



New England Fishery Management Council

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C.M. "Rip" Cunningham, Jr., *Chairman* | Paul J. Howard, *Executive Director*

Public Comments received  
at the following Draft Amendment 5 Public Hearings

Portland, ME  
Plymouth, MA  
Warwick, RI  
Cape May, NJ

*Public hearing summaries will be available at a later date and  
posted to our website.*



March 28, 2012

Over the past decade there have been declines in river herring. The decline has been alarmingly noticeable, therefore in 2004 the a closure of the river herring fishery within Rhode Island inland waters was implemented. At the time there was no clear understanding for these declines in returning alewife and blueback herring. Many thought it was predatory increase or overfishing by anglers, and lobster fisherman.

Since the closures were implemented there has been monitoring many of these river systems, collecting data on the number of fish returning each year to spawn. Many of these rivers and streams are also being monitored for water quality information as well. There have been many notable and costly restoration projects, such as dam removals, habitat restoration, fish ladder installations, and repairs to existing ladders. Some organizations even put together groups of volunteers that work diligently to lift hundreds of thousands of herring over dams where no passage exist. Over the better part of the past decade, not one of our rivers are showing any sign that the herring are returning to their original stock status despite all the efforts made thus far.

Alewife and blueback herring are one of the most important part of the ecosystem of the ocean. They help to provide a balanced diet for so many species, like striped bass. Now there are concerns of diseased striped bass being detected with micro bacteriosis. It is being considered due to malnourishment. Osprey, Bald Eagles, once endangered have now got to compete for the few returning herring to sustain themselves and their hatchlings.

In our inland waters the annual herring runs once teaming hundreds of thousands of fish would bring people to observe this amazing site, or to take as many as 12 fish on a limited number of days as bait. Fisherman would bring along their young children so they could also experience such an amazing event of nature. Many areas once realised economic growth due to the herring runs because of visitors from all over who came to witness the event, or from anglers purchasing supplies, bait and tackle. However those boom days are gone now which is especially sad considering the overall economic downturn.

The commitment from land will continue, however there is only so much that can be accomplished from land. River herring only spend a very short portion of their life within our inland waters. This is why we need to address the bigger picture in our ocean waters especially within three miles of coastlines. I encourage this council to implement catch caps on river herring, where currently there are none. Secondly, increase Federal on board observers to finally provide accountability, and ending the practice of at sea dumping where no observers are available.

Paul Earnshaw



President

Buckeye Brook Coalition

P.O. Box 9025



**Draft Comments, Lund's Fisheries, Inc.**

**A5 to Atlantic Herring FMP – Thursday 3/29/12 Cape May hearing, Congress Hall 7pm**

**Sec. 3.1 PROPOSED ADJUSTMENTS TO THE FISHERY MANAGEMENT PROGRAM**

**Sec. 3.1.1 Regulatory Definitions (Transfer at Sea and Offload)**

We support the establishment of regulatory definitions for *transfer at sea* and *offload* as an intent to clarify the regulatory definition of existing fishing operations, including clarifying that pair trawling does not represent a transfer at sea, increase the potential for accurate reporting in the fishery and minimize the potential for catch to be double-counted.

**Sec. 3.1.2 Administrative/General Provisions**

We support the proposed regulatory change that would clarify that vessels working cooperatively in the herring fishery are subject to the most restrictive possession limit associated with any of the vessels. The amendment refers to “paired purse seine operations”, which is a description that we are not familiar with in the Atlantic herring fishery; traditionally, any purse seine skiff being used to set a purse seine has been considered part of the purse seiner itself and not a “paired vessel.”

We support the amendment’s intent to make VMS power-down provisions consistent with the multispecies, scallop and surf clam/ocean quahog fleet and allow VMS units to be powered down after the issuance of a Letter of Exemption (LOE), if the vessel is expected to be out of the water or not fishing for an extended period of time.

