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New England Fishery Management Council

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DRAFT MEETING SUMMARY

Herring Committee Meeting

Sheraton Airport Hotel, Warwick RI

January 28, 2009

The Herring Committee met on January 28, 2009 to: continue development of management alternatives for Amendment 4 to the Atlantic Herring Fishery Management Plan (FMP) and develop Committee recommendations for Council consideration in February 2009; Continue to discuss stakeholder proposals/ideas regarding a catch monitoring program for the Atlantic herring fishery; review information related to at-sea monitoring and reporting, including available observer data, analyses related to a sampling design for an observer program, and preliminary analyses of river herring bycatch data; and discuss management measures to address at-sea monitoring.

Meeting Attendance: Frank Blount, Chairman; Dana Rice, Rodney Avila, Doug Grout, Mike Leary, Sally McGee, Jim Odlin, Mark Gibson, Terry Stockwell, Mary Beth Tooley, Erling Berg, Herring Committee members (Pierce absent); Dave Ellenton (Herring Advisory Panel Chairman), Peter Moore (Herring AP Vice-Chair), Peter Baker, Chris Weiner, Jeff Kaelin, Gib Brogan (Oceana), Herring Advisory Panel Members; Lori Steele, Lou Goodreau, NEFMC staff; Carrie Nordeen, Hannah Goodale; NMFS NERO; Sara Wetmore, Debra Duarte, and Tyler Staples (NEFSC Sea Sampling), Herring Plan Development Team Members; Roger Fleming (Earthjustice), Ray Kane, Lara Slifka and Tom Rudolph (CHOIR/CCCHFA), Jim Ruhle, Greg DiDomenico (GSSA), Shawn Gehan (Kelley, Drye, and Warren), Bill McWha, Geir Munsen (Seafreeze), Luke Szymanski and Mark Donovan (A.I.S. Inc.), Patrick Paquette (Mass. Striped Bass Association), Chris Weiner and Steve Weiner (CHOIR), Pam Gromen (NCCMC), Jud Crawford (Pew), and several other interested parties.

The meeting began with a brief review of the agenda and general announcements. Mr. Blount agreed to add another 15 minutes to the agenda prior to lunch to provide an opportunity for the public to comment on issues not specifically listed on the agenda. Ms. Steele briefed the Committee on the Herring PDT's work to date regarding some of the issues in Amendment 4 to the Herring FMP. The PDT has been developing analyses of observer data to determine the nature and extent of bycatch (river herring, haddock, other species) in the herring fishery, and to support the development of a sampling design for observer coverage in the herring fishery that builds from the approach in the Council's Standardized Bycatch Reporting Methodology (SBRM) amendment addresses the specific priorities identified by the Council at its October 2008 meeting (20% CV for herring, river herring, and haddock).

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Rather than conduct an analysis based solely on achieving a 20% CV for these species, the Herring PDT ran the analysis for all three priority species over a range of desired CVs. This helps to better illustrate the trade-offs associated with the choices that would need to be made, based on goals and priorities for observer coverage as well as available resources. The results illustrate the costs that would be associated with covering the fishery to sample “rare” bycatch events adequately enough to estimate bycatch with a CV of 20%. Based on available data, bycatch (discards) of Atlantic herring appear to be somewhat rare in the fishery and would therefore require a very high level of coverage (over 300 sea days) in order to sample enough to estimate the total bycatch with a 20% CV. A similar result is seen for estimating haddock bycatch on pair trawl vessels. The observed discard/kept ratios are low, which means that a high level of sea days would be required to achieve a CV of 20%. Likewise, when a sea day is allocated for the purposes of estimating river herring bycatch, available information suggests that no river herring will be encountered about 75% of the time.

Ms. Steele explained that while this analysis helps to illustrate tradeoffs and identify priorities for sea sampling, it really only provides some background and context for managers to consider what level of coverage may be necessary to achieve certain goals. It serves as a guideline and supplements the information and analysis provided in the SBRM amendment, but unless additional resources become consistently available in the future, it is not certain that NMFS would be able to implement such a program given the sea sampling budget and the monitoring priorities for all fisheries throughout the region.

Mr. Odlin expressed concern about the sampling design based on the priority species identified by the Council and felt that some of the resulting levels of coverage are unrealistic. He suggested that the justification for identifying priority species be linked to the status of the stock. He questioned whether achieving a 20% CV for Atlantic herring and haddock should really be priorities for sea sampling when these stocks are not considered overfished and are thought to be healthy. He emphasized the need to be practical when determining an appropriate sampling design for at-sea monitoring, especially given available resources.

