

Discussion Document:
for Framework 4
to the
Atlantic Herring Fishery Management Plan (FMP)

Action to address disapproved elements of Amendment 5



Prepared by the
New England Fishery Management Council

DATE: JANUARY 2014 MEETINGS

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1.0 INTRODUCTION

In November 2013, the NEFMC voted to initiate Framework 4 to the Atlantic Herring FMP, which will consider options to address disapproved elements of Amendment 5 relating to dealer weighing requirements and measures to address net slippage. The first Framework 4 meeting will occur at the January 2014 NEFMC meeting. This framework action will move forward as expeditiously as possible.

The NEFMC and MAFMC are also working with NMFS to develop an omnibus amendment to implement provisions for industry-funded monitoring across all fisheries. This amendment will also include provisions for observer coverage in the Atlantic herring and mackerel fisheries. The target implementation date for the omnibus amendment is the 2015 fishing year.

2.0 DEALER WEIGHING REQUIREMENTS

In Amendment 5, the Council considered measures to address reporting requirements for Federally-permitted Atlantic herring dealers. The *Preferred Alternative* to address dealer weighing requirements was not approved by NMFS (see Section 2.1). Related management measures that will become effective with the implementation of Amendment 5 (2014) are described below.

Status Quo (No Action Alternative, Post-Amendment 5 Implementation)

Federally-permitted Atlantic herring dealers, including at-sea processors, must submit, for each transaction, an electronic dealer report each week. Reports are due by midnight (Eastern Time) each Tuesday for the week that ended the previous Saturday at midnight. Reports must include the correct vessel name and Federal permit number of each vessel that harvested any fish received along with the correct weight units for purchased fish. Dealers must also report the VTR serial number used by each vessel that harvested fish. Dealers are required to submit a report even if there is no activity during a week.

- *Reporting Atlantic Herring Landed by a Carrier Vessel:* Dealers must attribute catch to the vessel that harvested the herring, which may not necessarily be the vessel that landed the herring. Vessels acting as herring carriers must obtain the VTR serial number from the catcher vessel. Subsequently, dealers must request the name, permit number, and VTR serial number of the catcher vessel from the carrier vessel, and report the fish as being harvested by the catcher vessel. Dealers should not attribute landings to a carrier vessel, as it may lead to double counting landings and could lead to trip limit reductions in a particular management area.
- *Reporting Haddock Landed from Herring Vessels:* Dealers, including at-sea processors, that cull or separate all other fish from the herring catch must separate and retain all haddock offloaded from vessels that have a Category A or B permit fishing on a declared herring trip and from vessels that have a Category C or D permit fishing with midwater trawl gear in Areas 1A, 1B, and/or 3. Any haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after it has been separated from the herring, for at least 12 hours for dealers and processors on land, and for 12 hours after landing on shore by at-sea

processors for inspection by law enforcement officials. The dealer or at-sea processor must report all such haddock on the weekly electronic dealer report and must use the appropriate disposition code for the haddock. The weekly dealer report must clearly indicate the vessel name and permit number of the vessels that caught the retained haddock.

- *Amendment 5 At-Sea Herring Dealer Permit:* Upon implementation of Amendment 5, a new Federal At-Sea Herring Dealer permit will be required for carrier vessels that receive Atlantic herring for purposes other than transport at sea, or other vessels that sell Atlantic herring to any entity. Possession of this At-Sea Herring Dealer permit will require compliance with federal dealer reporting requirements (Section 648.7) . A “dealer identifier” will be developed for at-sea for the purposes of reporting. Vessels in possession of both the At-Sea Herring Dealer Permit and a herring fishing permit will be required to fulfill the reporting requirements of both permits.

2.1 AM5 PREFERRED ALTERNATIVE: DISAPPROVED DEALER WEIGHING PROVISIONS

Preferred Alternative (Amendment 5, Sub-Option 2B)

This measure (Sub-Option 2B) would require federally permitted Atlantic herring dealers to accurately weigh all fish. If dealers do not sort by species, they would be required to document (for individual landing submissions) how they estimate the relative composition of a mixed catch, to facilitate quota monitoring and cross-checking with other data sources.

