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New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
C.M. "Rip" Cunningham, Jr., *Chairman* | Paul J. Howard, *Executive Director*

Additional Written Comments

Draft Amendment 5 to the Herring FMP

From: Earthjustice <action@earthjustice.org> on behalf of M McGillivary
Sent: Monday, March 19, 2012 7:28 PM
To: comments
Subject: Comments on Draft Amendment 5

UPDATED AS OF 4/23/12
Example of 3047 Batch
Emails Rec'd to date

Mar 19, 2012

Captain Paul Howard, New England Fishery Management Council
50 Water Street, Mill #2
Newburyport, MA 01950

Dear Captain Howard, New England Fishery Management Council,

I am writing to express my concern about poorly managed industrial fishing and the damage it inflicts on the ocean ecosystem. Inadequate monitoring, unmanaged catch of river herring, continued killing of groundfish within closures designed to protect them, and the wasteful practice of dumping are significant and pressing concerns.

I am especially concerned about populations of river herring, which have declined by 99 percent and are so depleted that they are being considered for protection under the Endangered Species Act.

Most Atlantic states now ban the harvest of river herring in coastal waters, even to the point of prohibiting children from netting one for bait. Yet astoundingly, no protections have been extended to these fish in the open ocean, where they are taken by the millions as profitable bycatch in the industrial fishery targeting a different species, Atlantic herring.

This is unacceptable and represents a significant setback in the ongoing efforts to restore alewife and blueback herring. Every year, states and communities throughout New England invest significant time and resources to restore their river herring runs. The New England Fishery Management Council must support, not undermine, these efforts.

Your revision to the Atlantic Herring Fishery Management Plan must address these issues and bring greater accountability and oversight to the industrial trawl fleet. I strongly urge you to approve a comprehensive monitoring and bycatch-reduction program that incorporates the following management actions:

- * A 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 catch cap).
- * 100 percent at-sea monitoring on all mid-water trawl fishing trips 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 slippage, or dumping, of catch, including a fleetwide limit 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).
- * A ban on herring mid-water trawling in areas established to promote rebuilding of groundfish populations (Section 3.4.4 Alternative 5).
- * A requirement to accurately weigh and report all catch (Section 3.1.5 Option 2).

Thank you for considering my comments and for your continued commitment to improving management of the Atlantic herring fishery.

Sincerely,

M McGillivary

Eugene, OR 97401

Alicia LaPorte
1621 1st St NW
1
Washington, DC 20001-1101

Mar 8, 2012

Paul Howard
New England Fishery Management Council

Subject: Re: Atlantic Herring Fishery Management Plan

Dear Paul Howard,

I am writing to express my concern about poorly managed industrial fishing and the damage it inflicts on the ocean ecosystem, especially to river herring. Populations of these fish have declined by 99 percent and are so depleted they are being considered for protection under the Endangered Species Act.

Most Atlantic states now prohibit the harvest of river herring in coastal waters, even to the point of prohibiting children from netting one for bait. Yet astoundingly, no protections have been extended to these fish in the open ocean, where they are taken by the millions as profitable bycatch by industrial herring ships.

This is unacceptable and represents a significant setback in the ongoing efforts to restore alewife and blueback herring. Every year, states and communities throughout New England invest significant time and resources to restore their river herring runs. Many tireless citizens carefully shepherd migrating river herring past in-river obstacles by hand. The council must support, not undermine, these efforts.

As the council finalizes its revision to the Atlantic Herring Fishery Management Plan, I strongly urge you to approve a comprehensive monitoring and bycatch reduction program that incorporates the following management actions:

- * Immediate implementation of a catch limit, or cap, on the total amount of river herring caught in the Atlantic herring fishery (Section 3.3.5).
- * 100 percent at-sea monitoring on all midwater trawl fishing trips 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 slippage or 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).
- * A requirement to accurately weigh and report all catch (Section 3.1.5 Option 2).

City and State of those 759 commenting, taken from the summary given by PEW Environmental

