



New England Fishery Management Council

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DRAFT MEETING SUMMARY

Herring Committee

Sheraton Colonial Hotel, Wakefield, MA

April 3, 2014

The Herring Committee met on April 3, 2014 in Wakefield, MA to: review information, alternatives, and analysis in Framework Adjustment 4 to the Atlantic Herring Fishery Management Plan (FMP). Framework 4 includes alternatives to address two disapproved elements of Amendment 5 – dealer weighing/reporting provisions and management measures to address net slippage. The Herring Committee considered the recommendations of the Herring Plan Development Team (PDT) and Herring Advisory Panel (AP) and developed recommendations for the Council to consider when selecting final measures for Framework 4 at the April 2014 Council meeting.

MEETING ATTENDANCE: Doug Grout (Chairman), Matt McKenzie (Vice Chair), Pete Kendall, Vincent Balzano, Mary Beth Tooley, Jeff Kaelin, John McMurray, David Pierce, Tom Dempsey, Terry Stockwell, Peter Christopher (11 Committee members present, Gibson absent); Lori Steele, Rachel Feeney, Tom Nies (NEFMC staff); Carrie Nordeen (NMFS GARFO staff); Mitch MacDonald (NOAA General Counsel); Chris Weiner (Herring Advisory Panel Chairman); Gerry O'Neill, Dave Ellenton, Jennie Bichrest (Herring Advisory Panel members); Peter Shelley, Erika Fuller, Greg Wells, Tom Rudolph, Patrick Paquette, Ryan Raber.

GoToMeeting (Webinar): Roger Fleming, Shaun Gehan, JP Bilodeau, Brad Schondelmeier

KEY OUTCOMES

The Herring Committee passed motions and reached consensus to support the following alternatives/options in Framework 4 to the Atlantic Herring FMP (described in detail in the Framework 4 Discussion Document):

- Dealer Alternative 2, Options A, B, and C
- Dealer Alternative 3, to apply to limited access herring vessels that store their catch below deck in fish holds
- Operational Discard Option B – prohibit operational discards on midwater trawl vessels in all areas (develop regulations similar to test tows)
- Gear Damage Option A – gear damage is part of mechanical failure
- Catch not brought on board due to falling out/off of gear would not be subject to additional slippage measures.

- Slippage Alternative 4, move-along 15 nautical miles for slippage due to safety, mechanical failure, and spiny dogfish, as well as Trip Termination Option B for all other slippage events, to apply to Category A and B herring vessels

Detailed minutes of the meeting are provided below.

PRESENTATION: FRAMEWORK 4 TO THE HERRING FMP

Ms. Steele (Council staff) presented an overview of the Framework 4 Discussion Document, including the alternatives under consideration, background information and analyses, and information provided by the Herring PDT at its March 6, 2014 meeting. Ms. Nordeen (GARFO Staff) summarized comments from the NMFS Analysis and Program Support Division (APSD) regarding the alternatives under consideration in Framework 4 to address dealer weighing/reporting. She explained that recent updates to herring quota (ACL/sub-ACL) monitoring methods and changes to the timing of data quality control checks have reduced the potential utility of Options A and B in Alternative 2, which were originally supported by NMFS when it disapproved the dealer weighing provisions in Amendment 5. She explained that these measures may now be redundant, and that their utility may not outweigh the costs/burden; the Fish-On-Line (FOL) reporting screen would require modification/re-design, and there would be an increased compliance and enforcement component with these requirements if they are adopted in Framework 4. She also noted that increasing the timing of VTR and dealer reports would not serve much utility because the data will continue to be analyzed and checked through quality control on a weekly basis.

Several Committee members and individuals in the audience asked additional questions.

- Dr. Pierce asked for clarification on the Herring PDT's recommendations regarding the dealer weighing/reporting alternatives; Ms. Steele stated that while the Herring PDT did not formally support any specific alternative in Framework 4, the PDT did conclude that none of the alternatives are likely to further enhance the goals/objectives of the Amendment 5 catch monitoring program and/or increase the accuracy of catch data.
- Mr. Dempsey asked how estimates of slippage are derived from the NEFOP data. Ms. Steele explained that the observers complete detailed discard logs when catch is released on vessels that pump fish; information about the amount of slipped catch is based on informed estimates provided by the observers with details in the logs about the event and the observer's ability to document/sample the catch. She noted that while species composition of slipped catch is more challenging for observers to document, the amount of catch that was released appears to be something that the observers can document relatively well. She stated that the estimates of average slipped catch provided in Appendix II are intended to provide perspective on the scale of slippage (i.e., 10,000 pounds versus 100,000 pounds), more so than the absolute number of pounds.
- Several Committee members asked for clarification regarding the submission of Released Catch Affidavits, Closed Area I (CAI) provisions, and related requirements recently implemented in Amendment 5. Ms. Steele confirmed that while the NEFOP data for 2012 and 2013 show that slippage events likely occurred in Closed Area I, no Released Catch Affidavits have been filed. She suggested that there may have been a great deal of confusion