Council Rationale (Amendment 5)

The *Preferred Alternative (including Sub-Option 2B)* for reporting requirements relates to the overall goal of Amendment 5 to improve catch monitoring and ensure compliance with the Magnuson-Stevens Act (MSA), and the first objective of the amendment to implement measures to improve the long-term monitoring of catch (landings and bycatch) in the herring fishery. Public comments on the Amendment 5 DEIS indicated that requirements for dealers to accurately weigh fish are a high priority for a substantial number of stakeholders in the fishery – tuna, groundfish, and recreational fishermen, environmental interests, and other stakeholders. Moreover, herring industry members who commented on the Amendment 5 DEIS expressed support for the proposed requirement for dealers to accurately weigh fish. The Council supported the vast majority of public comment received on this issue proposed the requirement for herring dealers in order to better achieve the goals and objectives of Amendment 5.

While it is generally recognized that dealers already weigh fish and it is required that federally-permitted dealers report the weight of fish they purchase in pounds (for all fisheries/transactions), the Council believes that establishing this requirement by regulation will improve catch monitoring in the herring fishery due to diversity within the fishery and the numerous methods for offloading/weighing/selling Atlantic herring. These various methods have been reviewed by the Council and are described in detail in Appendix I of the Amendment 5 document (Volume II): Discussion Paper: *Potential Applicability of Flow Scales, Hopper Scales, Truck Scales, and Volumetric Measurement in the Atlantic Herring Fishery*.

Because of the diversity associated with the Atlantic herring fishery, the *Preferred Alternative* does not specifically require all fish to be weighed on a scale, but does provide for the use of scales and standard volumetric measurements in a manner designed to improve accuracy, as described in Appendix I (Volume II). Furthermore, implementing this requirement and standardizing the methods by which dealers weigh all catch and requiring vessels to confirm the amount of fish landed should result in better overall estimates of catch and help ensure that catch limits are not exceeded. Accurate landings data will also aid in monitoring any catch caps that may be established in the future, and in achieving better catch and bycatch estimates of small-bodied fish that are often landed with herring, such as river herring and shad.

Based on observer data and discussions with industry, there are cases where various small pelagic fish are caught and processed together such that while the overall catch of “fish” is reported, it is not fully broken down by species. This effectively results in misreporting even if the total weight of all fish is known, and fish that make up a small proportion of a catch, like river herrings and shads, may go unreported. The Council’s *Preferred Alternative* in Amendment 5 would have required documentation of how such mixed catches are handled so that the extent of potential misreporting can be further evaluated.

This provision is intended to facilitate quota monitoring and cross-checking with other data sources. Requiring dealers to document (for individual landing submissions) how they estimate the relative composition of a mixed catch provides qualitative information that may not directly be utilized for quota monitoring, but the additional information may help clarify methods that dealers use to determine the weight of fish and comply with the overall requirement to accurately weigh the fish. The Council agrees and believes that implementing the proposed weighing provisions, along with sub-option 2B should improve the accuracy of dealer reports and reduce discrepancies between datasets.

NMFS Rationale for Disapproval

In its July 19, 2013 letter notifying the Council of the disapproval of this measure, NMFS noted that dealers currently report the weight of fish, obtained by scale weights and/or volumetric estimates. Because the measure proposed by the Council does not specify the methods dealers must use to determine weight and allows volumetric estimates, it is not expected to change dealer behavior and, therefore, is not expected to improve the accuracy of catch weights reported by dealers. Additionally, a qualitative description of how relative species composition is estimated cannot be incorporated into catch monitoring because NMFS must use the weights reported by the dealers, regardless of the methods used to determine weights. Without standards for estimating species composition, the Agency felt that it would be unable to evaluate the sufficiency of the information submitted. If this measure became a requirement, and dealers did not document how they estimated relative species composition, it would become a compliance issue and may affect future permit issuance.

NMFS therefore concluded that this measure does not comply with National Standard 7's requirement to minimize costs and avoid unnecessary duplication, and the Paperwork Reduction Act's requirement for the utility of the measure to outweigh the additional reporting and administrative burden on the dealers.