We support the establishment of a new Federal At-Sea Herring Dealer permit for carrier vessels or other vessels selling Atlantic herring to any entity since the intent is to improve reporting in the fishery. We encourage the agency to ensure that double-counting of landings is minimized through this change.

**Sec. 3.1.3 Measures to Address Carrier Vessels and Transfers of Atlantic Herring At-Sea**

We support 3.1.3.2 Option 3, which would provide flexibility for herring carriers to either utilize a VMS for declaration, thereby eliminating the minimum seven-day enrollment period and allow for engagement in other activities, or maintain the status quo (minimum seven day enrollment period with LOA restrictions), which would accommodate smaller carrier vessels that do not utilize VMS.

We support 3.1.3.3 Option 1, which would make no changes to current provisions regarding the transfer of fish at sea. It is our understanding that current reporting requirements are adequate to determine and segregate catches and allow for the transfer of herring at sea to vessels without a herring permit, for personal use as bait.

### **Sec. 3.1.4 Trip Notification Requirements**

We support a combination of 3.1.4.2 Option 2 and 3.1.4.3 Option 3, which would expand and standardize current trip notification requirements throughout the herring fishery, as we understand the proposal. We are unclear why Option 2 would not reach Category D vessels fishing in Area 2 and why Option 2 is limited only to fishing for herring with midwater trawl gear. Option 3 seems to include all fishing activity in Area 2, and in other herring management areas, and require both observer and enforcement notifications regardless of gear type used. It is our understanding that the small mesh bottom trawl fleet can also take river herring as an incidental catch, not only in the Gulf of Maine but also in Area 2 during the winter months, so it makes sense that all vessels working in the directed herring fishery, whether it be with an A, B, C or D permit be required to both call for observers before fishing and notify NMFS law enforcement before landing, so that monitoring activities, both at sea and shoreside, can provide the most complete picture of what is being caught and landed in the fishery.

Based upon herring fishery landings and other data that has been reviewed during the development of Amendment 5, our understanding is that the number of Category D vessels that would be regulated under this change, and others proposed in this amendment, would be only about 10% of the Category D permits issued. *(For example, Page 6 of the PHD tells us that 2,258 Category D herring permits were issued in 2010 while Page 19 of the PHD tells us that only 244 Category D herring permit holders are expected to qualify for mackerel limited access permits; we can assume that only this limited number of Category D permits were also fishing for herring when they encountered mackerel, likely while fishing in Area 2. While this calculation does not take into account the number of Category D permit holders landing herring in the Gulf of Maine, we expect that the total number of Category D vessels actually fishing for herring are far fewer than the 2200 total number of permits issued. There seems to be a need to rationalize the number of Category D permits that are being issued. We would support a requirement that all Category D permit holders have VMS on board when fishing directly for herring and would anticipate that the number of herring Category D permits applied for would likely drop dramatically if this requirement were imposed.)*

### **Sec. 3.1.5 Reporting Requirements for Federally Permitted Herring Dealers**

We support 3.1.5.2 Option 2, which would require dealers to accurately weigh all fish, and *Sub-Option 2B*, requiring dealers who do not sort by species to document, for individual landing submissions, how they estimated the relative composition of a mixed catch, to facilitate both quota monitoring, incidental catch analysis and cross-checking with other data sources.

We are opposed to 3.1.5.2, *Sub-Option 2C*, which would require dealers to obtain vessel confirmation of SAFIS transaction records to minimize data entry errors at the first point of sale. This proposal seems to be focused on minimizing discrepancies between vessel hauls (an estimate of what is on board) and actual amounts of herring that is purchased by dealers. It places fishermen and dealers in a potentially adversarial, competitive regulatory posture that should be reserved for the Agency, as we understand what is being proposed. If catch is weighed and sorted after landing, dealer reports should become the primary data source for quota monitoring by the Agency, as we understand to already be the case today.



Weighing and sorting will make dealer reports more accurate than they are today and eliminate the need for fishermen and dealers to compare their reports, and potentially be penalized if estimates and actual weights vary, which they will certainly continue to do.

