
- iv. **State or federal dockside monitors/samplers**

Note: If a dockside monitoring program is established, these dockside catch-weighing measures could be subsumed as part of that program. The intent, however, is that this be a standalone requirement to improve accuracy of landed catch throughout the fishery, including sectors of the fishery for which full dockside monitoring is limited or where coverage is less than optimal.

2. Measures to Improve Catch/Quota Monitoring

A. Require electronic daily VMS reporting for limited access vessels (Category A, B, & C) when engaged on a reported herring trip. Weekly IVR reporting, as currently required, for weeks when no fishing occurs (*i.e.*, negative reports). [**Note: Option 3, Section 2.3.1.3.3**, relating to VTR and VMS provisions.] Reports include estimates of amount of herring retained and discarded, and amounts and types of other discarded species.

Sub-option 1: Require Atlantic herring carrier vessels to carry VMS and report daily. A final VTR would continue to be required.

Sub-option 2: Reporting of landings for catch accounting and dockside sampling:

Alternative 1: Modified Current Reporting System. [Suggested improvements or clarifications to the current system.]

Alternative 2: Primary Catch Reporting Duties By Vessel Landing Fish. Catcher vessels must report herring all transferred to (1) authorized carriers; (2) non-herring vessels; (3) at-sea herring processors; and/or (4) Canadian fish tenders; as well as any herring that it lands directly. Transfers from other limited access herring vessels should be reported by the vessel that ultimately lands the herring. Atlantic herring carriers file VTR identifying total landed weight at first point of landing, and each subsequent point, if offloaded at multiple locations.

The objective is to create a consistent and clear reporting system that will ultimately allow all landings and catch reports to be cross-checked and verified, while eliminating duplicative reporting and the potential for double counting. The basic principal is that the primary responsibility for reporting landed herring falls to the vessel – limited access herring vessel or carrier – that brings the fish to shore, and that weights be taken and any dockside sampling occur at the first port of landing. The only exceptions are (1) transfers to Canadian transport vessels, the amount transferred to be reported on the catcher vessel’s VTR, and (2) transfers at sea to non-herring vessels for use as bait, which should be reported by both the transferring and receiving vessels.

3. Measures to Improve Estimates and Accounting of Catch and Discards:

A. Measures to Improve At-Sea Monitoring & Observer Safety. [Note: These represent a modification of measures set forth in Sections 2.3.4.2.1 & .2 of draft Amendment 5.] **Include all measures A-J with the following exceptions or modifications:**

- **Eliminate sub-option 2.3.4.2.2(H)** (requirement to bring all fish aboard the vessel for sampling). This can be a safety hazard for mid-water and pair trawl vessels, and problematic for purse seine and herring carrier vessels, as noted by the PDT and Enforcement Committee.
- **Option 1: Eliminate sub-option 2.3.4.2.2(I)** (which states: “Requirement that observers be allowed to view the codend after pumping, prior to pump removal.” Purse seines do not have codends – the appropriate terminology would be “bunt” – and this could prove problematic for many vessels. Also, it is not likely that this provision will yield much useful information, as the level of unpumpable fish is extremely small.

Option 2: Modify sub-option 2.3.4.2.2(I): Establish protocols to allow, to the extent possible and practicable, observers to view the codend or bunt after pumping, before removal of the pump.

- **Modify Sub-option 2.3.4.2.2(J)** (stating: “Determine (and apply) minimum portion of a slipped catch that would be required to be pumped on board a vessel to ensure complete sampling”). **To the extent practicable, assist the observer in obtaining samples from any haul to be released that are commensurate with the volume of fish in the codend or seine.**

B. Require vessel operators to complete an affidavit providing details on a released haul (Amendment 5, Section 2.3.1.4.1). The sworn report will include:

- Reason for release
- Whether or not the haul or set was made for determining species composition or marketability (*i.e.*, whether it was a “test tow”)
- Estimate of the quantity and species composition of the released haul
- Location and time of the event

- o Methodology for determining volume

When observers are present, the observer and authorized vessel personnel will work in cooperation to identify these elements. NMFS should provide guidance for completing the required elements of the affidavit appropriate to each major type of gear used in the fishery.

C. Observer coverage for all Category A & B vessels to achieve a 20 percent cv for estimations of stocks of concern (river herring), and 30 percent cv for stocks that are not overfished (herring and haddock) (Amendment 5, Section 2.3.4). [Note: Current analysis only reflects levels necessary to meet these objectives for mid-water and pair trawls. Needs to be supplemented to reflect levels necessary to achieve these levels for other major gear types (purse seine, otter trawls, and, perhaps, stop seines and weirs).]

Sub-option 1: Include this requirement for all limited access vessels, including Category C vessels.

Preferred Sub-option 2: Achieve target levels of precision for species of concern using combination of at-sea and dockside sampling.

D. Dockside Catch Sampling Program Alternatives:

- i. **Create Standardized Dockside Monitoring (DSM) Protocols and Reporting Forms.** Intent is to include applicable elements from the Objectives, Responsibilities, Notification Requirements, and Sampling Design analysis as set forth in **Sections 2.5.3.4 and 2.5.3.5** of Draft Amendment 5. That is, a DSM sampling design would be established to provide accurate estimations of catch and bycatch (in combination with at-sea observation) for all major elements of the fishery. NMFS would determine levels of coverage similar to the SBRM approach. Analysis would have to include, at a minimum, coverage of purse seine vessels, bottom trawl vessels, and other major gear types comparable to that included for mid-water and pair trawls.
- ii. **Establish a DSM Program as an Integrated State/Federal Program.** The current state port sampling program will continue under a common set of protocols and reporting forms, as specified in paragraph (i) above. NMFS would utilize observers to conduct dockside sampling on observed trips. In addition, NMFS would have the option to transfer observers from at-sea to port sampling, so long as at-sea coverage levels can be set to achieve an overall level of precision and accuracy of at least 30 percent cv, and a combined at-sea and dockside level of 20 percent cv for species of concern (river herring).