2.2 AM5 NON-PREFERRED DEALER WEIGHING PROVISIONS

Sub-Options 2A and 2C were non-preferred alternatives to address dealer weighing requirements in Amendment 5.

Sub-Option 2A: This sub-option would require federally permitted Atlantic herring dealers to accurately weigh all fish. If dealers do not sort by species, they would be required to document (annually in dealer applications) how they estimate the relative composition of a mixed catch, to facilitate quota monitoring and cross-checking with other data sources.

Sub-Option 2C: This sub-option would require federally permitted Atlantic herring dealers to obtain vessel representative confirmation of SAFIS transaction records to minimize data entry errors at the first point of sale. It would require vessel owners/operators to review and validate all catch information reported for their vessels in Fish-on-Line (FOL) on a weekly basis, including VMS, VTR, and dealer data. If data issues are noted by the vessel owner/operator they would indicate a data issue and provide comments describing the issue, this would create an issue report to NMFS in FOL. NMFS would follow up on all issue reports to resolve discrepancies by working with vessel operators and dealers to correct data submissions. If no data issues are noted, the vessel's owner/operator would indicate such.

Additionally, under Sub-Option 2C, the frequency of VTRs and dealer reports would be increased to improve the effectiveness of this measure. VTRs would be required to be submitted within 24 hours of the end of a trip and dealer reports would be required to be submitted within 24 hours of receipt or purchase. These changes would increase the timeliness of reports and would provide data to NMFS for validation sooner than they are available currently. While these changes would not likely have a significant impact on information used in weekly monitoring, they would improve the validation efforts that are currently conducted by NMFS and improve the overall state of data in these fisheries.

Discussion

Sub-option 2B (per-landing documentation) was selected by the Council over Sub-Option 2A (annual documentation) so that variability in weighing/reporting methods throughout the fishery can be better understood. Sub-option 2B was also selected over sub-option 2C because of potential problems associated with requirements for fishermen to cross-check dealer reports; industry comments suggested that the requirements associated with sub-option 2C could potentially put fishermen and dealers in adversarial and competitive regulatory positions.

Several alternatives for requiring scales, standardizing volumetric measurements, certifying fish holds, and/or requiring third-party landings verification were considered by the Council during the development of Amendment 5 to the Herring FMP. The Council may want to revisit some of these alternatives during the upcoming Framework 4 discussions. A Council staff discussion paper entitled "*Potential Applicability of Flow Scales, Hopper Scales, Truck Scales and Volumetric Measurement in the Atlantic Herring Fishery*" (Amendment 5 appendix) has been re-distributed for reference. Some of the approaches discussed in this paper (and throughout the development of Amendment 5) may be appropriate to consider in a framework action (ex., standardizing the pounds of Atlantic herring in a fish tote), while others are more complex and may require more time to develop and analyze.

Follow-up Guidance from NMFS

In its September 20, 2013 letter to the Council regarding potential approaches to addressing the Amendment 5 disapproved measures, NMFS provided the following guidance:

Revisions to the dealer reporting requirement would need to address our concerns with the accuracy and utility of the information reported and could be addressed in several ways.

The Council could select Sub-Option 2C in Amendment 5 (requiring vessel owners to review and validate data for their vessels in Fish-on-Line). This measure would be a change from status quo, and it has some utility as it helps identify, and possibly reduce, discrepancies between dealer and vessel reports. This option has an accompanying recommendation for daily vessel trip and dealer reports. Changing reporting frequency would increase the timeliness of reports and would provide data to NMFS for validation sooner than they are currently available.

Another way for the Council to revise the dealer reporting requirement would be to clarify and standardize the methods used to accurately weigh all fish. Does the measure require fish to be weighed using a scale? Does the measure require a volumetric estimate based on a certified fish hold or standardized totes? If the methods to accurately weigh all fish were specified, it would likely change dealer behavior from status quo, and may, depending on the methods, improve the accuracy of dealer reports. Alternatively, **the Council could take this opportunity to revisit the original concern that sparked the development of the dealer reporting requirement, that landings data were not verified by a third-party, and revise the measure to better address that concern.**

The sub-option requiring dealers to document how they estimate the composition of catch was intended to gather information on methods used by dealers to estimate species composition.