City	State	City	State	City	State	City	State
Stevenson	AL	Richmond	CA	Bakersfield	CA	Santa Cruz	CA
Pleasant Grove	AL	Los Angeles	CA	Santa Barbara	CA	Los Angeles	CA
Jacksonville	AL	Fresno	CA	Sacramento	CA	Saugus	CA
North Little Rock	AR	Alamo	CA	Cupertino	CA	Santa Cruz	CA
Haskell	AR	San Lorenzo	CA	Kirkwood	CA	San Luis Obispo	CA
Cabot	AR	Foster City	CA	Walnut Creek	CA	Lodi	CA
Tonopah	AZ	Albany	CA	escondido	CA	Davis	CA
orovalley	AZ	Venice	CA	Palm Springs	CA	Los Angeles	CA
Tucson	AZ	Hayward	CA	Simi Valley	CA	Fort Collins	CO
Tucson	AZ	Sherman Oaks	CA	Lake Elsinore	CA	Lakewood	CO
Tucson	AZ	Napa	CA	Palm Springs	CA	Denver	CO
Tucson	AZ	san diego	CA	Mill Valley	CA	Lakewood	CO
Cottonwood	AZ	San Jose	CA	Santee	CA	Northglenn	CO
Phoenix	AZ	Long Beach	CA	Berkeley	CA	Denver	CO
Tucson	AZ	Sacramento	CA	Napa	CA	Longmont	CO
Tucson	AZ	San Diego	CA	Folsom	CA	Pagosa Springs	CO
Tucson	AZ	San Diego	CA	Palmdale	CA	Golden	CO
scottsdale	AZ	Temecula	CA	San Mateo	CA	Carbondale	CO
Tucson	AZ	Piedmont	CA	Santa Rosa	CA	Denver	CO
Sun City	AZ	Los Angeles	CA	Vallejo	CA	Arvada	CO
Phoenix	AZ	Berkeley	CA	Ojai	CA	Louisville	CO
Auburn	CA	Costa Mesa	CA	Palm Springs	CA	Norwalk	CT
Montara	CA	Merced	CA	Studio City	CA	North Branford	CT
Hayward	CA	Menlo Park	CA	Malibu	CA	Fairfield	CT
Toluca Lake	CA	Albany	CA	Merced	CA	Bridgeport	CT
Sacramento	CA	San Francisco	CA	Tujunga	CA	Quinebaug	CT
W Hollywood	CA	Valley Village	CA	Anaheim	CA	Cromwell	CT
W Hollywood	CA	Los Angeles	CA	Santa Cruz	CA	Pawcatuck	CT
Agoura	CA	San Francisco	CA	Stockton	CA	Storrs Mansfield	CT
Novato	CA	San Francisco	CA	San Francisco	CA	Meriden	CT
Applegate	CA	San Francisco	CA	Los Angeles	CA	Madison	CT
Los Gatos	CA	Van Nuys	CA	Lancaster	CA	East Canaan	CT
West Hills	CA	Oakland	CA	Los Angeles	CA	Berlin	CT
Escondido	CA	Los Angeles	CA	La Jolla	CA	Windham	CT
San Diego	CA	Camarillo	CA	Glendale	CA	New Haven	CT
Mount Shasta	CA	Fresno	CA	Saint Helena	CA	Stamford	CT
Fort Bragg	CA	Glendale	CA	Laguna Niguel	CA	Milford	CT
Murrieta	CA	Long Beach	CA	San Marcos	CA	Norwalk	CT
San Jose	CA	Pacific Palisades	CA	Fountain Valley	CA	Enfield	CT
La Jolla	CA	Fountain Valley	CA	Orange	CA	Mansfield Center	CT
Riverbank	CA	Aliso Viejo	CA	Hesperia	CA	Shelton	CT
Sacramento	CA	Laguna Niguel	CA	Santa Monica	CA	Meriden	CT
Hollywood	CA	Ventura	CA	Point Reyes Station	CA	Stratford	CT
Los Angeles	CA	San Francisco	CA	Riverside	CA	West Hartford	CT

Lake Elsinore	CA	Rancho Palos Verd	CA			New Haven	CT
Los Angeles	CA					Storrs	CT
Tolland	CT	Tampa	FL	Alsip	IL	Middleboro	MA
Trumbull	CT	Boca Raton	FL	Highland Park	IL	Clinton	MA
Avon	CT	Boca Raton	FL	Westmont	IL	Northfield	MA
South Glastonbury	CT	Orlando	FL	Chicago	IL	Harvard	MA
Stratford	CT	Jacksonville	FL	Chicago	IL	Arlington	MA
New London	CT	Atlantic Beach	FL	Chicago	IL	Marshfield	MA
Stamford	CT	Atlantic Beach	FL	Oak Park	IL	Dracut	MA
Milford	CT	Jacksonville	FL	Chicago	IL	Lancaster	MA
Washington	DC	Jacksonville	FL	Arlington Heights	IL	New Bedford	MA
Washington	DC	Tampa	FL	Chicago	IL	Wakefield	MA
Washington	DC	Tampa	FL	Hoffman Estates	IL	Melrose	MA
Washington	DC	Tampa	FL	Highland Park	IL	Florida	MA
Middletown	DE	Fort Myers	FL	New Douglas	IL	Wellfleet	MA
Newark	DE	Lake Mary	FL	Glen Ellyn	IL	Cambridge	MA
Lantana	FL	Smyrna	GA	Chicago	IL	Cambridge	MA
Atlantic Beach	FL	Decatur	GA	Palatine	IL	South Dennis	MA
Orlando	FL	Atlanta	GA	Lake IN The Hills	IL	Sandwich	MA
Punta Gorda	FL	Douglasville	GA	Midlothian	IL	Duxbury	MA
Cooper City	FL	Smyrna	GA	rensselaer	IN	Arlington	MA
Cocoa Beach	FL	Temple	GA	cc	IN	cohasset	MA
Miami	FL	Atlanta	GA	Fort Wayne	IN	Woods Hole	MA
Lady Lake	FL	Arnoldsville	GA	Bloomington	IN	Boston	MA
Melbourne	FL	Athens	GA	Fort Wayne	IN	North Adams	MA
St Petersburg	FL	Kailua	HI	Munster	IN	Gilbertville	MA
Apopka	FL	Lihue	HI	Newburgh	IN	Cambridge	MA
Saint Cloud	FL	Kailua	HI	Merrillville	IN	Aquinnah	MA
Port St Lucie	FL	Evansdale	IA	Manhattan	KS	Braintree	MA
miami	FL	Ames	IA	Topeka	KS	Newburyport	MA
Venice	FL	Keokuk	IA	Lawrence	KS	Plymouth	MA
Tampa	FL	Cedar Falls	IA	Frankfort	KY	Watertown	MA
Jacksonville	FL	Windsor Heights	IA	Baton Rouge	LA	Cambridge	MA
Spring Hill	FL	Iowa City	IA	River Ridge	LA	Stoneham	MA
St Petersburg	FL	Boise	ID	Duxbury	MA	Brookline	MA
Saint Petersburg	FL	New Plymouth	ID	Duxbury	MA	Cambridge	MA
Winter Garden	FL	Lewiston	ID	Ipswich	MA	Boston	MA
Venice	FL	Meridian	ID	West Tisbury	MA	North Falmouth	MA
North Port	FL	Hailey	ID	Salem	MA	Stoneham	MA
Bradenton	FL	Villa Park	IL	Concord	MA	Somerville	MA
Sanibel	FL	Elgin	IL	Somerville	MA	Winthrop	MA
Jacksonville	FL	Naperville	IL	Cambridge	MA	West Dennis	MA
Big Pine Key	FL	Chicago	IL	Boxford	MA	Westwood	MA
Cocoa Beach	FL	Mchenry	IL	Gardner	MA	New Bedford	MA
Longwood	FL	Chicago	IL	Edgartown	MA	Framingham	MA
St Petersburg	FL	Chicago	IL	Acton	MA	Pembroke	MA

