

NEW ENGLAND FISHERY MANAGEMENT COUNCIL
HERRING AMENDMENT 4 SCOPING HEARING

Date: June 10, 2008, 6:00 PM

Location: Sheraton Hotel, Atlantic City, NJ

Attendance: Lori Steele, NEFMC staff; Frank Blount, Herring Committee Chairman and Scoping Hearing Officer; Carrie Nordeen, NMFS; Lars Axelsson, Greg DiDomenico, Arnold Leg, Jeff Kaelin, Phil Ruhle, Jim Ruhle, Tyler Staples, and several additional members of the public.

Council staff briefly summarized the scoping document for the audience and described some of the scoping issues before opening up the floor for scoping comments from the audience.

Greg DiDomenico, Garden State Seafood Association (GSSA) – Specifically, we would like to make one comment and one request. Thank you for recognizing the issue of herring bycatch in our directed mackerel fishery for those vessels that received the incidental permit. As you stated, it's at 3 mt, 6,600 pounds. In the years where there is significant mixing of the two stocks, people are probably routinely going over the possession limit. And that, of course, creates difficult conditions for fishermen to fish under, and we certainly don't want people out of compliance. It's not a good way to start and end the day.

Considering that in the areas in which the bycatch takes place, the TACs are routinely not ever reached, we would appreciate if the open access vessels receive a 25 mt possession limit to make it consistent with the second-tier limited access permit, and to also not create another permit category. Also, if it is at all possible to address this issue in the specifications process prior to the amendment, in any way to increase the possession limit, it would be very helpful. We don't want to wait too long and continue under the current situation. Thank you.

Phil Ruhle, Newport, RI – I need to ask a question first. On p.5, it says that the SBRM amendment established the baseline for observer coverage, which has just been voted in and was adopted by both Councils. Although both Councils accepted it, that's it – what we are saying right straight out of the gate, in this fishery, we are saying the SBRM is wrong. Is this correct? (Council staff provided clarification.)

It should be noted in the public document and made a little clearer that the first thing we are doing after the SBRM amendment is changing it. The recommendation right out of the gate is to change the SBRM.

On catch monitoring, I would suggest the Council and Service increase port sampling, back to when we used to use port samplers, which have been very lax in this fishery. I would request that they use that in conjunction with declarations for the fishery, which I will get to in a minute. Also, request that the VMS system – you have duplicative and antiquated regulations in place. The call-in system was put in place before you mandated VMS. After the mandate to use VMS, we should opt out of the call-in system. The declarations and the weekly reporting that is now required through the call-in system should be done away with or alleviated. Everything can be

done, you have the technology, you force the industry to put these things on, so you should be using them.

Now, to declare into the fishery, you have to use VMS, but then you have to call, and then you have to call for an observer. I think there are 5 or 6 declarations for one trip. I think that this is quite contrary to the Paperwork Reduction Act, and it should be looked at in that context. With the VMS, you should be able to declare your landings. You have to declare with VMS now when the boat is coming in and let them know six hours prior to where you are going to be and where you plan to offload. You should change the whole system so that you can declare what you have on. If it is going to be required, just do it daily or by trip. When the boat is not fishing and is not declared in, it should not be held to the responsibility of calling-in once a week to say it didn't go fishing that week. Some of the common sense stuff needs to be applied in this fishery.

Taking that into consideration, another question is how, in this fishery – the Service's permit holder letter a few weeks ago said that if you have intent of catching herring on a trip, you are supposed to be declared into the fishery. How is this going to work with the observer system? If you are out there, and all of a sudden you run into some herring, you are not going to be allowed to declare unless you are inside the demarcation, and then if you even think about the fact that you might run into herring, you have to wait 72 hours for an observer. So there are a whole bunch of issues that need to be evaluated.

As far as the monitoring and the observer program, I am very much against industry funding the observers. I have a whole host of reasons for that, and they are already on the record. One, when a lot of the science that is put forward by the industry is totally ignored, or put aside by the Service for different reasons – now they want us to pay for their observers. It's like a two-sided stone that is actually upside down. Also, the last thing I saw about the observer rate on the purse seine fishery (asked for clarification) – the number has been pretty miniscule recently. I would request that now that is the major portion of the fishery, the observer rate in the purse seine fishery needs to be in tune with the amount of fishing that is happening.