Another way to obtain that type of information would be to gather this information as part of a data collection program that would update community profiles for Northeast fisheries. *(Council Staff Note: It is unclear whether the above approach would require a Council action.)*

2.3 MAFMC ATLANTIC MACKEREL FISHERY (AM14)

The following measure was disapproved in Amendment 14 to the Mid-Atlantic Fishery Management Council's Mackerel Squid Butterfish (MSB) FMP, for similar reasons as Amendment 5 (see previous discussion).

Require that federally permitted MSB dealers weigh all landings related to mackerel transactions over 20,000 pounds. If dealers do not sort by species, they would need to document with each transaction how they estimated the relative composition of a mixed catch.

At this time, the Mid-Atlantic Council has not initiated a management action to reconsider and/or further address this issue. It is assumed that the vast majority of Atlantic mackerel dealers possess a Federal Atlantic herring permit and would be subject to dealer reporting provisions implemented for the Atlantic herring fishery for any transactions involving Atlantic herring.

2.4 ADDITIONAL DISCUSSION RE. DEVELOPMENT OF FRAMEWORK 4 OPTIONS

If the Council determines that additional provisions to address requirements for Atlantic herring dealers should be considered in Framework 4 to the Herring FMP, it will be helpful to clearly identify the goals/objectives of the measure(s) to be developed. Different provisions may be designed to achieve specific objectives. As shown in the Council Staff Discussion Paper for Amendment 5 (referenced in the previous sub-section), the Council considered numerous approaches to address dealer requirements for weighing and reporting Atlantic herring in Amendment 5, including requirements for flow scales, hopper scales, and/or truck scales: certifying volumetric measurements; and using a third-party to independently verify herring landings. Each of these approaches may be re-considered, depending on the objective(s) identified by the Council.

Is the objective of this measure to:

- Enhance the accuracy of dealer reporting?
- Standardize the methods by which dealers weigh all catch?
- Improve agreement and reduce inconsistencies between vessel and dealer reports?
- Improve understanding about how dealers weigh fish and determine species composition?
- Provide a mechanism to independently verify Atlantic herring landings?
- Other?

In Amendment 5, the Council identified specific goals/objectives of the catch monitoring program for the Atlantic herring fishery (see below). It may be appropriate to consider the development of Framework 4 options for dealer weighing/reporting in the context of the catch monitoring goals/objectives.

- 1. To create a cost effective and administratively feasible program for provision of accurate and timely records of catch of all species caught in the herring fishery;**
 - Review federal notification and reporting requirements for the herring fishery to clarify, streamline, and simplify protocols;
- 2. Develop a program providing catch of herring and bycatch species that will foster support by the herring industry and others concerned about accurate accounts of catch and bycatch, i.e., a well-designed, credible program;**
 - Avoid prohibitive and unrealistic demands and requirements for those involved in the fishery, i.e., processors and fishermen using single and paired midwater trawls, bottom trawls, purse seines, weirs, stop seines, and any other gear capable of directing on herring;
 - Improve communication and collaboration with herring vessels and processors to promote constructive dialogue, trust, better understanding of bycatch issues, and ways to reduce discards;
 - Eliminate reliance on self-reported catch estimates;

3. **Design a robust program for adaptive management decisions;**
4. **Determine if at-sea sampling provides bycatch estimates similar to dockside monitoring estimates;**
 - Assure at-sea sampling of at-sea processors' catches is at least equal to shoreside sampling;
 - Reconcile differences in federal and states' protocols for dockside sampling, and implement consistent dockside protocols to increase sample size and enhance trip sampling resolution.

3.0 MEASURES TO ADDRESS NET SLIPPAGE

In Amendment 5, the Council considered measures to address net slippage on Category A, B, and C Atlantic herring vessels. The *Preferred Alternative* to address net slippage was not approved by NMFS (see Section 3.1). Management measures related to observer sampling and measures to address net slippage that were approved by NMFS and are anticipated to become effective with the implementation of Amendment 5 (2014) are described below.