### **Sec. 3.1.6 Changes to Open Access Permit Provisions for Limited Access Mackerel Vessels in Area 2/3**

We support 3.1.6.2 Option 2, which would establish a new open access herring permit for limited access mackerel fishery participants, in Areas 2/3 only, who do not have a limited access herring permit. This permit would be associated with a 20,000 pound possession limit for herring and would assist these vessels by providing a reasonable incidental catch allowance of herring to allow them to be able to fish for mackerel and may reduce discards of herring. This amount equates roughly to the 25,000 pound mackerel incidental catch allowance, made by the MAFMC, for vessels fishing for herring, in all herring management areas, which was established in Amendment 11, the mackerel limited access amendment.

We also urge the Council to begin now to plan for allocating a significant set-aside of Atlantic herring, and explore other options during the upcoming specifications process, to facilitate an Atlantic mackerel fishery in the future that is not severely limited by lack of availability of Atlantic herring, as is the case this year. This year, the expiration of the Area 2 herring quota will keep more than 50 million pounds of mackerel from being harvested, at the same time that herring continue to be widely available in Area 2, according to accounts by vessel captains. Vessels are tied up today due to this fact and millions of dollars of wasted mackerel quota will not be taken due to the failure of the Agency and the NEFMC to set-aside herring quota for this purpose, as we requested when the current specifications were established. We estimate that a 10,000 metric ton set-aside may be adequate for this purpose, given the size of the current mackerel quota, and since the herring-to-mackerel mixing ratio can often be as much as 30%. It is our hope that the ongoing assessment will provide an opportunity to return the Area 2 quota to a level exceeding 30,000 metric tons, as has been the case in the past, to facilitate a mackerel fishery in the future.

### **Sec. 3.2 CATCH MONITORING: AT-SEA**

#### **3.2.1 Alternatives to Allocate Observer Coverage on Limited Access Herring Vessels**

Throughout the development of Amendment 5, we have argued that the herring fishery should not be singled out as being required to pay for excessive levels of observer coverage, beyond what the Agency and Council may prioritize through the SBRM process; a treatment similar to other fisheries managed by the Council.

We have taken this position because we believe that the herring fishery is one of the 'cleanest' fisheries in the region, and that this fact continues to be borne out by the data coming out of both the at-sea observer program and the shoreside monitoring program, a program that we believe should be continued in the region.

We have heard herring PDT members say that there is a limit as to the precision and accuracy of catch data accumulated through the observer program, even if the coverage level were to be at 100%, and have heard members of the scallop PDT state that observer coverage levels of about 30% in that fishery are adequate and that 100% observer coverage is unnecessary to satisfactorily monitor the scallop fishery, another regional fishery that we are active in.

Even so, we and the majority of other Category A-permitted herring vessels owners, are willing to support observer coverage levels of 100 per cent in the herring fishery, for a limited period of time, because we remain convinced that the data will continue to show that incidental catches in this fishery are not of significant biological concern to haddock, shad, river herring or any other regional fishery stocks. We are taking this position as a challenge to our detractors, who so far have shown no interest in the actual data coming from current monitoring programs and who continue to make unsubstantiated claims about how the herring fishery operates. We will take observers at a 100% rate to continue to demonstrate that the herring fishery is a responsible fishery.

We take this position with a couple of caveats, however. First, we do not support maintaining 100% observer coverage levels in the herring fishery forever since we do not believe this coverage rate is necessary and because the expense can be significant. We suggest that a 100% requirement be temporary and only last two years, after which time the PDT should be tasked to analyze the data and report to the Council as to whether or not this level of coverage is necessary to adequately monitor the herring fishery in the future.

Second, we are only willing to purchase observer coverage, beyond those levels that may be allocated through the SBRM process, and up to 100%, if the daily cost can equate to the \$325 a day rate paid by the West Coast H&G fleet, a fleet whose observer coverage rates have been suggested as a model for the herring fishery during the development of Amendment 5 by those who argue that we are under regulated and operating unsustainably. We are opposed to paying the \$1200 a day rate calculated by the observer program since this represents a cost that would not be sustainable in the low value Atlantic herring fishery.