E. Electronic Vessels Monitoring

- i. **Alternative 1: Require, on a phased-in schedule (i.e., either in year 2 or 3 following implementation of Amendment 5), the use of passive vessel monitoring systems that can, at a minimum, measure the instance of released tows (on trawl vessels) or sets (on purse seine vessels) on**

unobserved vessels, unless the Regional Administrator determines that the technology is either not sufficient or impracticable. Members of the mid-water and pair trawl and purse seine sectors would be responsible for working with NMFS to develop and test systems that can passively monitor major vessel systems and report this data, via VMS or otherwise.

Systems to be monitored in order to achieve the objective of measuring incidences of released tows:

- Net reels (deployment and retrieval) for mid-water trawlers, winches on purse seine vessels **[QUESTION: is this the right system to monitor on purse seiners? If not, what?]**
- Pumps
- Codend or seine release mechanism
- GPS

****PLEASE GROUNDTRUTH THIS FOR ME.****

- ii. **Alternative 2: Establish a new priority for use of the research set-aside to test applications of passive monitoring systems for mid-water, bottom trawl, and purse seine vessels. Add allowance to require the use of such systems to the list of items that can be implemented by framework action.**

4. Other recommended measures to improve monitoring program and catch accounting.

A. Take estimated herring discards “off the top” in setting annual TAC setting process, subtract estimated discards from the Annual Catch Limits based on the best available information of discard rates, such that the Annual Catch Limit is equivalent to a total allowable landings. Accounting for discards in this manner reduces management uncertainty.

B. NMFS would work with the industry to develop a protocol for estimating weight and species composition of any catch released at sea.

C. Encourage the development of a Code of Conduct by/for the herring fishing industry for the purse seine, midwater, and pair trawl sectors.

Catch Monitoring Alternative 2 - Analysis

This alternative was approved by the Committee and Council for further consideration/development at the January and February 2009 meetings.

I. Measures to Improve Accounting of Landed Catch

• Volumetric Catch Measurements or Certified Catch Weighing Alternative

This alternative will include management measures that require standardization and/or certification of volumetric measurements used to estimate catch. The measures under consideration are described below.

- As a condition of obtaining the limited access permit, limited access herring vessels and Atlantic herring carriers (as defined in 50 C.F.R. § 648.4(a)(11)), Category A/B vessels would be required to contract a marine surveyor to certify the vessel's fish hold for volumetric capacity. Schematics and conversion charts for each fish hold would be submitted to NMFS at the time of renewal of the limited access permit. NMFS would provide the schematics and conversion charts (and calibration tables) to the dockside monitors and observers. Each vessel would retain on board a customized measuring stick for the fish hold, or have the fish hold appropriately marked, so that the dockside sampler or observer on observed trips may estimate the total weight of the catch on board. With a known weight of fish per unit of volume, a relatively simple calculation can be performed to determine the amount of fish in the hold (using calibration tables). Alternatively, any Category A or B vessel may propose an alternative catch weighing plan suitable for the individual vessel, so long as such alternate method can be shown to provide catch weight estimates at least as precise as volumetric measurement (*e.g.*, weighing the catch on a certified scale). The intent of this alternative is to provide a substitute means for vessels to comply when hold calibration and measurement as described above would either impose a serious hardship or less accurate results compared to other methods.

The requirement for calibrated fish holds or an alternative catch weighing plan applies to any Atlantic herring carrier vessels as defined in 50 C.F.R. 648.2, and operating in accordance with the provisions found in 50 C.F.R. § 648.4(a)(10)(ii).

Discussion

To the extent that the hold contains non-target species, total catch estimates of herring estimated by this methodology will exceed total catch of herring. The dockside sampling program called for in this alternative will provide estimates of any such non-target catch that can be used to refine the estimated herring catch. Estimates of herring catch can also be compared to vessel trip and dealer reports for further calibration. Any small estimation error from this process would tend to over-estimate herring catch, creating a conservation neutral or even positive bias under this ACL-limited fishery. The inclusion of Atlantic herring carriers will provide opportunities for improving catch weighing and catch monitoring for harvests made by a number of limited access herring vessels that are aggregated aboard a single carrier vessel. It should be noted that much of this activity occurs in Area 1, where the need for accurate catch monitoring is arguably the greatest.

- All herring vessels (A, B, C, or D) that do not have holds suitable for calibration and measurement as specified above would be subject to an alternate catch weighing system. For any such vessels with a New England multispecies permit, all catch of herring would be weighed or accounted for as all other groundfish under that FMP. For all other vessels, catch shall be weighed at the first point of landing by either volumetric measures (such as certified trucks, as specified in section ___ above), calibrated scales, or standardized totes. NMFS certified port agents, sea samplers, or observers shall, where practicable, confirm and record all such weights, except that exceptions may be created for *de minimus* landings (*i.e.*, those less than 2000 pounds) and that verification of landed weights in remote locations may be verified by random checks.
- Captain and crew will work with observers and shoreside samplers to confirm volume and weight of fish whenever possible. Electronic logbooks will be cross-checked with dealer reports for accuracy.
- All vessels, regardless of availability of an observer, port agent, sea sampler, or state agent to independently verify the landed weight, will be required to utilize the catch weighing methodology (volumetric or alternative) upon landing to confirm final landed weight. These reported landed weights will be compared to dealer reports to insure accuracy.