For the purposes of Amendment 5, *slippage* is defined as:

Unobserved catch, i.e., catch that is discarded prior to being observed, sorted, sampled, and/or brought on board the fishing vessel. Slippage can include the release of fish from a codend or seine prior to completion of pumping or the release of an entire catch or bag while the catch is still in the water.

- Fish that cannot be pumped and that remain in the net at the end of pumping operations are considered to be operational discards and not slipped catch. Observer protocols include documenting fish that remain in the net in a discard log before they are released, and existing regulations require vessel operators to assist the observer in this process. Management measures are under consideration in this amendment to address this issue and improve the observers' ability to inspect nets after pumping to document operational discards.
- Discards that occur at-sea after catch brought on board and sorted are also not considered slipped catch.

Status Quo (No Action Alternative, Post-Amendment 5 Implementation)

Sampling Provisions for All Management Areas: Upon the implementation of Amendment 5, the following provisions will apply to limited access herring vessels (all gear types) carrying a NMFS-approved observer on board (any trip with an observer):

- Vessels will be required to pump aboard all fish from the net for inspection and sampling by the observer. Vessels that do not pump fish will be required to bring all fish aboard the vessel for inspection and sampling by the observer. Unless specific conditions are met (see below), vessels will be prohibited from releasing fish from the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer.
- Vessels may make short test tows in the area to check the abundance of target and bycatch species without pumping or bringing the fish on board if the net is reset without releasing the contents of the test tow. In this circumstance, catch from the test tow will remain in the net and would be available to the observer to sample when the subsequent tow is pumped out or all fish are brought aboard.
- Fish that have not been pumped or brought aboard may be released (slippage) if the vessel operator finds that:
 1. Pumping the catch or bringing all fish aboard 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.
- If the net is released for any of the reasons stated above, the vessel operator will be required to complete and sign a Released Catch Affidavit providing information about where, when, and why the net was released, as well as a good-faith estimate of the total weight of fish caught on the tow and weight of fish released. Released Catch Affidavits will be required for all slippage events and must be submitted within 48 hours of completion of the fishing trip.

Sampling Provisions for Midwater Trawl Vessels in Year-Round Groundfish Closed

Areas: In addition to the sampling requirements and slippage provisions described above, Amendment 5 requires midwater trawl vessels to carry an observer when fishing in the groundfish closed areas and leave the groundfish closed area(s) for the remainder of the fishing trip if a slippage event occurs in the groundfish closed areas. According to Amendment 5, if the groundfish year-round closed areas are modified and/or eliminated in the future, access by midwater trawl vessels will be considered accordingly in the related groundfish action.

Measures to Improve/Maximize Sampling At-Sea (All Limited Access Herring Vessels):

Upon the implementation of Amendment 5, the following additional provisions will be implemented for limited access herring vessels (Categories A/B/C) to improve sampling by NMFS-approved observers at-sea:

- (1) When vessels issued limited access herring permits are working cooperatively in the Atlantic herring fishery, including pair trawling, purse seining, and transferring herring at-sea, each vessel must provide to observers, when requested, the estimated weight of each species brought on board or released on each tow.
- (2) In addition to the requirements at §648.11 (d)(1)-(7), an owner or operator of a vessel issued a limited access herring permit on which a NMFS-approved observers is embarked must provide observers:
 - A safe sampling station adjacent to the fish deck, including: a safety harness, if footing is compromised and grating systems are high above the deck; a safe method to obtain samples; and a storage space for baskets and sampling gear.
 - Reasonable assistance to enable observers to carry out their duties, including but not limited to assistance with: obtaining and sorting samples; measuring decks, codends, and holding bins; collecting bycatch when requested by the observers; and collecting and carrying baskets of fish when requested by the observers.
 - *Advance notice when pumping will be starting; when sampling of the catch may begin; and when pumping is coming to an end.*
 - *Visual access to net/codend or purse seine bunt and any of its contents after pumping has ended and before the pump is removed from the net. On trawl vessels, the codend including any remaining contents should be brought on board. If bringing the codend on board is not possible, the vessel operator must ensure that the observer can see the codend and its contents as clearly as possible before releasing its contents.*