- Mr. Fleming asked whether the PDT has evaluated how well the sampling design may perform with respect to accurately estimating bycatch of other species. Ms. Steele indicated that the PDT had not investigated this issue, but based on the analysis, it appears that any species with an observed discard/kept ratio higher than that of Atlantic herring would likely be captured at a 20% CV or better.
- Mr. Kaelin expressed support for Mr. Odlin’s suggested and emphasized the importance of focusing on species that are overfished and/or species for which bycatch in the herring fishery may have an impact on fishing mortality/stock biomass.
- Mr. Rudolph suggested that the Council may want to explore alternate approaches to designing an observer program for this fishery and felt that the methodology identified in the SBRM amendment and applied in this analysis may not be the most appropriate approach for a high-volume fishery like the herring fishery. He also clarified some of his statements reflected in the December 16, 2008 Herring Committee Meeting Summary, noting that his suggestion was not to look at haddock bycatch in Area 1 from a resource-wide perspective (i.e., relative to the entire haddock biomass and catch), but instead to consider discards in Area 1 on a smaller scale – for example, consider the impacts of haddock bycatch relative to the allowable catch for the haddock Special Access Program in Area 1.

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- Mr. Ruhle testified that in the past few weeks, he has participated in the southern New England herring fishery and has never observed or experienced a cleaner fishery in his life. He stated that the last nine trips he has taken have been directed herring trips with very little bycatch and that he has not been asked to take an observer with him on any of these trips. He reminded the Committee that there are a great deal of fishermen who are working to minimize bycatch and keep the fishery clean and expressed concern that any closures that may be considered to protect river herring will unlikely be effective and will punish the people who are fishing the right way because of the few who may be fishing the wrong way.
- Steve Weiner agreed with Mr. Ruhle that the herring fishery can be fished in a clean and responsible manner and suggested that increased observer coverage could help to corroborate Mr. Ruhle's statements.

1. MOTION: JIM ODLIN/MARY BETH TOOLEY

Recommend to the Council to reconsider the recommendation for a 20% CV on the healthiest stocks encountered in the herring fishery, and instead recommend using a 30% CV on the healthier stocks (herring, haddock) and 20% on the stocks of concern (river herring)

MOTION #1 PERFECTED:

Recommend to the Council to reconsider the recommendation for a 20% CV on Atlantic herring, river herring, and haddock, and instead recommend using a 30% CV on the stocks that are not overfished (herring, haddock) and 20% on the stocks of concern (river herring)

Additional Discussion on the Motion: Mr. Stockwell expressed a general concern about funding for increased observer coverage, no matter what the sampling design. Ms. Tooley echoed this concern; while she expressed support for the concept and the proposed sampling design as a goal, she questioned whether the sampling design could realistically be achieved, given the current (and likely future) funding/budget considerations. Mr. Blount asked whether the PDT considered if/how electronic monitoring (EM) could be incorporated into the sampling program, and Ms. Steele responded that EM applications have not been discussed by the Herring PDT yet in detail and were not considered in the SBRM-related analysis that the Committee is discussing. Mr. Stockwell emphasized the importance of coordinating with the States and ASMFC to incorporate considerations relative to comprehensive sampling of river herring bycatch. Mr. Rudolph opposed the motion, urged the Committee to reconsider its approach for designing a sampling program for this fishery, and suggested that the SBRM methodology (which uses discard/kept ratios) may not be appropriate for this high-volume fishery because the denominator will always cause the ratio to be very low.

MOTION #1 CARRIED 7-3-0.

Observer Data and Potential Management Measures to Address At-Sea Monitoring

Ms. Steele updated the Committee on the Herring PDT's continuing evaluation of river herring bycatch and the development of a Herring PDT Report with recommendations regarding this issue. Although the Herring PDT Report is not available at this time, Ms. Steele gave a presentation illustrating the kinds of data and analyses the PDT is exploring. The presentation also provided more detailed information regarding some elements of the observer program/data about which the Committee had previously inquired (slipped catch, large animal takes).