II. Measures to Improve Catch/Quota Monitoring

The intent of these measures is to move towards as close to 100% catch weighing as practicable and necessary in order to meet the objective of improving the long-term monitoring of catch and catch estimates in the herring fishery. Proposed measures include:

• Daily VMS Reporting

- Each Category A & B, and potential C, vessel shall be required to submit daily electronic catch and bycatch reports and final electronic trip reports via the vessel's VMS system. Vessels will use Study Fleet software, or any compatible system acceptable to NMFS, to report this information. Ideally, paper VTRs would be replaced with electronic trip reports. Herring carrier vessels will be required to carry VMS and undertake additional reporting responsibilities, including daily reporting.
- Sub-options include improvements to the current reporting systems to clarify requirements, avoid unnecessary and duplicative reporting, and eliminate the possibility of duplicative reports.

III. Measures to Improve Estimates and Accounting of Catch and Discards

• Improved Reporting on Released Tows

• Measures to Achieve at Least 20% CV for Bycatch Estimates for River Herring from a Combination of At-Sea and Shoreside Sampling

The intent of this provision is to achieve a level of precision that reflects at least a 20% coefficient of variation (CV), for estimates of river herring bycatch in the Atlantic herring fishery from a combination of at-sea and shoreside sampling. Given the volume of fish caught by midwater trawl, pair trawl, purse seine vessels, and Atlantic herring carriers and the

configuration of the vessels, it is virtually impossible to sort fish in the hold at sea. Fish are pumped directly from the net to the holds below the deck or onto carrier vessels. Other than larger species such as dogfish that are excluded by grates, samples taken portside and those taken at-sea should yield results comparable to basket samples collected at sea. High levels of precision for species of concern, like river herring and haddock, can therefore be obtained through a combination of at-sea and shore-based sampling. (Improving estimates for bycatch that is not brought on board is addressed through measures to improve at-sea monitoring in Section ___).

- **Increase Observer Coverage to SBRM Levels.** This measure includes a recommendation that NMFS increase observer coverage in the Atlantic herring fishery to levels required by the Standardized Bycatch Reporting Methodology (SBRM) amendment. At-sea monitoring for the herring fishery would be prioritized by NMFS in such a way that the necessary levels of coverage could be achieved.

Discussion

The Council seeks to insure that the full measure of observer coverage necessary to meet the standards in the SBRM is achieved. However, even if the provisions for at-sea monitoring target a 30% coefficient of variation (CV) for bycatch estimates, the Council could achieve higher levels of precision by utilizing an expanded shore-based sampling program, as proposed (see below).

- **Dockside Monitoring/Portside Sampling Program**

This measure would require NMFS, in cooperation with the States of Maine and Massachusetts, to establish a uniform and statistically-robust shore-based catch sampling protocol, including standardized reporting forms, criteria for sampling (number of samples, methodology, etc.), standards for species identification training and data archiving. This will ensure that all information collected is comparable and rigorous, regardless of what entity is undertaking the collection (State, Federal, or other).

This measure also would mandate the establishment of a shore-based sampling program – directing NMFS to use some existing resources to collect catch/bycatch information at the first point of landing or production, subject to the normal operation of the fishing company. Vessels would be required to report when they will arrive in port, as detailed below, but unavailability of an observer, port sampler, state agent, or other authorized NMFS personnel to sample the catch will not prevent a vessel from being able to unload.

1. Dockside Sampling Program Objectives

Based on Herring Committee discussion and recommendations, this alternative for a dockside sampling program (DSP) is intended to achieve the following objectives:

1. Sample a sufficient number of landings events to provide a reasonably precise and accurate estimate of bycatch in the herring fishery (at least 20 percent CV for river herring in combination with at-sea monitoring/observer coverage);

2. Confirm the accuracy of self-reporting of herring landings (as an integral part of the measures to improve catch weighing and monitoring as specified above).

In addition, samplers may collect important biological information and commercial catch samples necessary to support stock assessments and other biological needs.

To achieve these objectives, this dockside sampling program (DSP) would be designed similarly to the current portside bycatch sampling programs managed by ME DMR and MA DMF with increased sampling coverage to ensure that extrapolations of landings and landed bycatch estimates can be made with some specified degree of precision (expressed as a coefficient of variation, CV). The sampling design and coverage levels for this program (distribution of sampling events across space and time) would be determined by NOAA Fisheries similar to how the NEFSC allocates sea days for observer coverage in the fishery, depending on the priority species and the target CVs that are identified by the Council (see below). To the extent possible, data collected from existing state port sampling programs will be utilized by NMFS.

2. DSP – Responsibilities, Notification requirements, and Sampling Design

- NOAA Fisheries would be required to determine levels of coverage for dockside sampling in a manner similar to the SBRM approach for at-sea monitoring, based on the Council's specified goals/objectives and the SBRM methodology (see below).
- NOAA Fisheries would be responsible for determining levels of coverage on an annual basis, including time/area/gear type.
- All herring limited access vessels and Atlantic herring carrier vessels would be required to call NOAA Fisheries, or the agency's designee, and notify the agency of a landings event at least six hours prior to landing. The current pre-landing notification system could be used to provide ample notice to NOAA Fisheries prior to landing, in order to arrange for samplers when they may be available. For these purposes, however, a transfer at sea from a limited access herring vessel to a herring carrier would not constitute a landings event; rather, the herring carrier would be required to provide timely notice prior to landing. The vessel must indicate when/where the boat will land, the approximate amount of the catch, and whether or not the offload will be to a processing facility, bait dealer, or other location. NOAA Fisheries will inform the vessel if the landings event may be sampled, and if so, NOAA Fisheries will work with the vessels to ensure that trips that require dockside sampling are met by a sampler.
- On all observed trips, the observer, after being adequately trained in dockside monitoring protocols, shall conduct the dockside monitoring.
- NMFS will have the authority to detail observers to dockside sampling program, so long as requirements for reasonable at-sea coverage can also be provided. In order to maximize resources, observers should be used in this manner at locations and during times with high volumes and numbers of landings.