Lauderhill	FL	Wilmette	IL	Cotuit	MA	Southwick	MA
Quincy	MA	Falmouth	MA	Kansas City	MO	Trenton	NJ
Amherst	MA	Cockeysville	MD	Florissant	MO	Morristown	NJ
Somerville	MA	Greenbelt	MD	Kansas City	MO	Ocean	NJ
Mendon	MA	Greenbelt	MD	Wildwood	MO	Old Bridge	NJ
Natick	MA	Hagerstown	MD	Saint Louis	MO	Weehawken	NJ
Arlington	MA	La Plata	MD	Kansas City	MO	Iselin	NJ
Worcester	MA	Buckeystown	MD	Kansas City	MO	Jersey City	NJ
Wellfleet	MA	Glen Burnie	MD	Saint Louis	MO	Carteret	NJ
Quincy	MA	Bethesda	MD	Laurel	MS	Hewitt	NJ
Framingham	MA	South Portland	ME	Jackson	MS	Montclair	NJ
Duxbury	MA	York Harbor	ME	Charlotte	NC	Williamstown	NJ
Springfield	MA	York	ME	Concord	NC	Barnegat	NJ
Haydenville	MA	Yarmouth	ME	Halifax	NC	Califon	NJ
Boston	MA	Harmony	ME	Wilmington	NC	Morganville	NJ
Upton	MA	Scarborough	ME	Asheville	NC	Bridgewater	NJ
Ayer	MA	Sanford	ME	Lenoir	NC	Santa Fe	NM
Cambridge	MA	Portland	ME	Hampstead	NC	Albuquerque	NM
Somerville	MA	Freeport	ME	Morganton	NC	Albuquerque	NM
Sheffield	MA	Lincolnville	ME	Arden	NC	Santa Fe	NM
Tewksbury	MA	Waterford	ME	Lexington	NC	Capitan	NM
Holliston	MA	Camden	ME	Beulah	ND	Barcelona, Spain	None
Norwood	MA	Limington	ME	Lincoln	NE	Reno	NV
Framingham	MA	Troy	ME	Papillion	NE	Las Vegas	NV
Quincy	MA	Lewiston	ME	Lincoln	NE	Brooklyn	NY
Jamaica Plain	MA	E. Machias	ME	Exeter	NH	New York	NY
West Falmouth	MA	Hancock	ME	Newton	NH	New York	NY
Quincy	MA	Northville	MI	Hollis	NH	Mahopac	NY
Burlington	MA	Lansing	MI	Alstead	NH	Peekskill	NY
Charlestown	MA	Sterling Heights	MI	Milton	NH	Port Washington	NY
Somerville	MA	Westland	MI	Durham	NH	Saugerties	NY
Boston	MA	Lansing	MI	Newport	NH	Kenmore	NY
Marshfield	MA	Ypsilanti	MI	Londonderry	NH	New York	NY
Boston	MA	Ypsilanti	MI	Exeter	NH	Goshen	NY
Cambridge	MA	Grand Junction	MI	Newtonville	NJ	Schenectady	NY
Colrain	MA	Bloomfield Hills	MI	Newtonville	NJ	Middletown	NY
Aquinnah	MA	Belleville	MI	Jersey City	NJ	Selden	NY
Aquinnah	MA	Belleville	MI	Hammonton	NJ	New York	NY
Duxbury	MA	Minneapolis	MN	Cherry Hill	NJ	Brooklyn	NY
Boxford	MA	Chisago City	MN	Madison	NJ	Mount Sinai	NY
Plainville	MA	Nevis	MN	Garfield	NJ	New Rochelle	NY
Amherst	MA	Hutchinson	MN	Warren	NJ	High Falls	NY
Swampscott	MA	White Bear Lake	MN	Collingswood	NJ	New York	NY
Cambridge	MA	Maple Grove	MN	Bloomington	NJ	New York	NY
Peabody	MA	Madelia	MN	Princeton Junction	NJ	New York	NY