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- Ms. Tooley noted that while the Sea Sampling Branch has tried to provide the best information possible about observed slipped tows, some of the reasons for slippage do not seem logical. She suggested that the Committee may want to make some recommendations regarding how this information is reported to observers.
- Mr. Kane asked how the details regarding slipped catch are currently reported to observers, and he expressed concern that captain's estimates are used to document species composition and poundage of slipped catch.
- Ms. McGee and Mr. Blount questioned the figures provided in the presentation showing that there is almost zero bycatch of river herring by any gear type in the year-round groundfish closed areas. Ms. Wetmore confirmed that the figures depict all observed trips in the areas from 2005-2007 but agreed to follow-up on this issue.
- Mr. Paquette from the Mass. Striped Bass Association raised a few concerns regarding both the proposed sampling design and the observer data. He reminded the Committee that some of the observed river herring bycatch events totaled amounts that are larger than some runs of river herring. He also expressed concern about the data relative to slipped bags in the herring fishery.
- Ms. Slifka reminded the Committee that the bycatch figures illustrate bycatch ratios, which will be higher for gear types like bottom trawls, which have a lower total catch than midwater trawls or pair trawls. She also expressed concern about some of the summary data regarding slipped tows (haul durations) and large animal takes.
- Mr. West confirmed previous statements made by Jim Ruhle regarding the very low levels of bycatch that have been observed recently in the fishery. His plant saw more than 900 mt of herring during the first three weeks of January, all of which had very little bycatch. He emphasized the importance of focusing on species at risk.
- Mr. Rudolph stated that he has no confidence in the observer data regarding slipped catch and suggested that the only way to obtain accurate data about slippage in the fishery is to require that the vessel bring the bag on board for inspection by the observer.

The Herring Committee reviewed and discussed the measures proposed in the Amendment 4 Discussion Document to address/improve the current at-sea monitoring program (Section 2.3.4.2 of the Amendment 4 Draft Discussion Document).

- Ms. Tooley agreed that providing safe working conditions for observers should be required of all vessels, but expressed some concern about implementing specific regulations to address some of these issues; she wondered how such regulations would be interpreted and enforced. She noted that many of the proposed measures relate to improving communication between the crew and observers, and she suggested that the Enforcement Committee review the proposed measures and provide the Herring Committee with enforcement-related comments/recommendations. Mr. Avila agreed with this suggestion.
- Mr. Odlin expressed concern about adopting any regulatory requirements for vessels carrying observers that are based on North Pacific fishery regulations. He felt that the fisheries are significantly different, and any requirements or standards should be developed with special consideration of the operation of the Atlantic herring fishery.
- Mr. Grout supported further consideration of the proposed management measures at this time, as well as the recommendation to seek comment on these measures from the Enforcement Committee.

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- Ms. McGee reminded the Committee that the Council previously expressed concern about haddock bycatch and the need to ensure that observer coverage in the fishery is sufficient to monitor the situation. She urged the Committee to continue to consider the proposed management measures and highlighted the importance of safety for both observers and crew members.

Consensus

The Herring Committee agreed by consensus to forward the list of proposed management measures to address at-sea monitoring (Section 2.3.4.2) to the Enforcement Committee for further discussion.

Public Comment on Issues Not on the Meeting Agenda

Mr. Kaelin presented a letter to the Committee on behalf of Eldon V.C. Greenberg, Counsel to the Sustainable Fisheries Coalition, regarding recent actions related to litigation regarding midwater trawl vessel access to groundfish closed areas (Midcoast Fishermen's Association v. Gutierrez). The letter supports NMFS' initial decision to deny rulemaking on the petition submitted by MFA.

Stock Assessment, Amendment 4, and 2010-2012 Fishery Specifications – Timeline Issues

After a brief review of the Amendment 4 Discussion Document, Ms. Steele updated the Herring Committee on timing issues associated with the upcoming stock assessment (TRAC) and the need to develop fishery specifications as well as the alternatives for inclusion in Amendment 4. The TRAC assessment for Atlantic herring is now scheduled for June 2009 instead of December 2009, and new information will be available to develop the herring fishery specifications. The Herring FMP allows for three-year fishery specifications, which would be developed for 2010-2012 during this calendar year; the timing of this process may affect the timing of Amendment 4 development, and the Council will need to consider the legal requirement to implement measures to address the ACL/AM provisions of the Magnuson-Stevens Reauthorization Act. A revised timeline will be drafted, and the Council will discuss these issues further at its February 9-11, 2009 meeting.

Mr. Stockwell expressed support for splitting Amendment 4 into two actions to ensure that the ACL/AM provisions can be implemented in a timely manner. He suggested that there also may be some minor adjustments to the current catch monitoring program that could be implemented in the earlier action as well, provided that their impacts are not significant enough to trigger the development of an EIS.

Amendment 4 Catch Monitoring Alternatives and Stakeholder Proposals

During the afternoon, the Committee discussed the catch monitoring measures/alternatives under development in Amendment 4 and continued to review the related stakeholder proposals that the Council has received.

- Sean Gehan presented a letter to the Committee which included a catch monitoring proposal and requested that the Committee consider including the proposal as one alternative in Amendment 4. The elements of the proposal include: goals and objectives as voted by the Committee in December 2008; a program to implement near 100% weighing/certification of

catch; provisions for alternative catch weighing programs for some sectors of the fishery; suggestions for working with the observer program and the industry to devise a protocol to estimate slipped catch; measures to encourage the use of new technology; continuation of the research set-aside; and establishment of a portside sampling program.