Should management measures be considered in this amendment to improve observer working conditions and data collection? That is a tricky little sentence. I understand the need for it, and I heard the argument for it. This was generated by a request for a working station on the bigger boats for the observer. How do you deal with that on a 30 footer? Does a 30 footer have to have a working station for an observer? Or is it just because the boat is bigger that it can go to the expense of having to provide the observer with a complete working station. I believe that was the gist of that question last year. I am very nervous about requiring it, and then having it tumble down into the 30, 40, 50 foot range that all of a sudden, these boats have to have electronic scales and flow meters.

I think the electronic monitoring, cameras, could be very effective, but it still needs to be worked out. It is still pretty new to a bunch of fisheries, and jumping on it at this point in time might not be the best thing. Although they could be fairly effective, it just needs to be researched well and not made so that it builds its own little cottage industry by having this requirement again.

The at-sea processing question is not a major issue, but I think what the west coast has in place should be looked at, and you can work off of what they have. They have a lot of history in that area.

Shoreside monitoring – I don't think you need shoreside monitoring. You just need to step up the port sampling so that you have accurate information coming out of them.

New Management Measures – The first thing I would recommend is that the Council separate midwater trawlers from pair trawlers. In the first amendment, they were put together, but they are two completely different fisheries. They are lumped together, and that should be separated and looked at very severely. Second, under the ACLs and AMs, whenever that is considered, OY should be considered with them. If you are going for annual catch limits and accountability measures, then achieving OY or close to it should be part of it, not just discounting the fishery. As we get into the ACLs and AMs, a payback provision is not a bad idea, as long as there is a carryover provision on the other side of it. I realize the number wouldn't be exactly the same, but this goes to the same point of achieving OY.

I would say that as far as ecosystem and forage stuff, that has been pretty much commented on. I would request that the Council start looking in this amendment at the carbon footprint that they are leaving on this industry. The industry has to start looking at their footprint, but what the Council has to do is start looking at the regulations they have in place that increase this carbon footprint. If you have regulations in place where a boat has to go fish for 2 or 3 or 4 days what he could accomplish in one, then something needs to be done about that. It was bad enough at \$1 fuel, but now that we are \$4 and \$5 fuel, every mile that the boat goes out of the way to go around some obstacle such as the closed areas and transiting areas is totally absurd. The Council needs to be cognizant of what is going on in the future and take this into account with all of the regulations.

As far as sectors and IFQs and related things – in my estimation, seeing how this fishery only went limited access in the last two years, which narrowed the players down somewhat, I think it is very premature to go into a sector policy or to an IFQ at this time because you haven't really created the history. I am very concerned that under the sector proposals that I have seen, you are going to have very few players controlling a good portion of the industry. I don't think New England is ready at this point in time to accept that. Also, I am very concerned about the sector proposals that any transferability be severely constrained. You can't have someone forming a sector and then sending his boats to fish on something else while he has other boats doing that. There were some concerns about that in the original proposal. You can't put eight boats in the sector and let one boat harvest all of that sector, and the other seven boats go groundfishing or whatever else they have permits for. Thank you.

Lars Axelsson, Cape May NJ – I represent the fishing vessel Flicka and my brother's vessel the Dersten. We are out of Cape May, New Jersey I have three major things on my mind concerning this document.

I have run afoul of reporting issues in regards to the IVR system. Back in 2000/2001, I fished herring up in 1A and against the Hague line and did a joint venture with the Russians. I also froze fish for myself, trying to create a market overseas, not trying to get into the bait market but do something different on my own, food fish mostly. I was unable to contact the beach weekly to make the IVR report because I was out of range. I was 150 miles from Boston. And I was out to sea as much as 21 days at a time before I got in. I didn't run afoul of IVR reporting then, but that set me up for running afoul of it as of October last year. What I did to cover myself is that I had set up a deal with Kohl Kanwit, who was the IVR person up in Maine. I had talked to her about not making the call, but I do have this BoatTracs and asked to send an email with my