Winchester	MA	Moorhead	MN	Milford	NJ	Brooklyn	NY
Montauk	NY	New York	NY	Williamsport	PA	Richardson	TX
Syracuse	NY	Massapequa Park	NY	Canonsburg	PA	Plano	TX
Binghamton	NY	New Rochelle	NY	Hellertown	PA	Austin	TX
New York	NY	Gloversville	NY	trevose	PA	Keller	TX
Troy	NY	Gloversville	NY	Philadelphia	PA	Austin	TX
Ossining	NY	Brooklyn	NY	Philadelphia	PA	Houston	TX
Schenectady	NY	Manlius	NY	Philadelphia	PA	Austin	TX
Sag Harbor	NY	Ithaca	NY	West Chester	PA	Highland Village	TX
Rochester	NY	Rock Creek	OH	Horsham	PA	Arlington	TX
White Plains	NY	Union	OH	Greensburg	PA	San Antonio	TX
New York	NY	Cincinnati	OH	Hatfield	PA	Corpus Christi	TX
Massapequa	NY	Westerville	OH	Lancaster	PA	San Antonio	TX
New York	NY	Gambier	OH	Exeter	PA	Austin	TX
Cambridge	NY	Columbus	OH	Feasterville Trevose	PA	Austin	TX
Staten Island	NY	Akron	OH	York	PA	Stephenville	TX
Buffalo	NY	Ashley	OH	Feasterville Trevose	PA	San Antonio	TX
New York	NY	Cleveland	OH	Lansdale	PA	Denton	TX
New York	NY	Mayfield Hts	OH	Pittsburgh	PA	Katy	TX
New York	NY	Vienna	OH	Pittsburgh	PA	Houston	TX
Middletown	NY	Warren	OH	Selinsgrove	PA	Denton	TX
New York	NY	Clinton	OK	Philadelphia	PA	San Antonio	TX
Brooklyn	NY	Oklahoma City	OK	Cayey	PR	Houston	TX
Peekskill	NY	Stillwater	OK	Arecibo	PR	Austin	TX
Medford	NY	Broken Arrow	OK	Newport	RI	Coppell	TX
Hamilton	NY	Eugene	OR	Warwick	RI	Austin	TX
New York	NY	Klamath Falls	OR	Coventry	RI	Smithville	TX
Brooklyn	NY	Pendleton	OR	Chepachet	RI	Richardson	TX
New York	NY	Portland	OR	Barrington	RI	Dallas	TX
West Haverstraw	NY	Ashland	OR	Riverside	RI	Baytown	TX
New York	NY	Portland	OR	Warwick	RI	Layton	UT
New York	NY	Eugene	OR	North Providence	RI	Salt Lake City	UT
Port Jervis	NY	Myrtle Creek	OR	Prudence Island	RI	Salt Lake City	UT
New York	NY	Corvallis	OR	Wakefield	RI	Salt Lake City	UT
Patterson	NY	Portland	OR	Aiken	SC	Salt Lake City	UT
brooklyn	NY	Philadelphia	PA	Beaufort	SC	Ogden	UT
Albany	NY	Lansdale	PA	Seabrook	SC	Virginia Beach	VA
Brooklyn	NY	Philadelphia	PA	Clemson	SC	Richmond	VA
Corning	NY	Lancaster	PA	Memphis	TN	Burke	VA
New York	NY	New Castle	PA	Murfreesboro	TN	Arlington	VA
Brooklyn	NY	sellersville	PA	Franklin	TN	Ruther Glen	VA
ny	NY	Bethel Park	PA	Nashville	TN	Richmond	VA
Whitestone	NY	Broomall	PA	Memphis	TN	Roanoke	VA
Rego Park	NY	Canonsburg	PA	Nashville	TN	Arlington	VA
Montauk	NY	Munhall	PA	Bon Aqua	TN	Glen Allen	VA