3. Sampling Design for Estimating (Landed) Bycatch – Objective #1

A. DSP Sampling Methodology/Protocols

Sampling methodology will be consistent with NOAA Observer Program protocols, with some modifications to decrease variance in extrapolation of bycatch estimates and reduce potential sampling bias. Due to the large quantities of fish that are typically landed in the herring fishery, sub-sampling will likely be necessary for many offloading events. Sub-sampling is used when the volume of fish that the sampler is attempting to quantify is too large to obtain actual weights or if the amount of bycatch is too abundant. During sub-sampling, the sampler will collect smaller batches of fish, sort and weigh by species, and then extrapolate to the total catch.

In the Atlantic herring fishery, no offload points/events are the same. The methodology described in this section provides some general guidelines and examples for sampling landings events in the herring fishery. NOAA Fisheries will determine the most appropriate sampling approaches given the logistical differences in offload points and other complicating factors.

The two fundamental elements necessary for a dockside sampler to know in order to successfully sample a landings event are a volumetric estimate of the total landings and the species composition of the catch. Landings will be either sampled completely or sub-sampled to determine the species composition of the catch (see protocols for complete sampling and sub-sampling below). In most situations, sampling will be conducted over the entire offloading period to capture any stratification that may occur throughout the entire fishing activity (*e.g.*, while being pumped aboard while out at sea, due to the difference in species size and composition between purse seine sets or trawl tows, settling in the vessel's holding tanks, etc.). Because the catch is not unloaded the same way at every dealer or plant, sampling techniques may vary (examples are provided below). Typically, samples will be collected systematically at set intervals with predetermined sample sizes. All samples will be sorted by species, and actual weights will be taken. Lengths will be taken according to the NOAA Observer Program species priority list by statistical area, and commercial catch samples for assessment purposes will be collected using current protocols.

i. Complete Sampling Protocol (Processing Plants and Whenever Possible)

A complete sampling protocol can be utilized in cases where the entire offload can be observed and sampled, and all bycatch can be sorted and counted. Complete sampling is desirable for offload events that occur at processing plants. The samplers collect and quantify all landings from individual lots of fish (transported by trucks or vessels) that enter the processing facilities. Samplers position themselves at the point of entry into the facility along an assembly line or at the base of the hoppers where the fish are unloaded. Sampling is conducted before grading or sorting of the catch occurs. All bycatch is removed from the assembly line or hopper and placed in bushel baskets or buckets specific to each species. The total weight of any observed bycatch is recorded along with species identification, total species weight, individual lengths and weights of all fish according to a NOAA Fisheries and ACCSP specified protocol. If there is a large amount of one incidental species, the total weight is

recorded and then length frequencies and weight are gathered from a randomly selected sub-sample of 50-100 individuals.

ii. Sub-Sampling Protocol

A sub-sampling protocol can be utilized when sampling a very large volume of catch and/or when facilities at the offload point make complete sampling impossible. Instances where this is likely to occur include offload points where fish are pumped directly into trucks. Sub-sampling is also appropriate in instances when the volume of fish pumped is greater than the manpower available at the sampling point can observe with certainty. In these cases, it may not be possible to use the complete sampling protocol regardless of the amount inspected (< 80,000 lbs.). These situations are also likely to occur when vessels are fishing mixed groups of herring and mackerel, some of which can have a 50-50 composition.

Sub-samples are to be collected using bushel baskets at timed intervals during the pumping or unloading process following the NOAA Fisheries at-sea observer sampling protocol. To accomplish this type of sub-sampling, the dockside sampler needs to know the total lot weight and the duration of time it will take to unload the catch. After sampling, the bushel baskets of fish should be sorted by species, and total weight of each species and length frequencies should be recorded (sub sample n=50, for length frequencies if more than fifty of any species occurs).

Data will be recorded on sheets developed by NMFS in coordination with the States of Maine and Massachusetts, as specified above, and which are based on the ME DMR and MA DMF data collection sheets for the existing portside bycatch sampling programs (Figure __). The sampling sheet for the processing plant (Figure __) is designed to collect and record all data needed to comprehensively quantify discards through the field “inches in vat.” Once the discard composition is recorded, along with pump rate and data for “kept” catch, Excel worksheets are used to derive the composition of the landings. Sub-sampling data sheets (Figure __) are used to sample baskets of unsorted catch at intervals set by the sampler based on the total volume of catch and pump rates.

• **Use of Electronic Logbooks and Passive Monitoring Systems**

This measure calls for phased-in implementation of a requirement that vessels employ passive vessel monitoring systems, along the lines of the Study Fleet technology, to enable the monitoring of incidents of released tows on unobserved Category A & B vessels. This system should be configured to record: the deployment and retrieval of the net, along with the GPS coordinates of the vessel while towing (for otter, mid-water, and pair trawl vessels), or the deployment of the seine and location of the vessel (for purse seine vessels); the operation of the vessel’s pump system; and any mechanical device used to release the net.

A released tow would be considered on in which a net or seine is deployed without a subsequent pumping event. Each such incident should be accompanied by the required affidavit providing details on the reason for the release, the amount and type of fish released, etc. The ability to

Received August 2009

match length and location of these events on unobserved trips will enhance NMFS's ability to (1) confirm whether releases occur more, less, or at the same frequency as on observed trips and (2) use precise and detailed information on the location and length of hauls to match with observed hauls in order to check for consistency with volumes and types of species that are discarded at sea.

In order to implement this program, a pilot program should be undertaken at the earliest reasonable time, by the midwater trawl and purse seine sectors of the industry, to investigate the feasibility of adopting passive monitoring systems that integrate major vessel systems (GPS, pumps, gear retrieval systems, net sensors and the like) into the Study Fleet software and computer systems. This research may be funded through the research set-aside program, other funding sources, or by the industry directly.