reports. She said fine. The herring season came to a close and I came back to Cape May. Once I got back to Cape May, herring got out of my mind, and I got into my other fisheries. And this business of having to come to a screeching halt on a Tuesday, stop everything I am doing, get my information together, the numbers and boat codes and week numbers – the same situation started to occur, so I again set up a deal with Ms. Kanwit up in Maine about if I don't call you with a report, then it's a negative report. That worked well from 2000 all the way until October 2007. All of a sudden, I have NMFS Enforcement knocking on my door, ready to throw me in jail because I am not reporting. They scrutinized my VTR reports, I got the local enforcement down here, and they in turn reported to Linda Galvin's office. We discussed this at length, and what I had done was gotten into the habit of relying on the information to be transferred as I had explained, but I didn't know they moved the reporting office from Maine to Gloucester, and that it fell under another person's purview, I believe Allison Verry now. Of course, now I am scrambling, I am trying to play catch up with my reporting. I am thinking in my own mind that if they moved it to Gloucester, that's great because the VTRs I send in go to Gloucester, the dock has to report weekly, the dealer reporting goes to Gloucester, and now the IVR goes to Gloucester. So the three separate computers – if they are separate – they can write a program and collate all the information and bring everyone up to speed. Even though they are each in a separate room or on separate floors, I don't know. Anyway, I ran afoul.

This redundant reporting – VTRs, dealer reporting – especially for negative catch is absurd. It is not needed, it is not necessary. That portion should be done away with. Take it away. If you have a catch, then report it. What I tried to do this winter is be good and get on the IVR every Tuesday and call-in my reports, but sometimes that conflicted with me being out on a trip. I don't have a personal secretary to do this day in and day out. I do all of this myself. I have a boat to run, maintenance to do on the boat, I can't just delegate the IVR calls. I have to stop what I am doing, gather all of this information, and then, that system has its problems. It gives me a recording periodically “unable to process” or something like that. It hampered me several times. Instead of knocking it out in 15-20 minutes or sometimes a half hour, it took me an hour, or I would have to remember to go back to it an hour later and try again. Sometimes it took me a whole weekend to get through to that thing for whatever reason. When that machine experiences technical difficulties, I am liable by the law for not reporting. From what I can understand, for every week you don't report, that's another ticket. I am requesting that at least that portion be done away with.

Is there some way, in this modern day of technology, to have all of this information collated? If I am reporting on VTRs, and the dealer is reporting weekly, you are getting the information, and you are getting it weekly. Why does it have to be so redundant? I would like to do away with the IVR totally for that reason. Why do I have to call-in? I have email at home. What I have been doing when I have had trouble is that I have sent Allison an email saying I had trouble with the IVR and asking her to plug the numbers in for me, and right away, she is kind enough to help. In the eyes of the law, it's not working though. So please change the law.

The other big issue that came to bear down here in the Mid-Atlantic is with bycatch that occurs with mackerel fishing. I have been mackerel fishing since 1973. I have single boated, I two boated, way back in 1973. Really, a midwater trawl is not much different than our scup trawl, or our squid trawl. In some cases, we can use the same net to catch all of the species, it's just how we use the net. I am at an advantage – I got my 1A permit. But all my local buddies down here, when they were going out and couldn't find any scup or flounders, or the quota was closed and

there was herring right out front to be had, they weren't allowed to bring any in. And yet, prior to the amendment, they were allowed bring a boatload in now and again to make a day's pay or a week's pay. That was taken away unjustly in my mind. Working up to that amendment, the advisors to the Committee had come to a compromise between the Mid-Atlantic boats and the New England boats on a good plan. When it got presented before the New England Council, that whole thing that the Committee had gone through and set up and spent a lot of time agonizing to try to make it fair got thrown out strictly because New England had the lead and they could do it. And so they yanked the rug out from a lot of people – a lot of Mid-Atlantic fishermen that do depend on herring. And that right was taken away. I call it a product grab, and in my opinion, that's wrong. In this new amendment that's coming up, there is a chance to right that, and I would appreciate it if it would be righted. One way is to up the bycatch tonnage to that smaller class of vessels. Right now, the Mid-Atlantic has the lead on the mackerel and could do a quid pro quo kind of deal and say you took something away from us, and now we're going to take something away from you. But the Mid-Atlantic doesn't play that game. They do like to look at fishermen as one in the same no matter where you are from – Mid-Atlantic or New England. They are allowing everyone to fish as normal, to try to take into account the bycatch fishery of mackerel that occurs with herring up in the Gulf of Maine. Why can't that happen now with this amendment? I am requesting that. Twenty five (25) tons may be enough, but the quotas are not being met down in this area, so I would personally like to see them get more. I fished a smaller boat, and I know what it's like to come in and know that you can come in and pay your fuel bill and suddenly have to let it go.