Jamaica NY Philadelphia PA Nashville TN Lynchburg VA

North Chesterfield VA

Yorktown VA

Broadlands VA

Hinesburg VT

Bristol VT

Weston VT

White River Junctio VT

Marshfield VT

Seattle WA

Clinton WA

Seattle WA

Seattle WA

Vancouver WA

Seattle WA

Bellingham WA

Renton WA

Seattle WA

Issaquah WA

Clarkston WA

Seattle WA

Seattle WA

Spokane WA

Des Moines WA

Buckley WA

Milwaukee WI

Mondovi WI

Oshkosh WI

Madison WI

Waupaca WI

Ripon WI

Fitchburg WI

Madison WI

Madison WI

Milwaukee WI

Waukesha WI

Madison WI

Mannington WV



THE
PEW
ENVIRONMENT GROUP

April 16, 2012

Paul J. Howard
New England Fishery Management Council
50 Water Street, Mill #2
Newburyport, MA 01950



Dear Mr. Howard,

The Pew Environment Group has collected 36,544 comments from individuals asking the New England Fishery Management Council to take specific steps to manage the Atlantic herring fishery through Amendment 5 to the Atlantic Herring Fishery Management Plan.

The enclosed CD includes copies of many of the letters, and a spreadsheet listing all the signers. Please note that many of these letters have been personalized or include additional comments.

Below you will find a summary the responses from Atlantic states (18,395), and on subsequent pages there is a table of all comments received by state. Please include a summary of these comments for the April NEFMC meeting.

Connecticut: 921
District of Columbia: 79
Delaware: 149
Florida: 1,859
Georgia: 389
Massachusetts: 2,266
Maryland: 911
Maine: 452
North Carolina: 1,237
New Hampshire: 411
New Jersey: 1,605
New York: 4,461
Pennsylvania: 2,112
Rhode Island: 262
South Carolina: 187
Virginia: 1,094

Thank you,

Greg Wells
Associate, Northeast Fisheries Program

State	Comments collected
Alaska:	75
Alabama:	140
Arkansas:	97
Arizona:	702
California:	5051
Colorado:	683
Connecticut:	921
District of Columbia:	79
Delaware:	149
Florida:	1859
Georgia:	389
Hawaii:	172
Iowa:	172
Idaho:	103
Illinois:	1029
Indiana:	394
Kansas:	154
Kentucky:	196
Louisiana:	135
Massachusetts:	2266
Maryland:	911
Maine:	452
Michigan:	691
Minnesota:	447
Missouri:	340
Mississippi:	78
Montana:	108
North Carolina:	1237
North Dakota:	22
Nebraska:	79
New Hampshire:	411
New Jersey:	1605
New Mexico:	352
Nevada:	251
New York:	4461
Ohio:	700
Oklahoma:	132
Oregon:	691

Pennsylvania:	2112
Rhode Island:	262
South Carolina:	187
South Dakota:	35
Tennessee:	332
Texas:	1213
Utah:	154
Virginia:	1094
Vermont:	111
Washington:	1050
Wisconsin:	526
West Virginia:	87
Wyoming:	32
TOTAL	36544
TOTAL US ONLY	34990
Atlantic States	18395

Mr. P Henry
300 Park Terrace Dr
Stoneham, MA 02180-4438

Mar 16, 2012

Paul Howard
New England Fishery Management Council

Subject: Re: Atlantic Herring Fishery Management Plan

Dear Paul Howard,

Over four years ago, the public called for and the New England Fishery Management Council (NEFMC) committed to improving the management of industrial fishing in New England. Now, after several years of deliberation and tens of thousands of public comments, it's time to deliver on that promise of reform.

Inadequate monitoring, unmanaged catch of river herring, continued killing of groundfish within closures designed to protect them, and the wasteful practice of dumping are significant and pressing concerns. Your revision to the Atlantic Herring Fishery Management Plan must address these issues and bring greater accountability and oversight to the industrial trawl fleet.

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 slipping catch at sea continues to undermine efforts to identify and record everything that is caught by herring vessels. Alarming interactions with groundfish also continue, as midwater trawl fishermen recently demanded and received a five-fold increase in their haddock bycatch allowance.

Moreover, river herring populations remain depleted, forcing Atlantic seaboard states to close traditional fisheries and deprive recreational anglers and the public of this important resource. NMFS is now considering listing river herring under the Endangered Species Act.

I urge you, as trustees of our nation's marine resources, to fulfill your duty to conserve and manage these resources sustainably by approving this long-awaited revision without further delay. In particular, I strongly support:

- * A 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 the catch cap).
- * 100 percent at-sea monitoring on all midwater trawl fishing trips 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 slippage 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).

* A requirement to accurately weigh and report all catch (Section 3.1.5 Option 2).

Thank you for the opportunity to comment and for your sustained commitment and support of these priority reforms.

Sincerely,
Mr. P Henry



Mr. Paul Howard
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

March 8, 2012

Dear Mr. Howard,

The Cape Cod Conservation District is writing to comment on the draft of Amendment 5 to the Atlantic Herring Fishery Management Plan.

The District has been engaged in activities for the past 42 years to improve passage for river herring to their spawning grounds. River herring play an important cultural and ecological role on Cape Cod and their arrival every spring marks the end of a long winter. The District is currently working on the Cape Cod Water Resources Restoration Project – a partnership with the USDA Natural Resources Conservation Service to restore tidal flow to restricted salt marshes, improve water quality on shellfish beds, and improve passage for river herring. In 2012 we will build five new fish ladders and restore tidal flow to four salt marsh systems.