The phased in alternative would require that the NMFS Regional Administrator evaluate the results of this pilot program and assess the agency's ability to utilize the data in order to measure slipped hauls. If the finding is that this approach is not technically or administratively feasible, the RA would have the authority to waive the requirement. The other will be to allow the requirements to utilize such systems and report such data to be adopted through a framework action.

Discussion

The amount and quality of the information collected can help managers and the industry to better assess conditions that may lead to higher levels of bycatch, thereby improving the ability of fishermen to avoid it. Ultimately, this technology may also prove to be a much more cost-effective means of monitoring the fishery than either additional at-sea observers or video monitors.



Coalition for the Atlantic Herring Fishery's Orderly, Informed and Responsible Long Term Development

July 31, 2009

Frank Blount, Chair
NEFMC Herring Committee
PO Box 3274, 33 State Street
Narragansett, RI 02883

RE: August 6th Herring Committee Meeting

Dear Frank,

I am writing on behalf of the CHOIR Coalition to comment on the direction of the upcoming Herring Committee meeting on August 6th. While we understand the much of the meeting may be spent on Specifications, there may be time towards the end to work on monitoring and so we wanted to speak to that issue.

While the Committee has spent a great deal of time on the catch monitoring alternatives already, much of the effort has gone into working on Alternative 3, while Alternatives 1 and 2 have seen little to no discussion at this point in time. We were pleased to see the Council staff acknowledging the need for more work on these two alternatives and are excited to see the Committee spending some time working on them as there is much to do. While there is work that also needs to be done on Alternative 3, it is far ahead of the game in terms of the level of discussion and analysis that has been done in comparison to the other two alternatives.

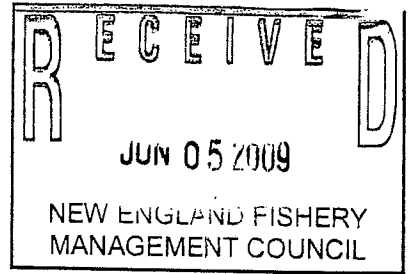
For example, Alternative 2 relies heavily on the use of the Study Fleet technology, but at the Herring Committee meeting on June 5th, John Hoey presented information that brings into question the readiness of this technology in the herring fleet. He highlighted multiple issues that need to be addressed: the fact that the equipment is not tamper-proof, that the equipment is still in the testing phase and has also never been used with midwater trawl gear, and lastly that there may be some potential legal issues. While this technology may prove useful in the future, there is a lot of work that needs to be done to determine what role it can play in the herring fishery.

The lack of analysis on the Study Fleet technology is just one example of the parts of Alternatives 1 and 2 that need to be fleshed out, but there are many others. We feel it is key that the Committee spends its time working out these problems before doing more work on Alternative 3.

Thanks for your time,

A handwritten signature in cursive script that reads "Stephen B Weiner".

Steve Weiner, Chair



To: NEFMC Herring Committee and Plan Development Team Members
From: Tom Rudolph, Cape Cod Commercial Hook Fishermen's Association
(On behalf of the CHOIR Coalition)

RE: Herring PDT Report for 5/26/09 (Response to questions and concerns on Maximized Retention)

Date: 6/5/2009

The PDT report dated 5/26/09 contains a great many questions about maximized retention (MR). While many of these questions are actually already addressed or answered in the text of Alternative 3, others may warrant further clarification. Both categories are addressed below. In addition, the CHOIR Coalition, as the stakeholder group which submitted the monitoring proposal from which Alternative 3 was adapted, has submitted a suite of suggested additions and modifications to Alternative 3 which further address some of the questions and concerns raised in the PDT memo (see CHOIR letter to Herring OSC dated 6/1/2009).

- The PDT states that it is "unclear what the goal/expectation of a maximized retention program may be"
 - Alternative 3 as incorporated into the Amendment 4 Discussion Document contains a set of detailed goals and objectives for the proposed MR program, which includes many specific explanations of why MR is likely to be more efficient and effective than other program designs
 - The overall goal is to ensure that industry participants, managers, and stakeholders know what is caught in the fishery in close to real time
 - In addition, a key objective of MR is to minimize wasteful discarding. Herring fishery discards may appear small as a percentage of the overall herring catch, but the high-volume nature of the fishery masks the fact that the total discards, in tons, are actually quite large and wasteful. CHOIR fully supports this additional objective.
- The PDT asks whether the goal of MR is to obtain a census of all bycatch or to improve the precision and accuracy of bycatch estimates
 - Alternative 3 lays out options for both. The preferred option is to cover landings events with dockside monitoring (DSM) on a census basis (all events) but there is another option that would cover less than 100% of landings events, at a level that would cover enough events to allow extrapolation across all landings events. This would constitute an improvement in the precision and accuracy of bycatch events relative to the current monitoring program in the fishery.
- The PDT asks whether MR is being considered because there is uncertainty about the accuracy of sea sampling data, and while recognizing that coverage levels should be increased, whether there is a lack of faith in the sea sampling data that are collected
 - The answer to both is yes, but this should not be construed as a criticism of the Northeast Observer Program (NEFOP) or on the credibility of Federal observers. Current regulations allow for the dumping of unsampled catch on observed trips, negating over 15% of the tows on these trips in the most recent year for which data are available (2007) and biasing the data. NEFOP itself classifies these tows as "unobserved" and sets the data aside. In addition, there are not enough observers to achieve precision or

Tom Rudolph AS MFA

accuracy in discard estimates, much less monitor catch limits. Finally, coverage levels are so low that an observer effect is likely present.