regarding compliance with the CAI provisions and related requirements for an affidavit. Ms. Nordeen added that NMFS has been conducting outreach with the industry during the implementation of Amendment 5 (March 2014) to reduce confusion about the requirements and make the affidavit more accessible to the industry. She cautioned the Committee against using CAI regulations as a measure for success or as a basis for making fishery-wide determinations. She added that only about 10% of herring fishing occurs in the year-round groundfish closed areas. Ms. Steele and Ms. Nordeen also noted that the Enforcement Committee will be discussing this and related issues at its April 14, 2014 meeting and that there would be additional follow-up with NMFS Office of Law Enforcement (OLE). Ms. Tooley reminded the Committee that all of the data in Appendix II is from the time period prior to the implementation of Amendment 5.

- Dr. McKenzie asked about discrepancies between dealer and VTR data for the herring fishery, and the Committee discussed some of the changes to monitoring/reporting during 2000-2010 that may have influenced this.
- Mr. Grout asked for clarification regarding Dealer Alternative 3, which would require third-party confirmation of total catch by measuring the volume of fish in the hold (“sticking” the tank). He suggested that it may be appropriate to apply this alternative only to vessels that pump herring into their fish holds (versus storing the fish in totes on deck), and the Committee agreed that this should be clarified if Alternative 3 is selected.
- Ms. Tooley asked whether regulations exist in other fisheries that impose an additional consequence or rule on an action that is prohibited. Mr. Christopher stated that he is unaware of any comparable regulations in other fisheries, and Ms. Nordeen indicated that this was identified as something unusual during preliminary discussions with NMFS enforcement personnel about the Framework 4 alternatives.
- Several audience members asked questions:
 - Steve Weiner (CHOIR) asked several questions about how the herring quotas are monitored and how data are checked for quality.
 - Erika Fuller (Herring Alliance) asked about how often observer contracts are modified and how the end of a trip is defined in the observer contracts. Ms. Nordeen suggested that additional information about these issues be provided by Northeast Fisheries Observer Program (NEFOP) personnel at the April Council meeting.
 - Patrick Paquette (MA Striped Bass Association) asked for further clarification regarding the CAI provisions. He expressed concern about haddock bycatch and suggested that the updated slippage information be presented to the Groundfish Committee.
 - Tom Rudolph (Pew Environment) asked whether Dealer Alternative 3 could be modified to provide opportunities for other third parties to perform measurements (not just observers); Ms. Steele responded affirmatively and noted that this was the recommendation of the Advisory Panel as well. Mr. Rudolph also confirmed that one of the objectives of the Amendment 5 catch monitoring program included reducing reliance on self-reporting.

HERRING ADVISORY PANEL REPORT

Chris Weiner, Herring Advisory Panel Chairman, presented the report from the Herring AP meeting on April 2, 2014 (see April 2, 2014 Herring Advisory Panel Report for a full summary of the Advisory Panel discussion and related recommendations).

DEALER WEIGHING/REPORTING ALTERNATIVES

1. MOTION: DEMPSEY/MCKENZIE

That the Council adopt Alternative 2.1.2, Alternative 2, Options A, B, and C, as well as Alternative 2.1.3, Alternative 3 for dealer weighing/reporting requirements

Discussion on the Motion: Ms. Tooley felt that the motion included too many elements and moved to split.

MOTION TO SPLIT TOOLEY/KAELIN.

MOTION TO SPLIT CARRIED 5-4-1.

2. SPLIT MOTION PART 1:

That the Council adopt Alternative 2.1.2, Alternative 2, Options A, B, and C for dealer weighing/reporting requirements

Discussion on the Motion: The Committee discussed NMFS' guidance and comments regarding Options A and B in detail. Mr. Dempsey felt that despite the Agency's recent comments that these measures may no longer be necessary, they represent a reasonable path forward and are improvements to the current system that should minimize data errors. Ms. Tooley stated that she could support Option C but not Options A and B given the Agency's recent comments (March 31, 2014 memo with comments from APSD). She also reminded the Committee that several industry members have expressed concern about a requirement to submit reports within 24 hours. Ms. Nordeen clarified that NMFS' change in perspective regarding the utility of Options A and B is a function of how the process for data management and quality control continues to evolve. Given current conditions and current requirements in the fishery, the Agency believes that the utility of Options A and B no longer outweigh the costs.