We applaud your efforts to address the bycatch of river herring in the Atlantic Herring fishery. We believe that Amendment 5 to the Atlantic Herring Fishery Management Plan should include provisions that require observers to be present on all vessels that target Atlantic Herring, that the entire catch of these vessels should be provided to the observers for inspection, and that an overall limit or “catch cap” of river herring should be established for each fishing year.

The District will continue to work on projects that protect and increase the populations of river herring in the fresh and brackish waters of Cape Cod. We look forward to knowing that efforts are being made to conserve river herring in their saltwater environment as well. We hope that by working together the moratorium on harvest from Massachusetts rivers can be lifted.

Sincerely,

Lee Davis
Chair, Board of Supervisors, Cape Cod Conservation District



Alan J Evelyn
326 East Dover Street
Valley Stream, NY 11580-4749
capt.al@fishtaxiny.com



Doug Grout, Chair
NEFMC Herring Oversight Committee
50 Water Street, Mill #2
Newburyport, MA 01950

April 13th, 2012

Re: Herring Amendment 5 DEIS

Dear Chair Grout,

I am writing today to offer my comments on the Draft Environmental Impact Statement (DEIS) for Herring Amendment 5.

The mismanagement the herring fishery must stop. The large mid water trawlers are depleting this resource at an unacceptable rate. The Council must address the serious destructive practices of this gear type/practice when decisions are made for Amendment 5.

At minimum, the following actions should be approved:

- 100% observer coverage on Category A and B herring vessels in order to provide reliable estimates of all catch, including bycatch of river herring, cod, haddock, bluefin tuna, and other marine life (Section 3.2.1.2 Alternative 2).
- Closed Area I (CAI) provisions with trip termination after 10 dumping events in order to reduce dumping on Category A and B vessels. Given the nature of the gear being used in the fishery, it is critical that rules are put in place to make sure that unsampled dumping is not occurring. (Section 3.2.3.4 Alternative 4C)
- Prohibit herring midwater trawl vessels from fishing in Groundfish Closed Areas. These boats should have never been allowed in to begin with. (Section 3.4.4 Alternative 5)
- Implement measures to require weighing of catch across the fishery so that managers have accurate data on how much herring is being landed in the fishery. (Section 3.5.1 Option 2)

By implementing the above practices/policies, the Council will begin to address the most critical problems in this fishery. Please protect this valuable fishery from the destructive mid water trawls and approve these measures.

Thank you for listening to my opinion.

Alan J Evelyn

BOARD OF TRUSTEES

Niaz Dorry
NAMA Coordinating Director
Gloucester, MA

Ted Hoskins
Board President
Stonington Fisheries Alliance
Blue Hill, ME

Madeleine Hall-Arber, Ph.D.
Board Vice President
MIT Center for Marine Social Sciences
Boston, MA

Amanda Beal
Board Clerk
Maine Eat Local Food Coalition
Freeport, ME

Jamey Lionette
Board Treasurer
City Growers & City Fresh Foods
Jamaica Plain, MA

Bill Adler
Massachusetts Lobstermen's Association
Scituate, MA

Charles Curtin
Environmental Science Faculty
Antioch College, NH

Shannon Eldredge
Fishing Family
Chatham, MA

Louis Frattarelli
Commercial Fisherman
Bristol, RI

Karen Masterson
Owner, Nourish Restaurant
Lexington, MA

Neil Savage
Educator
Exeter, NH

Ed Snell
Commercial Fisherman
Portland, ME

STAFF

Niaz Dorry
Coordinating Director

Boyce Thorne Miller
Science Coordinator

Brett Tolley
Community Organizer

Cynthia Bush
Finance Coordinator & Program Assistant

April 18, 2012

Paul J. Howard, Executive Director,
New England Fishery Management Council
50 Water Street, Mill #2,
Newburyport, MA 01950



The Northwest Atlantic Marine Alliance (NAMA) is a regional organization supporting the community-based commercial fishermen of New England and the coastal communities in which they live, consistent with our mission to restore and enhance an enduring marine ecosystem. NAMA's history of weighing in on the herring fishery dates back to the discussions that led to the creation of the first herring fishery management plan in 2000. As you know, we were also party to a 2005 joint legal petition (with the Midcoast Fishermen's Association of Maine) asking the Department of Commerce to ban the herring midwater trawl fleet from groundfish closed areas.

Herring are critical to a healthy marine food chain and ecosystem. As such it is unclear that fishing them at all is justifiable, but certainly the fishery should be seriously restricted. Traditional fixed gear herring fisheries - which consisted of appropriately scaled purse seines and stop seine/weirs - did not appear to have a dramatic impact on the ecosystem, but more modern industrial scale trawl and purse seine fisheries do. Not only is the loss of herring available to the food chain important, but we now know that the herring fishery continues to catch significant groundfish bycatch - especially haddock. This is very important to the groundfishery which is experiencing lean years. In a recent report, an international group of marine scientists has called for cuts in commercial fishing for sardines, herring and other so-called forage fish whose use as food for fish farms is soaring (*Too Many Small Fish Are Caught, Report Says*, NY Times, 4-2-12). The report suggests that catch should be cut in half for some fisheries to protect populations of both the fish and the natural predators that depend on them.