- The PDT asks whether MR is being considered because of concerns that:
 - Observed trips are not representative of the entire fleet
 - The answer is yes. Current coverage does not allow for fleetwide extrapolation. MR is proposed as an option that may allow for the collection of enough data to achieve statistical significance
 - Observed trips are biased by an “observer effect”
 - The answer is yes. Coverage rates are so low that multiple observer effects are likely present. standard minimum coverage rates to negate observer effects are considered to be 50% for fisheries like the herring fishery which feature rare but significant bycatch events
 - Precision around discard estimates are too low
 - The answer is yes. There is not enough coverage and MR with Dockside Monitoring (DSM) should, in the long term, be more cost effective and allow for a greater coverage rate
 - A census may provide better estimates of catch than statistical sampling
 - The answer is yes. This fishery features rare but significant bycatch events and warrants high coverage to achieve precision and accuracy and derive catch estimates suitable for monitoring catch limits
- The PDT asks whether the vessels would separate the target harvest and unwanted catch at-sea
 - Under Alternative 3 this would be up to each individual vessel or vessel owner to determine and describe through that vessel’s Catch Monitoring and Control Plan (CMCP).
- The PDT asks would the unwanted/discarded portion of the catch be fully sampled (high volume) or counted (very low volume)
 - This would be up to the Dockside Monitors to determine based on their assessment of what was feasible and their observer protocols, just as such decisions are often left to observers and dockside monitors currently. Subsampling, as long as the data can be extrapolated, is perfectly legitimate.
- The PDT asks would all trips or just some trips be sampled at the dock for species composition
 - The preferred option in Alternative 3 is for all trips to be sampled, but there is an option to sample less than 100% provided that statistical significance is achieved and the data can be extrapolated fleetwide.
- The PDT asks would the volume of unwanted/discarded catch be measured for all vessels or only some vessels
 - This question is unclear. The preferred option for Alternative 3 is to implement MR for Category A and B vessels provided this will ensure robust monitoring on the vast majority of the catch in the fishery (it is based on an assumption that this would capture >95% of the catch in the fishery)
- The PDT expresses concern that separating the harvest from the unwanted catch may be difficult for some vessels and could reduce vessel capacity
 - Unwanted catch needs to be separated from harvest whether MR is implemented or not. The only thing different about MR is that the unwanted catch would need to be brought to shore instead of discarded at sea

- Vessel capacity may be preserved by allowing vessels to discard at sea if they chose, by instituting a cap system and assumed discard amount. Under Alternative 3 as currently proposed because vessels would still be able to discard at-sea if they chose, within a cap system.
- The PDT expresses a concern that many boats take trips with the intention of bringing back a specific quantity of herring to fill a market, but that they may reach this quantity before a bag is fully pumped. The PDT is also concerned about the potential for landing poor quality/unmarketable fish under MR
 - Again, the MR program in Alternative 3 would make an allowance for discarding these mistakes at sea, but would cap this practice to encourage compliance with the MR program and reduce such wasteful discarding. CHOIR suggests that a gradual reduction of the cap on at-sea discarding over a two to four year period will help facilitate the process of identifying and eliminating these practices.
- The PDT asks how “test tows” are addressed, and specifically whether “test tows” would be prohibited under MR
 - Again, the decision over whether to retain or discard the catch on a “test tow” would be left to the captain but if his decision was to discard there would be tonnage charged against the cap.
 - To be clear, CHOIR questions the validity of the notion of “test tows” unless the fish are brought aboard for inspection and sampling. These tows cannot be considered a “test” in any sense of the word unless the test is “graded” i.e. the catch is sampled.
- The PDT asks how the unwanted catch will be sampled and also asks about the eventual disposition of the unwanted catch, for instance will it need to be brought back out to sea for disposal
 - The former is simple: that catch will be sampled upon offload according to the vessel CMCP
 - The latter is indeed a challenge for which several options have been proposed (market the catch and develop a way to backfill funding for the program, utilize existing state enforcement protocols to help dispense it, donate to food-banks etc.). Additional discussion is likely necessary.
- The PDT asks what would prevent non-observed vessels from discarding at sea
 - Under Alternative 3 there would not be any MR vessels without a verification system aboard. Less than 100% verification has been determined to be inadequate by managers in the West Coast U.S. Shore-Based Hake MR program. The PDT is correct in that MR would only be effective with an observer or video camera on the boat.
- The PDT asks whether or not the same goals as those of MR could be achieved just by increasing observer coverage and getting better information about slipped catch
 - The answer is yes, some of those goals could be achieved, including those of deriving catch estimates. But others could not, such as minimizing long-term costs, sampling ashore instead of in the challenging at-sea environment, reducing discarding, and utilizing the existing dockside monitoring programs
- The PDT asks whether there are safety concerns with requiring maximized retention and putting everything in the hold, as well as possible product quality concerns.
 - Safety is addressed in Alternative 3 by the discarding cap system. Vessels could still discard at sea when necessary. In addition, CHOIR has proposed additional safety-related measures for Alternative 3, such as a trip termination regulation.

- These measures also address product-quality concerns
- There has been a particular focus on dogfish in terms of the two considerations above. Alternative 3 contains measures to mitigate the dogfish issue, and additional measures are proposed in CHOIR's letter dated 6/2/2009, which outlines suggested additions to Alternative 3 CHOIR recommends the Council incorporate.
- The PDT points out that there are additional costs to be considered, including video monitoring, dockside sampling, and disposal
 - Only the last one of the above (disposal) is not already addressed in Alternative 3. The others are estimated and discussed. Further analysis, including some on disposal, is a good idea.
- The PDT asks how carriers would be addressed under MR provisions
 - As explained in Alternative 3, catcher vessels would be defined as first receivers and would be required to design and submit for approval a CMCP. If a first receiver chooses to work with carriers, this relationship and the catch handling procedures, including all the concerns raised by the PDT, would need to be specified in the CMCP. For instance, a CMCP might specify that a carrier will also have a Video Based Electronic Monitoring (VBEM) system to verify that all catch for a given cod end transferred at sea is pumped aboard and also specify that that carrier will land under DSM coverage.