3.1 AM5 PREFERRED ALTERNATIVE: DISAPPROVED SLIPPAGE PROVISIONS

The Council's *Preferred Alternative (Option 4C)* for addressing net slippage in Amendment 5 included the provisions that will apply to herring vessels in all management areas, described under the No Action Alternative in Section 3.0 of this document (the full sampling provisions were approved by NMFS in Amendment 5).

The element of the *Preferred Alternative* which was disapproved by NMFS was part of Option 4C and would have implemented a requirement for trip termination after ten slippage events by a gear type in a management area:

- Under this option (4C), NMFS would track the number of slippage events by gear type (midwater trawl, purse seine, bottom trawl) observed in each management area. Once ten (10) slippage events occur in any management area by one of the three gear types, each additional slippage event observed by a herring vessel using that gear will result in trip termination and the vessel will be required to return to port. Slippage events that are caused by spiny dogfish (#3 above) would not be counted towards the trip termination thresholds.

Council Rationale (Amendment 5)

The measures proposed to address slippage directly relate to the first objective of Amendment 5: to implement measures to improve the long-term monitoring of catch (landings and bycatch) in the herring fishery. Minimizing slippage events and better documenting slipped catch may improve estimates of bycatch in the fishery. To the extent that the amount and species composition of slipped catch can be sampled and/or estimated, catch monitoring will be enhanced. To the extent that slippage events can be reduced/eliminated, bycatch can be further minimized. The measures under consideration in Amendment 5 to address net slippage also relate to the first two goals of the catch monitoring program established in Amendment 5.

Net slippage was identified during the development of Amendment 5 as a significant concern with respect to maximizing sampling in the directed herring fishery and generating accurate/precise estimates of the catch of herring as well as other species. Many stakeholders expressed support for measures to address net slippage in Amendment 5, suggesting that implementing these measures would further ensure that there is accountability for all catch in the fishery. Ultimately, the Council proposed a range of options in the Draft EIS that were based, in part, on the Closed Area I sampling provisions that were implemented by NMFS during the development of Amendment 5. The sampling provisions implemented in Closed Area I (CAI) appear to have been successful in reducing slippage events to date, so the Council developed the ***Preferred Alternative*** based on the CAI provisions, with some modifications to allow for the measures to be applied throughout the herring fishery, on vessels using gear other than midwater trawl gear. Support for trip termination measures relates to accountability, as well as implementing a deterrent to discourage inappropriate use of the slippage exceptions (safety and mechanical failure).

The success of the CAI sampling program, to date, is one of the primary reasons that the Council is proposing similar provisions throughout the fishery (modified accordingly to address the diversity of the fishery and the use of multiple gear types). According to the Amendment 5 DEIS, there were 99 hauls observed in CAI during 2010, under the new provisions for sampling catch, implemented in November 2009 (note that only midwater trawl vessels have operated under this rule in CAI). There were no slippage events observed on these 99 hauls, and consequently no Released Catch Affidavits were submitted from the Closed Area I fishery in 2010. There appears to have been one released catch event (estimated 1,500 pounds) on a haul that ended (but did not begin) in CAI. In 2011, there were 28 hauls observed in the Closed Area I from vessels on declared Atlantic herring trips. There were no partial or full slippage events documented in CAI during 2011. There were 313 observed trips in all Atlantic Herring Management areas (trips defined by gear type and include purse seine and paired/single midwater trawl) in 2011, resulting in a total of 723 associated observed hauls.