Third, we only support a temporary, 100% observer program in the herring fishery if the program would authorize the Agency to provide a vessel with a waiver if a Federal observer, or an observer from an approved observer service provider, is not available for a particular trip. We simply cannot afford to have our vessels tied up if an observer is not available to us for some reason and we are willing to both take and pay for an observer on that trip.

### **Sec. 3.2.2 Management Measures to Improve/Maximize Sampling At-Sea**

We support the addition of the provisions listed in Sec. 3.2.2.2, which are intended to improve sampling by observers at-sea and we understand that many of these provisions are already in place; these include requirements for a safe sampling station, requirements for 'Reasonable Assistance', requirements to provide notice, requirements for trips with multiple vessels, improving communication on pair trawl vessels and providing visual access to the net and codend. It is our understanding that the relationship between the Federal observers that have been on our vessels over the past few years and our fishing captains is excellent and we have



attempted to cooperate with every request made to us by the observer program throughout this period of time.

### **Sec. 3.2.3 Measures to Address Net Slippage**

We support Sec. 3.2.3.2 Option 2 requiring the use of a released catch affidavit for ‘slippage events’ and understand that these affidavits are already in use, with the support of vessel owners and captains.

We are opposed, however, to the continued application of the Closed Area 1 Sampling Provisions (Sec. 3.2.3.3), either within Closed Area 1 or elsewhere because of the requirement that all fish be brought on board for sampling and inspection by the observer. As we have repeatedly pointed out during the development of Amendment 5 there are significant operational restrictions that make it impossible, or dangerous, to bring the pump and codend over the rail during fishing activities on midwater trawl fishing vessels. Our captains tell us that the observers have no problem seeing what remains in the net after pumping, while the net remains alongside the vessel and, as we indicate above, we have no problem providing visual access to the net and codend so that the observer can do his or her job.

We are strongly opposed, however, to all of the options listed in Sec. 3.2.3.4 Options 4A through 4D (proposing catch reduction and trip termination) as being simply punitive in nature and not being constructive to the ongoing cooperation between our captains and the observers on our vessels.

In addition, we urge the Council and the Agency to repeal the Closed Area I regulations since there is no indication that incidental catches in Closed Area I differ significantly from those in other areas where the herring fishery operates and due to the fact that there is no data to indicate that the herring fishery is having any significant mortality effect on any groundfish species, either inside or outside of Closed Area I.

It is important, however, to retain in regulation that fish can be released throughout the herring fishery if the vessel operator finds that:

1. Pumping the catch could compromise the safety of the vessel;
2. Mechanical failure precludes bringing some or all of the catch aboard the vessel; or
3. Spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch.

Finally, as we all know, the Council’s habitat and groundfish committees are moving towards either eliminating Closed Area I or modifying the area due to its lack of relevance today as either a groundfish protection or habitat protection area, making regulations specific to the area equally irrelevant to managing the herring fishery today or in the future.

### **Sec. 3.2.4 Maximized Retention Alternative (Experimental Fishery)**

We support Sec. 3.2.4.1, the no action alternative. Herring vessels would continue to operate under the regulations and possession limits for any fisheries for which they possess permits.

Amendment 5 would add other regulatory changes, which we could support, consistent with our comments.

The herring fishery has taken place in this region for more than 100 years and was the first fishery to agree to hard quotas, more than a decade ago with the approval of the Federal FMP, by the Council and Agency, in 2001. The idea that the herring fishery should be operated as an experimental fishery has been suggested by advocates who clearly would like to eliminate the majority of the fishery and the vessels in it. This proposal only has punitive value and should be summarily rejected by the Council.