Given the evidence of damaging impacts of industrial fishing of forage fish worldwide, herring Amendment 5 comes none too soon to help alleviate some of that impact in New England. Therefore, NAMA supports the strongest measures be adopted in Amendment 5 and we welcome their application to purse seine vessels as well as trawl vessels. NAMA would like to express its support for the following measures to be included in Amendment 5:

- 1) Relevant to Section 3.2.1, the Council should implement 100% observer coverage on A&B herring vessels, which account for 97-98% of the landings. We therefore support alternative #2.
- 2) Relative to Section 3.1.2, we support the expansion of possession limits to include purse seine operations; the elimination of the VMS

power-down provision; and in requirement for dealer permits at-sea.

- 3) Relative to Section 3.2.2.2, we generally support measures that improve sampling and the increased information that may be generated, and we are supportive of application of these measures to purse seine as well as trawl vessels.
- 4) Relative to section 3.2.3.4, the Council should implement Closed Area 1 provisions with termination of trips after five dumping events have been reported. This provision should reduce the dumping of catch and bycatch by category A and B vessels. We support alternative 4D.
- 5) Relative to Section 3.4.4, as we have continued to say for over a decade, the Council should prohibit vessels participating in herring fishing from fishing in groundfish closed areas. The proposal addresses only midwater trawlers, however, and we believe industrial scale purse seiners should be explicitly included. Midwater trawl vessels were given access to the closed areas based on the assumption that their nets remain high in the water so they do not catch any groundfish. Now this has been demonstrated to be untrue, and in fact, they agree they do catch groundfish, sometimes in significant numbers. Therefore they should be subject to groundfish closures. And without an explicit direction for the depth of purse seine vessels' gears, purse seines with nets designed to fish in deeper fathoms can have interaction with groundfish. We support alternative 5.
- 6) Relative to section 3.3 – measures to address river herring bycatch – we prefer the closed area approach in Alternative 3, as it is more protective of river herring and is more likely to be effectively enforced.

Thank you for the opportunity to comment on Amendment 5. While we don't believe the amendment addresses the core problem of impacts on the marine ecosystem by industrial scale fishing, we believe the right decisions for Amendment 5 will go a long way toward making sure the impacts are no greater than regulations allow.

Yours truly,



Boyce Thorne Miller
Science Coordinator



MAINE
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www.maine lobstermen.org



Mr. Paul Howard
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

April 19, 2012

Dear Mr. Howard:

The Maine Lobstermen's Association (MLA) is providing comments on the proposals under consideration for Amendment 5 to the Fishery Management Plan for Atlantic Herring. The MLA is an industry-based fishing organization whose mission is to advocate for a sustainable lobster resource and the fishermen and communities that depend on it.

One of MLA's primary areas of focus in recent years has been on ensuring a steady and sustainable bait supply for Maine lobstermen. In 2011, Maine lobstermen hauled in a record harvest of nearly 104 million pounds with an ex-vessel value of approximately \$331 million, generating an estimated near billion dollars in economic activity for the state. Maine's lobster industry is the economic backbone of Maine's coastal communities because it is an owner-operated fishery which ensures that revenue generated from landings is spent locally.

The fate of the herring management plan is extremely important to the Maine lobster industry because it is highly dependent upon herring as bait for our fishery. Data from Maine Department of Marine Resources Port Sampling program shows that herring was used in 59% of trap hauls by Maine lobstermen in 2011. The Maine lobster industry has diversified its bait supply following the cuts to the Area 1A herring quota beginning in 2007 when herring was used in 83% of traps hauled. Despite the reduction since then, herring is still the primary source of bait use by Maine lobstermen.

The MLA strongly supports sustainable management of the herring resource, based on the best scientific information, and supports the Council's efforts to improve catch monitoring in the commercial fishery through Amendment 5. The MLA offers the following input to the Council:

- The MLA supports implementing measures to weigh the catch across the fishery to improve the accounting of all fish landed.

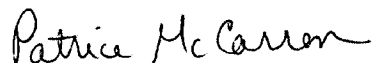
- The MLA supports 100% observer coverage for Category A and B vessels which account for 97%-98% of the landings, with no sunset provision. The cost of observer coverage should be carefully monitored and controlled. The observer rates for the Atlantic fleet must be on par with other regions of the US. Given the importance of sustainably managing the herring fishery, government funds should be secured to help pay for this comprehensive observer coverage.