The Council's ***Preferred Alternative*** is consistent with several comments received on the Amendment 5 DEIS expressing support for a hybrid approach that would establish trip termination provisions by fleet sector and/or management area, versus a fleet-wide allowance for slippage events. The Council considered these comments/suggestions and modified the ***Preferred Alternative*** accordingly when it selected final measures for Amendment 5. The intent is to reduce negative impacts of trip termination provisions on vessels that may not have contributed to the need for trip termination (i.e., vessels that did not have slippage events count

towards the threshold but must terminate trips if they do so after the threshold is reached). This addresses perceptions about fairness as well as the need to mitigate negative impacts of a measure that is designed primarily to serve as a backstop.

Information regarding slippage events by gear type and management area is provided in Section 6.3.2.1 of the Amendment 5 document. The Council weighed available slippage data and comments provided by stakeholders when selecting the final measures and proposing the gear-specific and area-specific thresholds. Given the buffer against trip termination provided by the slippage allowance by gear and area, and given the success to date of the CAI sampling provisions, the Council believes that the *Preferred Alternative* provides a reasonable balance that will adequately deter slippage events across the fishery without unduly penalizing the fleet or individual vessels.

NMFS Rationale for Disapproval

In its July 19, 2013 letter notifying the Council of the disapproval of this measure, NMFS expressed concern about the rationale for, and legality of, the slippage caps. NMFS noted that the proposed threshold for triggering a slippage cap (10 slippage events by area and gear type) does not have a strong supporting analysis in the EIS. Observer data indicate that the number of slippage events is variable across years. During 2008-2011, the number of slippage events per year ranged between 35 and 166. The annual average number of slippage events by gear type during 2008, 2009, and 2011 are as follows: 4 by bottom trawl; 36 by purse seine; and 34 by midwater trawl. Because the frequency of slippage was not consistently analyzed by gear type and management area, NMFS concluded that it is difficult to use the analysis in the Amendment 5 EIS to support the selection of trigger for the slippage caps. Additionally, recent observer data (2008-2011) indicate that the estimated amount of slipped catch is relatively low (approximately 1.25 percent) compared to total catch by limited access Atlantic herring vessels.

Once a proposed slippage cap has been met, vessels that slip catch, even if the reason for slipping was safety or mechanical failure, would be required to return to port. This aspect of the measure has the characteristic of a sanction, inconsistently applied. Vessels may continue fishing following slippage events 1 through 10, but must return to port following the 11th slippage event, regardless of the vessel's role in the first 10 slippage events. Additionally, this measure may result in a vessel operator having to choose between trip termination and bringing catch aboard despite a safety concern. For these reasons, the Agency believes the proposed slippage caps are inconsistent with the Administrative Procedure Act and National Standards 2 and 10, and had to be disapproved.

3.2 AM5 NON-PREFERRED SLIPPAGE PROVISIONS

Several variations of this alternative were considered by the Council during the development of Amendment 5. The *Preferred Alternative* was Option 4C (above). Other non-preferred options are described below.

Council Staff Note: In Amendment 5, Option 3 (Measures to Address Net Slippage) included the full sampling provisions and slippage prohibitions (with three exceptions) for limited access herring vessels fishing in all management areas on trips with observers on board, as well as a requirement for a Released Catch Affidavit; these provisions were approved by NMFS and will be implemented with Amendment 5 (see description of the No Action Alternative in Section 3.0, p. 7).

Option4A: Catch Deduction and Possible Trip Termination (Non-Preferred)

Under this option, the following provisions would apply to limited access herring vessels (all gear types) carrying a NMFS-approved observer on board (for any trip with an observer):

For slippage events that occur if the vessel operator finds that (1) pumping the catch could compromise the **safety** of the vessel or (2) **mechanical failure** precludes bringing some or all of the catch aboard the vessel:

- It will be assumed that the herring not pumped on board will equal 100,000 lbs. of herring, to be counted as part of the catch and against the sub-ACL for that management area. Vessel operators will be responsible for reporting this catch through the quota monitoring mechanism (IVR or VMS) and their VTRs, under penalty of perjury. The slipped catch will be identified separately so that the number of slippage events per management area can be tracked and any resulting discrepancies between datasets can be more easily resolved.
- Once ten slippage events are observed in a particular management area, each additional slippage event for reasons specified in (1) and (2) above will cause trip termination and the vessel will be required to return to port.