This call-in that we have to do – I am a mackerel fisherman in the winter time, but I do run into herring periodically. And I periodically do catch herring to cover my fuel bill if I haven't found any mackerel. I presented this scenario to enforcement's office when this IVR situation came to light back in October. To that officer, I said that if I am out there already and I am declared out of the fishery because I am going after mackerel, but at the end of the week, if I don't have my fuel bill covered and I have 100 miles to steam, I am going to take a swipe at the herring and bring them in just to cover my fuel bill. Or sometimes, those fish do look a little different on the machine, and sometimes they look the same. And you'll make a trial set and you'll haul back, and you'll got a 50/50 mix. Suddenly now I have mackerel and herring mix. I am dealing with tons here, not just a few thousand pounds. I pump my fish aboard. My vessel can carry over 400 tons of product. If I get 100 tons, that's ¼ of my load. I can get bigger tows than that, but when I sample an area, I tend to go with the lesser amount just to see what's in the area. My question I posed to enforcement was if I get a 50/50 mix and I am not declared in the fishery, what do I do? Do I dump everything? Regulated discard is what is occurring. Then things got a little nasty. I got a nasty email from Linda Galvin asking about me catching herring on the Boattracts. I thought the Coast Guard and everyone was going to come after me. I tried sending an email back and didn't get an answer, an my satellite phone doesn't make a good connection. I called her up and got a hold of her. I told her I am mackerel fishing. I have been out for 24 hours, but there is a possibility I may have herring on the boat. But If I put herring on the boat, I am going to be in violation if I land in Cape May. Someone wagging a big bat up there is looking at their computer and saying that I am declared out of the fishery but he has significant landings of herring. I am not doing anything different than I have done for the last 35 years. I have got observers that have been with me off and on for over 30 years. My situation has not changed, and the way I do business has not changed. I am sure the people up there can see what I have done every year and can see that it is very consistent.

That leads me to increased observer coverage for midwater trawls – are we going to increase coverage for groundfish boats when they are highgrading and discarding so they can get the bigger fish? Are we going to put 1,000 observers on 1,000 permitted boats to make sure they are not highgrading? Regulated discards are okay in that fishery but not on our boats because we are midwater trawling. I feel like the present way that we are being sampled by the observers is a good way. I don't feel like we need to increase it.

I have a lot of family that comes from inland. I go to see my wife's family, and they ask me if it's true what they have been reading in the magazines. I say that is pure propaganda, and that's not what occurs. I don't know why people do that. To sell magazines? In any case, this unknown factor by the people who live on land and don't know what fishermen do at sea generates this feeling like fishermen always do something wrong, and that we have to catch them in the act. I have been fishing full-time since 1973, and I have watched how different groups have picked on me and what I have done – not just environmental groups but other user groups of the fish. The person that's visible always gets blamed whether or not he's the culprit. Because we are visible and we have big boats, we get blamed for things that aren't even happening. I have also found that when you are blowing smoke on somebody else, it takes the eyes off of you. So it's like if we can get those midwater trawlers or those herring boats covered, they will leave us groundfish boats or haddock boats or scallop boats or whatever alone.

Observers now are turning into big business. I can remember when observers got \$35 a day for the joint ventures on the big ships. When they came aboard us, it was \$25 a day. The following year, it went to \$150 a day on the ship, but they only charged us \$35 a day for the same person. And then I watched as time went on. Last summer, I found out what the observer gets, and what their reporting office gets, and there is a big disparity there. For every person that is out to sea, if they get \$200, their office gets \$400 or more. I know they have to pay expenses, but it is turning into big business, and it's on the back of fishermen that this is occurring. It used to be a thing that the government provided. Now, the government is still taking taxes out of my pocket, but we are all paying for it. And now they want to take it all out of the fishermen's pocket because they are catching the fish and getting the benefit of it. There's not much benefit left out there.