2A. MOTION TO AMEND SPLIT MOTION PART 1: TOOLEY/KAELIN

To strike Options A and B, and to modify Option C to require fish holds on a limited access herring vessel to be empty of herring before leaving the dock on any herring trip. If a vessel has exhausted options (contacted multiple dealers/Canadian dehyde plant) and is not able to offload all catch, they may contact NOAA enforcement to request a waiver. If possible, a declaration of no herring in the hold should be added to the current trip declaration that begins the trip

Discussion on the Motion to Amend: Ms. Bichrest (Herring Advisory Panel member) expressed concern about the requirement to submit dealer reports within 24 hours; she stated that this could be especially problematic for fish that are trucked to Canada. She also expressed concern about requiring fishermen to confirm dealer entries under Option A. Mr. Weiner (audience) asked for clarification regarding the language that a vessel has exhausted all options; he stated that his dock would take whatever the vessel has to sell for bait if the price is right. Mr. Dempsey opposed the motion and reiterated that all of the elements of Alternative 2 are incremental improvements to self-reporting in the fishery. He also expressed concern about the vagueness of language that would require fishermen to exhaust all options. Ms. Tooley indicated that the language represents an improvement from the status quo, and that the intent was to provide a mechanism for enforcement to confirm that the vessel fish hold is empty.

MOTION TO AMEND PERFECTED:

To strike Options A and B, and to modify Option C to require fish holds on a limited access herring vessel to be empty of herring before leaving the dock on any herring trip. If a vessel has exhausted options (contacted multiple dealers/Canadian dehydrate plant) and is not able to offload all catch, they may contact NOAA enforcement to request an inspection of the fish hold and a waiver. If possible, a declaration of no herring in the hold should be added to the current trip declaration that begins the trip

Discussion on the Motion to Amend: Mr. Dempsey noted that he does not see the added value of enforcement confirmation and felt that these additions likely represent significant enforcement burdens without much benefit.

MOTION TO AMEND SPLIT MOTION PART 1 FAILED 2-4-4.

Before voting the main motion, Dr. McKenzie identified some direct benefits of the measures proposed in Alternative 2: (1) Reducing the discrepancy between dealer and VTR data sets should improve catch data and enhance data used in assessments; (2) Involving the industry more in data production and management should improve transparency and improve understanding of how data are generated and used.

MOTION #2 (SPLIT MOTION PART 1) CARRIED 4-2-4.

3. SPLIT MOTION PART 2:

That the Council adopt Alternative 2.1.3, Alternative 3 for dealer weighing/reporting requirements

Discussion on the Motion: Mr. Rudolph (Pew) expressed support for Alternative 3 with some modifications. He emphasized the importance of third-party catch verification and the need to reduce reliance on self-reporting. He cited the Proposed Rule for the 2014 Herring ACL adjustments, in which NMFS identified several common problems with dealer reports and stated that the quality of herring landings data is being affected by unresolved errors. He also questioned the Herring PDT's concern that this alternative could introduce new or additional errors into the data. Ryan Raber (F/V Providian) expressed concern about the 24-hour reporting requirement for dealers (previous motion). He also stated that there is no motivation for vessels to under-report in the herring fishery, as vessels are concerned about catch history for the future

if catch shares are developed. Ms. Tooley expressed reluctant support for this alternative and noted that its effectiveness would be significantly enhanced with a portside sampling program. Ms. Nordeen noted that this alternative would create a new data stream that would not replace either dealer or VTR data; she urged the Committee to identify how the data would be utilized and how this approach reduces the reliance on self-reporting in the fishery. Ms. Steele also reminded the Committee of some of the concerns expressed by the PDT and also agreed that it is unclear for what purpose the data may be utilized; she identified mixed trips (herring/mackerel) as one concern with respect to the data that may be generated under Alternative 3. Mr. Dempsey indicated that the data provided by the third parties would provide a cross-check for total catch on trips that are sampled. Dr. McKenzie agreed and felt that by its nature, this approach is a step towards reducing reliance on self-reporting; he felt that it would provide a mechanism to evaluate whether the current reporting system is working. Ms. Tooley expressed some concern about the costs associated with this approach and also noted that observers currently represent third parties, as they estimate total catch as well as the composition of the catch.

MOTION#3 (SPLIT MOTION PART 2) PERFECTED:

That the Council adopt Alternative 2.1.3, Alternative 3 for dealer weighing/reporting requirements, to apply to limited access herring vessels that store herring in fish holds

Further Discussion: Mr. Grout reminded the Committee of the need to clarify that Alternative 2 would apply to herring vessels that put their catch in fish holds below deck.