As the primary consumer of herring, any cost incurred by the herring fleet will inevitably be passed onto the lobster industry. The MLA's weekly monitoring of bait prices shows that the lobster industry has already absorbed a 28% increase in the cost of bait during the peak fishing months of July through November over the three years from 2007 (\$21/bushel) to 2010 (\$27/bushel). With the tightening of profit margins in the lobster industry due to soft boat price and increased operating expenses, the lobster industry cannot afford to absorb the cost of implementing comprehensive observer coverage in the herring industry. Controlling the cost of observer coverage and securing government funding will be critical to ensure successful implementation of 100% observer coverage.

- The MLA supports the sampling of all catch with trip termination after ten dumping events per area. These measures are similar to what has been successfully implemented in Closed Area 1.
- The MLA is concerned about midwater trawl vessel access to groundfish closed areas. These vessels should only be allowed access with 100% observer coverage with a full accounting of all fish caught in order to strictly adhere to bycatch limits.

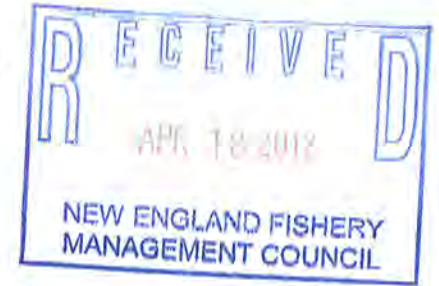
Thank you for your consideration of our comments.

Sincerely,



Patrice McCarron
Executive Director

CAPE SEAFOODS, INC.
3 STATE PIER
GLOUCESTER, MA 01930, USA
Tel: 978-283-8522: Fax: 978-283-3133
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and

WESTERN SEA FISHING COMPANY
3 STATE PEIR, GLOUCESTER, MA 01930
Tel: 978-283-7996

April 10th, 2012

Capt. Paul J. Howard
Executive Director
50 Water Street, Mill #2
Newburyport, MA 01950
By Email to: comments@nefmc.org

Re: Comments on Draft Amendment 5

Dear Captain Howard:

Cape Seafoods Inc is a processing facility, based in Gloucester Massachusetts, capable of handling, grading, packing, freezing and storing Atlantic Herring. The Company is a major supplier of fresh, salted and frozen herring to the Massachusetts and Maine lobster fisheries. Western Sea Fishing Company owns and operates three purpose built mid-water trawlers which land their herring catches to Cape Seafoods. These vessels are equipped with refrigerated sea water tanks ensuring landings of top quality fresh herring. At the height of the fishing season approximately 60 people are working for one or other of the companies.

Please accept these comments on Draft Amendment 5 (A5) to the Fishery Management Plan (FMP) for Atlantic Herring.

We understand that the National Marine Fisheries Service (NMFS) will be publishing a Draft Environmental Impact Statement (DEIS) on A5, on April 20, 2012, and that we will have an additional opportunity to comment on that document, which may be different than the Public Hearing Document (PHD); the source of these comments. We reserve the right to provide additional or amended comments to the Council and NMFS once we have the opportunity to review the DEIS.

Our comments follow the order of issues and options outlined in the PHD:

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.

We request that a definition of “*Localized Depletion*” be included in this Amendment as it does not appear in the plan at the moment.

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 understand that Option 2 would not reach Category D vessels fishing in Area 2 (because the current language stems from that implementing the haddock catch cap) and, therefore, why Option 2 is limited only to fishing for herring with midwater trawl gear.

For the purposes of this amendment, however, all areas and gear types should be considered as part of these notification requirements.

Option 3, however, 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 only 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 less than 10% of the number Category D permits issued.

Specifically, Page 6 of the PHD tells us that 2,258 Category D herring permits were issued in 2010 while Table 49, at page 200 of the Council's DEIS tells us that less than 100 of these permit holders landed herring in recent years.

There seems to be a clear need to rationalize the number of Category D herring permits that are being issued by the agency. We strongly support a requirement that all Category D permit holders have VMS on board, when engaged in the directed fishery for herring, and we anticipate that the number of herring Category D permits applied for would likely drop dramatically if this requirement were imposed. We do not see a VMS requirement as a significant economic burden on a vessel today and expect that most of these 100 Category D permitted vessels landing herring may already be required to have VMS on board through other permit requirements.

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 hails (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 put fishermen in a position so that they could 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, provided 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, such as taking days out of the herring fishery, 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 potentially 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 we have received from vessel captains. Many 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%.

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 any higher daily rate 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 or brailer 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, our captains 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, and would aid observers in their responsibility to see and sample catches.

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 to provide an important baitfish for the region's lobster fisheries and other markets.

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 the 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 do not support the Council considering a biologically-based river herring catch cap through a framework adjustment to the herring FMP or the herring specifications process with this amendment. It is our understanding that the PDT has not made a recommendation for a catch cap because there is insufficient information upon which to base one. The relative mortality

effects of incidental catches in the herring fishing, and 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.

Thank you for your consideration of our comments. We look forward to continuing to work with you and the members of the Council towards the implementation of reasonable, additional monitoring requirements in the Atlantic herring fishery, through the implementation of Amendment 5, to ensure a sustainable Atlantic herring resource and fishery for many years to come.

With best regards,

Dave Ellenton

General Manager / VP Cape Seafoods Inc
V/P Western Sea Fishing Company