The PDT concludes with a discussion of other possible alternatives to MR. CHOIR fully supports the development of a wide array of alternatives including but not limited to MR and a careful relative comparison of the costs and benefits of each. We are however quite concerned about the 4 bullets at the bottom of page 3 of the PDT report- they contain an inconsistent and somewhat troubling message.

Specifically, bullet #2 strongly recommends stopping slippage ("it is imperative that observers be provided the opportunity to sample the contents of the entire haul"). Bullet #3, however, simply calls for more detailed self-reporting of the contents of slipped hauls. And Bullet #4 calls for an extended study of slippage to determine whether or not there is a problem.

CHOIR respectfully submits that we do not need to study slippage. We need to minimize it, cap it, and hopefully eventually eliminate it.

On behalf of the CHOIR Coalition and the CCCHFA, thanks for your time and consideration of these remarks.

Tom Rudolph
 Herring Campaign Operations Director
 CCCHFA



Coalition for the Atlantic Herring Fishery's Orderly, Informed and Responsible Long Term Development

June 1, 2009

Frank Blount, Chair
NEFMC Herring Committee
PO Box 3724
33 State Street
Narragansett, RI 02883

Re: June Herring Committee Meeting

Dear Frank,

I am writing on behalf of the CHOIR Coalition to offer our comments regarding ongoing development of Amendment 4 in advance of the June Herring Committee meeting. Specifically, we would like to offer some additional management measures for Alternative 3 that are designed to address some of the concerns that have been raised and improve the alternative in other areas. We urge the Committee to include the following options into Alternative 3 for further development and analysis.

Before going into the specific discussion regarding Alternative 3, we wanted to first highlight a certain inconsistency to the Committee in that there seems to have been a great deal of "pre-analysis" of Alternative 3 since the Council voted to include it in the document, but almost no discussion of the other three alternatives. We believe that this is primarily due to the highly detailed level to which this alternative was developed before submission in comparison to the others. While this pre-analysis has been helpful in refining the alternative, it is important to note that if the remaining alternatives were held up to the same scrutiny as Alternative 3 that many similar problems would be brought to light. We would strongly urge the Committee to continue to develop Alternative 3 while also putting more time and effort into working out the problems in the other alternatives.

Safety Issues

At both the Enforcement Committee meeting and the Herring Advisory Panel meeting last month there was discussion centered on safety concerns regarding the Maximized Retention (MR) program at the core of Alternative 3. Some believe that it is unsafe to force a captain to bring fish aboard as it could lead to the vessel being overloaded. In other words, they are saying that there will be occasions when boats are trying to top off the hold and end up with more fish than they can physically hold; if forced to pump all this fish aboard the vessel may become overloaded. While maximized retention has not been shown to be inherently dangerous in the west coast whiting fishery, we take these safety concerns very seriously and feel that there are several simple solutions to this potential problem. The first addition is a Trip Termination exception and we feel that it is something that should be formally added to Alternative 3.

Trip termination has actually been considered by the Council's Ad-Hoc Bycatch Committee during the deliberations that ultimately led to Framework 43 to the Multispecies Plan, and the Council may find useful language and/or analysis by consulting these records. But basically, we recommend that the Committee include for analysis in Alternative 3 a measure that would require a herring vessel to terminate its trip and return to port in the event that a dumping event takes place. This measure would enhance vessel safety by ensuring that herring vessels are not repeatedly exposed to any unsafe loading and/or sea state conditions that require dumping unsampled catch. Furthermore, it would ensure that herring captains do not take advantage of a safety exception in order to dump fish.

The second addition to Alternative 3 that will help address the overloading issue is in response to the specific concern of pumping large amounts of dogfish aboard. All fishermen know that dogfish are often hard to avoid and members of the herring industry have made clear that this is a problem for them at times. While we never intended for this alternative to force herring vessels to pump aboard and retain large amounts of dogfish we believe that additions to the Alternative will clarify that such exceptions are allowed (but not abused) and to also lay out how managers could account for these incidents. We would like to point out that the most effective solution for this problem, hard caps on dumping for the fishery, is already outlined in Alternative 3 and we stand by it. The following are essentially a series of proposed modifications to the dumping cap concept.

Species-based options for the target of the maximized retention program should be developed, considered and analyzed. Maximized retention can mean a lot of things- it depends on what managers and stakeholders decide to maximize. For instance, there may be broad consensus to minimize retention of dogfish, and thus dogfish would not be a target of the program. We suggest laying out a variety of options which could be mixed and matched as far as what Alternative 3 might require the vessels to bring ashore for shoreside sampling, broken down as follows: Sea herring, mackerel, haddock, other large mesh regulated groundfish, small-mesh regulated groundfish, river herring/shad, dogfish, other ASMFC-managed species.

It is important to realize that maximized retention and maximized sampling are two different things. While a decision to avoid maximized retention of dogfish may be reasonable, it will still be critical to encourage and achieve an examination of a catch containing dogfish whenever possible. In other words, there is a difference between dumping and traditional discarding in that the latter provides for a positive identification and characterization of the catch. We suggest that while an overall cap on dumped tonnage might need to be adjusted to accommodate reasonable dumping of un-pumpable dogfish; this must be done carefully to prevent abuse of the exception. Alternative 3 currently targets the retention of 99.5% of the catch in the fishery with a dumping cap of 0.05%. Various options for the adjustment of this ratio should be considered if species or species groups are shifted out of the maximized retention program, but the adjustments to the ratio should be based on historic dumping and discard data. Caps should be set at historic levels or less.