### **Sec. 3.3 MANAGEMENT MEASURES TO ADDRESS RIVER HERRING BYCATCH**

#### **Sec. 3.3.2 River Herring Monitoring/Avoidance**

The public hearing document tells us that the long-term goal of this section of the proposed amendment is to adopt river herring bycatch avoidance strategies in the time and areas where interactions with the herring fishery are observed or anticipated.

At the same time, the Magnuson-Stevens Fishery Conservation and Management Act's National Standard Nine requires that "*conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.*" National Standard One requires that "*conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the United States fishing industry.*" The Atlantic herring fishery is not considered overfished, nor is overfishing occurring, so maintaining OY in the fishery must be a Council priority.

We agree with the amendment's goal, since it has now become clear to us that minimizing the incidental catch of alosine species has recently become both a public and a Council interest and we recognize our duty under the law to reduce the incidental catch of these fish.

As this amendment has developed over the last few years, however, we have come to the realization that most of the river herring monitoring and avoidance strategies proposed by the Council in the amendment do not recognize the temporal and spatial variations dictating where river herring will be from year to year, or even from day to day, and that the extensive areas that are proposed to be closed threaten our ability to continue to catch herring, either to provide an important baitfish for the region's lobster and crab fisheries or to export high quality, nutritional herring for human consumption when international markets are available to us under favorable terms.

Consequently, during the past two years, we have been working with other boat owners, organized as the Sustainable Fisheries Coalition (SFC), and in partnership with the Massachusetts Division of Marine Fisheries (DMF) and the UMASS Dartmouth School of Marine Science and Technology (SMAST), to replicate a bycatch avoidance project already in use in the scallop fishery, to reduce the incidental catch of yellowtail flounder; an approach recognized as effective by this Council.

Our project, funded for the past two years through the National Fish and Wildlife Foundation, and with recent financial support from the Nature Conservancy to allow for the participation in the project by small mesh bottom trawl fishermen, is already working to create awareness of the issue within the fleet and direct effort away from where river herring species are known to be on a daily, real time basis. At this time, we are seeking additional funding through the MAFMC RSA program, so that this low cost, real time program can continue into the next fishing year. This program includes a goal of monitoring 50% of trips that are landed, so that incidental catches can be identified and quantified.

Within this context, we support Sec. 3.3.2.2.4 Option 4, a two-phase bycatch avoidance approach based on SFC/SMAST/DMF project, as the only option that will work to reduce the incidental catch of river herring in the herring fishery and allow for the continued production of optimum yield from the Atlantic herring resource. The project should involve all vessels directing on Atlantic herring, including Category A, B, C and D permit holders. VMS is essential to the success of this project and therefore, all Category D permitted vessels directing on Atlantic herring should be required to have VMS on board.

#### **Sec. 3.3.5 River Herring Catch Caps**

We support the Council considering a biologically-based river herring catch cap through a framework adjustment to the herring FMP or the herring specifications process after the ASMFC completes its stock assessment. We recognize that the employment of a reasonable cap would complement the efficacy of the SFC/SMAST/DMF project. A shoreside monitoring component would be necessary, however, to allow the fleet and the agency to know how much of the cap had been taken at any particular time during the fishing season.

Recently, we participated in a meeting where a preliminary ASMFC assessment report was presented to the Commission's Shad and River Herring Technical Committee and understood one of the conclusions to be that current levels of river herring fishing mortality did not collapse river herring stocks up and down the coast and that, if the current level of incidental catch in the herring fishery were entirely limited, all riverine herring runs would not recover due to the myriad mortality threats that these species face. The relative mortality effects of incidental catches in the herring fishing would be critically important to understand before setting a biologically-based catch cap.

#### **Sec. 3.4 MANAGEMENT MEASURES TO ADDRESS MIDWATER TRAWL ACCESS TO GROUND FISH CLOSED AREAS**

As stated above, we believe that there is no relationship between incidental catches in the Atlantic herring fishery and the groundfish closed areas. The GFCAI provisions (CFR §648.80) should be repealed upon implementation of this amendment for this reason and access to the groundfish closed areas should be retained for both herring midwater trawlers and purse seiners, through a LOA issued by the agency, as had been the case for many years.