With the observer issue, the reporting issue, and blowing smoke – leave the observer coverage the way it is. If there is something bad going on out there, you will find out about it. The talk goes around, and all they have to do is keep their ears open, and there are enough ears around now that it happens very quickly. You can't even get to the dock before people are telling them what's going on. That's how fast news travels. There are no secrets on what is going on out at sea. It's already been recorded, and it hasn't changed. If anything, it has changed for the better as far as reducing bycatch, which our family has been able to do over time. With our electronics and the way we fish, we have been able to reduce our bycatch tremendously. I am down to about ¼ of 1% with the bycatch on average, when I am pelagic fishing for mackerel, herring, or even illex squid. And that's not bad. I was told in the mid-80s that anything less than 4% was a clean fishery back then. But since then, it has to approach zero, but I don't know how much closer to zero we can get. When you get 30 tons of product and you only cover the bottom of a basket with bycatch, that's nothing. Years ago, I do remember port samplers coming down, measuring my fish, taking the ice pick and getting length frequencies. I don't see that anymore. That occurs at-sea with the observers, but that's still a way of doing it, and that worked fine.

Don't add any more observers to the fishermen. Ten years ago, the crew on my boat used to pay the fuel. It used to be about eight cents on the dollar for fuel. Last year, fuel rose to 42 cents of

every dollar I stocked. Now with fuel over \$4 a gallon, I'll probably be pushing 60%-70% of my gross. I haven't had a price increase on my fish since the mid-80s. I catch a high-volume fish so the housewife can afford it worldwide, but there are a lot of hands have to dip into that pot before I get to see the money. And now organizations want to dip into my pot some more and make me pay observer costs. It used to take about 50% of the gross on the boat's side to pay for insurance, mortgage, interest, upkeep of the vessel, and engine repairs – about 50 cents on the dollar. Last summer, after I paid the crew and the fuel, I didn't have the mortgage, interest, and upkeep of the vessel, and this year is even worse. Everything that the whole group trying to regulate fishermen is doing a good job of putting fishermen down more and more, but the fuel is going to do that for you. It's going to be a moot point unless the councils actually get together and help make this fuel issue known to the Secretary who has to sign these fish plans. You ought to send a note to him because something needs to be done. It's terrible, and it's not going to last long.

Regarding limited access or ITQs, or some form of ownership of the ocean's product – I guess so they can figure out another way to jump into fishermen's pockets. But because I have been burned a few times down here in the Mid-Atlantic over what has happened with the regulations between New England and the Mid-Atlantic, I am very cynical. I am looking at this as another product grab. I haven't quite seen how I am going to lose out yet. One way I am leaning towards is yes, I qualify for Area 1A with my vessel. I haven't prosecuted that fishery, mainly because of the price of the product versus fuel and being away from home if I can make money in my backyard. I haven't been up to the Gulf of Maine since 2000. If they are going to choose history from 2000-2006, guess who will be left in the cold as far as getting any kind of chance at the quota. My boat is a pelagic boat, and I depend on the pelagic fish. I do fish the range of the species, but because I don't live in New England, and I haven't fished up here in the last 5 years, I could stand to lose if they use history and choose that are to take it from. My suggestion is that if you are going to go into that direction, the people have already qualified for 1A. You had to come up with a pretty big tonnage to get into 1A. I would suggest that's already been set. The qualification is already there. It doesn't need to be revisited. Don't even bother using the history. If you have a 1A permit, you should have an equal crack at whatever the shares are going to be, no matter what size vessel you have. If you have already qualified for 1A, you're your permit already tells you what you have. If it's a few fishermen that are colluding together to kick out one or two of the big boats from Cape May, and maybe one or two of the boats from Rhode Island or Massachusetts because they don't fish up here now, I don't like that. It's not fair and equitable, so I would suggest not to do that. Thank you.