Logistical Implementation Issues

Building and refining a maximized retention program will take time. CHOIR has discussed several of these issues with NMFS staff and others, and proposes the following solutions for addition to Alternative 3 and further development and analysis:

A phased-in implementation approach for maximized retention warrants serious consideration. Three potential elements should be developed:

1. *A temporal phase-in of maximized retention over two to four years which includes a gradual but steady reduction in the amount of at-sea discarding permitted as well as the dumping tonnage cap. Data from the U.S. west coast hake fishery maximized retention program show a steady reduction in at-sea discarding as unnecessary discards and bad behavior are identified and eliminated.*
2. *A spatial phase-in of maximized retention in which bycatch hotspots, for instance the previously identified river herring hotspots or groundfish closed areas, require maximized retention.*
3. *A gradual phase-in of Video Based Electronic Monitoring (VBEM) as the verification system through pilot programs. This approach is briefly mentioned in Alternative 3 now, but warrants further attention. It will be important to provide overlapping coverage with Federal observers on pilot fishing trips to ensure robust monitoring during the phase-in period while herring fishermen dial in VBEM. Though a proven application of VBEM, maximized retention verification in trawl fisheries would be new to New England.*

Landings Issues and Fish Disposition Issues

Another issue that has been raised pertains to the landing of prohibited and/or non-permitted species; that is, the landing of catch that is currently not allowed. It should be pointed out here that Alternative 3 would not require, under any circumstances, the landing of a species prohibited under the Endangered Species Act or Marine Mammal Protection Act. A second concern raised is what to do with this catch once it is accounted for onshore. We do not feel that these issues should be seen as roadblocks as there are simple solutions that will solve these and any other problems regarding the landing of catch. In fact, both the NERO and the NMFS Office of Law Enforcement (OLE) have said that they do not see these two issues as problems.

First, in terms of the landing of species currently prohibited under the vessel's permits and/or by a Federal or Interstate Fishery Management Plan (FMP), changes would have to be made so that herring fisherman would be formally allowed to bring in all catch. It is a given that for a maximized retention program to be feasible the vessels must be able to bring in catch without being in violation.

Our primary suggestions to solve this issue would be annual Exempted Fishing Permits (EFP) to allow maximized retention, or for the Council to implement an omnibus amendment so that it will be legal for herring fishermen to bring in their catch. NMFS has made clear that an omnibus amendment would not only be possible, but relatively easy. A third suggestion, recently endorsed by the Enforcement Committee, would be to handle this catch as it is handled currently. We support further development of the latter to facilitate a better understanding of current procedures so that all stakeholders can assess their viability going forward.

Our additional suggestion for these issues is similar to the approach outlined above: lay out a series of different options for which species and species groups will be maximized. This will break down what appears to be an insurmountable problem (amending every plan including ASMFC plans) into more manageable options. Based on the previous list of options (sea herring, mackerel, haddock, other large mesh regulated groundfish, small-mesh regulated groundfish, river herring/shad, dogfish, other ASMFC-managed species), CHOIR would suggest that the program should seek to maximize sea herring, mackerel, groundfish, and river herring. The benefit of this is easy to see. For instance, by separating river herring and shad from the other ASMFC species, you take advantage of the fact that (as far as we know) there are no ASMFC limits or prohibitions on them at this time anyway. The argument that maximized retention will result in violations or require changes to other FMP's is neatly separated from one of the main

Amendment 4 monitoring targets, one which is also most suitable for shoreside sampling (river herring). Another way to look at this specific example is that herring boats are landing river herring now at-will and with no consequences, so maximizing retention on them is no major problem.

Second, in terms of what to do with the catch once it has been accounted for onshore, there are multiple solutions. While NMFS OLE has stated that they would be able to handle these landings, we feel there are other possible answers to this question. The first solution would be to setup a system like that used in Alaska, known as SeaShare [<http://www.seashare.org/>] which is a non-profit foodbank that distributes bycatch that is landed in that part of the country. It deals with millions of pounds of catch and distributes it to the hungry. The second solution would be to work with local fish dealers- of which there are many- to find sources for these landings. And a third suggestion would be to do what is done now- to have the vessels dump the landings once it has been counted onshore. Anecdotal reports suggest that herring vessels are often forced, for market reasons, to discard large quantities of target species they intended to land and tried to land. These are just three of many potential solutions to this problem.

Other Additions. We also suggest the following additions to Alternative 3:

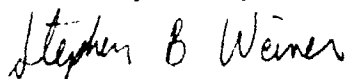
***Utilization of vessel electronics:** Electronic capture and addition to the official monitoring database of key data streams from vessel electronics, including mesh pressure-based catch weight sensors ("eggs") and footrope height over bottom, possibly through the NMFS Study Fleet or through an approved VBEM system. Herring industry representatives have indicated support for this approach and it warrants further development. Catch weight sensors may have a powerful ability to help derive an estimated weight for discard and dumping events. It is important to recognize that these electronic sensors will not provide catch composition data and that other solutions will need to be developed to ensure that the reliance on self-reporting is eliminated with respect to the species make-up of dumped tows.*

***Modifications to Catch Monitoring and Control Plan (CMCP) measures:** Discussions with Council staff indicate that use of CMCP's in other U.S. fisheries is in some cases narrowly targeted, for instance only on processors. CHOIR suggests that a series of options be developed and analyzed under which CMCP's would be required in the herring fishery for different fleet sectors (i.e. processors only, Category A and B vessels only, pump vessels only, vessels which utilize carriers, etc.)*

Conclusion

We have endeavored to examine and address the concerns about Alternative 3 expressed over the past several months by various Council bodies and by multiple stakeholders during outreach discussions. We formally request that the italicized management measures be added to Alternative 3 for consideration as Alternative 3 and the maximized retention program it describes are developed for further analysis in Amendment 4. We also urge the Committee to begin the necessary work of considering the strengths and weaknesses of the other three catch monitoring alternatives, as well as the all-important work of comparing the relative costs and benefits of the four alternatives to each other.

Thanks for your time,



Steve Weiner, Chair