- Tom Rudolph presented a letter on behalf of CHOIR requesting that the Committee/Council incorporate the CHOIR proposal as a stand-alone alternative for further development and analysis in Amendment 4 and the Draft EIS. Ms. Steele took exception with the statements made in the CHOIR letter regarding the Herring PDT's work and role in the amendment process. She also noted that the quote from the Amendment 4 Discussion Document appearing in the CHOIR letter is not in the Amendment 4 Discussion Document; it was part of some materials provided to the Herring PDT for discussion purposes at the PDT meeting only and was never part of a complete/formal Discussion Document that was provided to the Committee or the Council at any time.

2. MOTION: TERRY STOCKWELL/SALLY MCGEE

To include both the industry proposal (January 21, 2009 Kelley Drye & Warren letter) and the CHOIR proposal as alternatives for catch monitoring to consider in this amendment

2A. MOTION TO SPLIT THE QUESTION: MARY BETH TOOLEY/JIM ODLIN

MOTION #2A TO SPLIT CARRIED 5-4 WITH THE CHAIRMAN VOTING IN FAVOR.

3. SPLIT MOTION #2 (PART 1):

To include the industry proposal (January 21, 2009 Kelley Drye & Warren letter) an alternative for catch monitoring to consider in this amendment

Additional Discussion: Ms. McGee questioned whether the intent of splitting the motion was to try to eliminate one of the proposals from further consideration. She stated that she supported consideration of a full range of alternatives and that she would be voting in favor of including both proposals. Several Committee members agreed. Ms. Goodale expressed concern about some of the elements of the Kelley Drye & Warren proposal because they are more conceptual and may not contain substantive management measures to achieve the stated goals and objectives. Mr. Gehan acknowledged that the details of some of the management measures may require further discussion/development and urged the Committee to include it in the document so that this can occur.

MOTION #3 (SPLIT MOTION #2 PART 1) CARRIED UNANIMOUSLY.

4. SPLIT MOTION #2 (PART 2):

To include the CHOIR proposal as alternatives for catch monitoring to consider in this amendment

Additional Discussion: Ms. Tooley stated that her reason for requesting a split motion is because the CHOIR proposal is very detailed and contains many options and elements that may require some additional discussion and clarification before being incorporated into the document. She requested a brief overview of the proposal from the CHOIR representatives. With some reluctance, Mr. Weiner and Mr. Rudolph very briefly described some elements of the CHOIR proposal, including measures to ensure maximized retention; video-based electronic monitoring; development of catch monitoring control plans (CMCPs); and a suite of other management

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measures to improve monitoring in the fishery and address concerns that have been about some of the proposed management measures. Mr. Odlin expressed concern about the proposed measures for maximized retention and referred to it as “kill them so you can count them.” Mr. Rudolph agreed that this may be the result of such a measure but stated that the tradeoff is that this approach ultimately leads to better and more accurate information about total catch in the fishery, which is currently lacking.

Ms. Steele emphasized that for all catch monitoring alternatives approved for further development and analysis in Amendment 4, including the stakeholder proposals, the Committee/Council are approving the alternatives in concept, recognizing that a significant amount of detail remains to be developed and that the measures themselves may be modified/revised and may even be eliminated as the amendment process continues. As they stand now, the alternatives provide a framework from which to develop more specific management measures, and the Council is scheduled to approve the full range of management measures for analysis in the Draft EIS later this year. She also suggested that once a stakeholder proposal is approved for further development in the amendment, it should lose its association with a particular stakeholder or group and instead become one of the Council’s alternatives under development. The Committee members agreed with these suggestions and acknowledged that some of the measures within the alternatives may change as they are developed and discussed further.

MOTION #4 (SPLIT MOTION #2 PART 2) CARRIED 7-1-0.

5. MOTION: TERRY STOCKWELL/RODNEY AVILA

To include MASS DMF Proposal as an alternative for catch monitoring in the amendment

Additional Discussion: None.

MOTION #5 CARRIED 7-0-1.

Public Comment on Issues Not on the Meeting Agenda

Mr. DiDomenico requested that the Committee/Council consider including measures to address concerns about herring/mackerel interactions and the possession limit for open access permit holders in the herring specifications package, if possible, or in an action that could be implemented as expeditiously as possible if Amendment 4 is split and ACL/AM provisions are implemented first. He stated that while this issue is important to a small number of vessels in the southern New England/Mid-Atlantic area, addressing it should not result in a significant impact for the resource or the fishery.