MOTION #3 (SPLIT MOTION PART 2) CARRIED 7-1-2.

MANAGEMENT MEASURES TO ADDRESS NET SLIPPAGE

The Committee first addressed the proposed clarifications to current (Amendment 5) management measures to address net slippage.

4. MOTION: DEMPSEY/MCKENZIE

That the Council support Operational Discard Option B– operational discards prohibited on midwater trawl vessels in all areas on trips with an observer on board

Discussion on the Motion: Ms. Tooley expressed opposition to the motion as well as the prohibition on operational discards in CAI. She explained that it is not feasible for some vessels to unhook the bag from a 500-pound pump to bring the net on board after every haul to address the very small amount of fish that operational discards have been well-documented to represent.

4A. MOTION TO SUBSTITUTE: KAELIN/TOOLEY

To recommend that operational discards would not be prohibited on midwater trawl vessels operating in the Atlantic herring fishery

Discussion on the Motion to Substitute: Mr. Grout noted that this option is not currently in the Framework 4 document and is less restrictive than the options under consideration; he suggested that it may be ruled out of order at the Council meeting. Mr. Dempsey expressed opposition to the motion and referenced NMFS' statements in the Closed Area I rule. Mr. Raber expressed support for this motion. He stated that prohibiting operational discards on midwater trawl vessels sends a message to vessels that there are to be zero losses in this high-volume fishery, which is just not realistic or possible.

MOTION TO SUBSTITUTE #4A FAILED 2-6-2.

Further Discussion on the Main Motion: The Committee agreed that the intent of this option would be to develop regulatory language for operational discards that is similar to that referring to test tows (see Framework 4 Discussion Document). Ms. Tooley asked for clarification regarding how these rules apply to marine mammal interactions.

MAIN MOTION #4 CARRIED 6-2-2.

5. MOTION: DEMPSEY/MCKENZIE

To recommend that the Council support Gear Damage Option A – gear damage would be part of mechanical failure

Discussion on the Motion: None.

MOTION #5 CARRIED UNANIMOUSLY.

HERRING COMMITTEE CONSENSUS

Catch not brought on board due to falling out/off of gear would not be subject to additional slippage measures (consistent with staff recommendation in Framework 4 Discussion Document).

The Herring Committee then addressed the move-along alternatives under consideration in Framework 4 to address net slippage.

6. MOTION: DEMPSEY/MCKENZIE

That the Council adopt Slippage Alternative 4, move along 15 nautical miles for slippage due to safety, mechanical failure, and spiny dogfish, as well as Trip Termination Option B for all other slippage events, to apply to Category A and B permits

Discussion on the Motion: Mr. Dempsey stated that the two-tiered approach in this alternative is intended to strike a balance by allowing for exemptions when necessary but having a consequence for these events, and then having a more drastic consequence for slippage events for other reasons. Ms. Nordeen noted that the move-along rule in CAI had a biological basis, i.e., to move the vessel out of an area designed to reduce protect groundfish and reduce groundfish mortality. She asked the rationale for the move-along proposed in this alternative. Mr. Dempsey stated that the rationale is to dis-incentivize slippage.

6A. MOTION TO SUBSTITUTE: TOOLEY/KAELIN

That the Council adopt Slippage Alternative 5, no move along for slippage due to safety, mechanical, dogfish, as well as trip termination for all other slippage events

Discussion on the Motion to Substitute: Ms. Tooley expressed support for this alternative and noted that it is consistent with the Mid-Atlantic Council's preferred alternative for the mackerel fishery. Mr. Kaelin added that the biggest incentive to ensure that the observer has an opportunity to document all of the catch is to send the vessel back to the dock if this does not occur. Mr. Dempsey agreed that consistency is important, but not if there is disagreement about the fundamental approach; he encouraged the Committee to be consistent with the Council's own regulations for the herring fishery, i.e., the CAI provisions. A few members of the audience expressed opposition to the motion to substitute.

MOTION TO SUBSTITUTE #6A FAILED 2-6-2.

MAIN MOTION REPEATED (#6).

6B. MOTION TO AMEND: PIERCE/TOOLEY

To remove spiny dogfish (i.e., exempt spiny dogfish from the move-along rule)

Discussion on the Motion to Amend: Mr. McMurray and Mr. Dempsey expressed opposition to the motion to amend and felt that the integrity and success of the entire program depends on not allowing any exemptions or creating loopholes. They agreed that there should be a consequence every time a vessel slips catch.

MOTION TO AMEND #6B FAILED ON A TIE 4-4-2.

MAIN MOTION #6 CARRIED 5-2-3.

The Herring Committee meeting adjourned at approximately 4:45 p.m.