In response to a previous legal challenge to midwater trawlers' rational access to GFCAI and other mortality closures, in a brief to a Federal court in June 2009, Agency attorneys wrote, "*even if bycatch in the herring fishery (was) hundreds of times the level suggested by the data, then there would be no compelling reason to suspect that haddock or other groundfish stocks (are) imperiled.*" The Agency also clarified in its brief that, "*by contrast, the directed groundfish fishery's total allowable catch of haddock is... 500 times the (existing) herring bycatch cap*" and "*for those stocks that are undergoing overfishing, the bycatch in the herring fishery is so miniscule that the measures sought (evicting herring vessels) could not prevent overfishing of these stocks.*"

In conclusion we strongly support Sec. 3.4.1 *Alternative 2 – Pre-Closed Area I provisions*, which would reestablish criteria for midwater trawl vessel access to the groundfish closed areas based on provisions prior to the implementation of the Closed Area I rule.

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**The Great Egg Harbor  
Watershed Association &  
River Council**

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March 29, 2012

Paul J. Howard, Executive Director  
50 Water Street, Mill #2  
Newburyport, MA 01950

RE: Draft Amendment 5

Dear Executive Director Howard:

The Great Egg Harbor River supports breeding River Herring, and we are very concerned about the future of our River Herring populations. The current study for their listing under the Endangered Species Act is a reason to move quickly to protect this fish species and other species in the ecosystem dependent on River Herring.

Amendment 5 was initiated almost five years ago, following a wave of public outcry to address concerns with industrial trawling, and the dangerous, poorly regulated practices allowing these huge ships to severely impact the marine food web. Herring trawlers are the largest vessels on the East Coast, and their football field-sized nets catch and kill millions of pounds of unintended catch every year, including depleted fish, like bluefin tuna, river herring, shad, and cod, as well as whales, dolphins, and seabirds.

Specific concerns with the fishery include inadequate monitoring, unmanaged catch of river herring, continued killing of groundfish within closures designed to protect them, and the wasteful practice of dumping catch at sea. Alarming interactions with groundfish also continue, as midwater trawl fishermen demanded and received a five-fold increase in their haddock bycatch allowance.

Since the initiation of Amendment 5, these problems have continued to get worse. The National Marine Fisheries Service (NMFS) has repeatedly proven unable to enforce Atlantic herring quotas, the first step in fishery management, due to inadequate catch monitoring. In addition, the practice of dumping catch at sea continues to undermine efforts to identify and record everything that is caught by herring vessels.

We strongly urge you to approve a comprehensive monitoring and management reform program that brings greater accountability and oversight to the industrial trawl fleet. At minimum, the following actions must be approved:

[www.gehwa.org](http://www.gehwa.org) – The Official Website of the Great Egg Harbor Watershed Assoc.

- 100 percent at-sea monitoring on all midwater trawl fishing trips (i.e., Category A& B vessels) in order to provide reliable estimates of all catch, including bycatch of depleted river herring and other marine life (Section 3.2.1.2 Alternative 2).
- An accountability system to discourage the wasteful dumping of catch, including a fleet-wide allowance of five slippage events for each herring management area, after which any slippage event would require a return to port (Section 3.2.3.4 Option 4D).
- No herring midwater trawling in areas established to promote rebuilding of groundfish populations (Section 3.4.4 Alternative 5).
- An immediate catch limit, or cap, on the total amount of river herring caught in the Atlantic herring fishery (Section 3.3.5, Modified to require immediate implementation of a river herring catch cap).
- A requirement to accurately weigh and report all catch (Section 3.1.5 Option 2).

Thank you for considering measures designed to revise the Atlantic Herring Fishery Management Plan to protect the River Herring and other bycatch species.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fred Akers', written in a cursive style.

Fred Akers