Jeff Kaelin, Winterport ME – I am representing the F/V Providian, Ocean Spray Partnership, and New England Fish Company. I won't go into a lot of detail tonight because I did give about 12 pages of comment up in Maine last week. One thing I wanted to say tonight relative to this mackerel bycatch issue that Lars and Greg mentioned, I am also a mackerel advisor, and we talked about this issue at length today in the context of the mackerel specification process. Our concern is that with mackerel, the 20,000 pound allowance for herring fishing if the mackerel fishery closes is low. In our comments to you the other night, we said we get 20,000 in mackerel, so we should give the Mid-Atlantic guys 20,000 too, with the intent of moving both plans to something that is more equitable. I think the 25 tons is a good target number.

We didn't make any progress today with the Mackerel Committee to move the mackerel bycatch allowance. We do like a percentage approach more. The Service's position right now is that you can't do a percentage. It used to be ten percent by volume in terms of the amount of mackerel

that herring vessels could take once the mackerel fishery ended. I think that's difficult to understand because the observer program in fact does estimate bycatch based on sampling and looking at a percentage, yet the enforcement people say we can't use a percentage. Be that as it may, we need to move towards a common number, and the 25 tons makes sense in both fisheries. We heard from Joel today that we can't deal with it through the specifications process because you are creating different permit categories. I don't think it will work through the specifications process. But we have a good opportunity, with a mackerel amendment and a herring amendment going forward, for the two Councils work closely together and give all the members around the table a comfort level that we are not trying to create a new directed fishery. We are trying to find a way for fishermen in both fisheries to not be criminals for taking fish they normally take in their normal operating practices. Thank you.

Jim Ruhle, Mid-Atlantic Council – I am the Chairman of the Squid, Mackerel, and Butterfish Committee. For the record, I want to state that I was going to make some comments, but I have elected not to, since I am still a member of the Herring Committee. There was a lot of confusion in the last two days from the Sq/Mack/Butterfish Committee, and there was a significant attempt to try to deal with the concerns we've got with the herring fleet, as well as the mackerel fleet here in the Mid-Atlantic. In specifications today, we move forward to the Committee tomorrow that the fishery shuts down at 90% of OY, and then the 20,000 pound trip limit kicks in. The concern that was raised that the 20,000 may not be enough for the herring vessels. The motion now reads that if 90% of the OY is reached on or after June 1, the 50,000 trip limit takes place.

So, if we get to that point without triggering OY, then you have the higher trip limit throughout the year. That way, you don't have the concern about exceeding the 90% significantly during the height of the markets. The motion should be reflected. The purpose is to provide the opportunity for that 25 tons, which is actually 55,000. There is a caveat, and that is that OY not be reached during the first six months of the year. Considering the majority of the herring fishery takes place from then on anyway, this was a way to deal with that. That was in the Committee motion to be presented to the Council tomorrow.

Also, in Amendment 11, there will be a tiered qualification so that any vessels that hold a limited access herring permit will qualify for that tier. We would hope that the Herring Committee will give same consideration for those vessels that missed or they don't have the right permit. So the 3 tons should become 25 tons. We do believe that this could be done, and hopefully can be considered through specifications.

Motion – directed mackerel fishery to be closed at 90% of OY. If 90% of OY is reached prior to June 1, a 20,000 pound trip limit results. If 90% of OY is reached on or after June 1, a 50,000 pound trip limit results.

Motion – Tier 1 qualifies with 500,000 pounds with a qualifying period of 1997-2007; Tier 2 qualifies with 250,000 pounds with a qualifying period 1983-2007; Tier 3 have a herring limited access permit or 50,000 pounds with a qualifying period of 1983-2007; and an incidental category with a current mackerel permit as of 3/2007.

Greg DiDomenico, Garden State Seafood Association (GSSA) – Quick question – Was the issue of sectors considered and rejected from the amendment? (Clarified that it was rejected from Amendment 1 and is being reconsidered in this amendment.)

One thing we would have concerns about if we went to sectors or some type of allocation is that we do believe that qualifying history or landings should be prior to 2007. The possible dates could be January 1, 1993 – December 31, 2006. Thank you.