Option4B: Closed Area I Provisions with Catch Deduction and Possible Trip Termination (Non-Preferred)

This option would apply management measures similar to those for herring vessel access to Multispecies Closed Area I based on the November 30, 2010 Rule for the Closed Area I provisions (CFR §648.80). The following provisions would apply to limited access herring vessels (all gear types) on declared herring trips in all herring management areas carrying a NMFS-approved observer on board (for any trip with an observer):

- Vessels would be required to pump aboard all fish from the net for inspection and sampling by the observer. Vessels that do not pump fish would be required to bring all fish aboard the vessel for inspection and sampling by the observer. Unless specific conditions are met (see below), vessels would be prohibited from releasing fish from the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discarding fish at

sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer.

- Vessels may make short test tows in the area to check the abundance of target and bycatch species without pumping the fish on board if the net is reset without releasing the contents of the test tow. In this circumstance, catch from the test tow would remain in the net and would be available to the observer to sample when the subsequent tow is pumped out.
- Fish that have not been pumped aboard may be released 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.
- If the net is released for any of the reasons stated above, the vessel operator would be required to complete and sign a Released Catch Affidavit providing information about where, when, and why the net was released, as well as a good-faith estimate of the total weight of fish caught on the tow and weight of fish released. The Released Catch Affidavit must be submitted within 48 hours of completion of the fishing trip.

For slippage events that occur if the vessel operator finds that (1) pumping the catch could compromise the **safety** of the vessel or (2) **mechanical failure** precludes bringing some or all of the catch aboard the vessel:

- It will be assumed that the herring not pumped on board will equal 100,000 lbs. of herring, to be counted as part of the catch and against the sub-ACL for that management area. Vessel operators will be responsible for reporting this catch through the quota monitoring mechanism (IVR or VMS) and their VTRs, under penalty of perjury. The slipped catch will be identified separately so that the number of slippage events per management area can be tracked and any resulting discrepancies between datasets can be more easily resolved.
- Once ten slippage events are observed in a particular management area, each additional slippage event for reasons specified in (1) and (2) above will result in trip termination and the vessel will be required to return to port.

Council Staff Note: The full sampling provisions described above were approved by NMFS and will apply on all limited access herring trips with an observer on board. As a result, Option 4B is now the same as Option 4A.

Option 4D: Closed Area I Provisions with Trip Termination Only (5 Events)

Option 4D is the same as the Council's ***Preferred Alternative***, except trip termination would result once five (5) slippage events occur in any management area.

Follow-up Guidance from NMFS

In its September 20, 2013 letter to the Council regarding potential approaches to addressing the Amendment 5 disapproved measures, NMFS provided the following guidance:

If the Council wants to revise the slippage cap, the revisions would need to address issues concerning safety, the biological/administrative justification for the cap's trigger, and equity.

The slippage cap could be revised to be more similar to the sampling requirements in Closed Area I, such that all vessels that slip catch have a consequence. This revision would alleviate the concern NMFS had with the equitable application of the slippage cap among those who contribute to reaching the cap, as well as the concern we had with the basis for triggering the cap. **The consequence of slipped catch could be a requirement to leave the area where the slippage event occurred; the area could be a herring management area or a statistical area.** But the consequence should not be so severe as to create a safety issue. To alleviate safety concerns, **slippage for safety, mechanical, or excess spiny dogfish catch reasons could be exempt from any consequence,** except that the vessel would still be required to complete a Released Catch Affidavit.

3.3 MAFMC ATLANTIC MACKEREL FISHERY (AM14)

The following measure was disapproved in Amendment 14 to the Mackerel FMP, for similar reasons as Amendment 5 (see previous discussion).

*With the exceptions noted below, mackerel limited access and/or longfin squid moratorium permitted vessels that have notified the observer program of their intent to land over 2,500 pounds of longfin squid or over 20,000 pounds of mackerel and have been selected to carry an observer would be required to pump/haul aboard all fish from the net for inspection and sampling by the observer. Vessels that do not pump fish would be required to bring all fish aboard the vessel for inspection and sampling by the observer. Vessels would be prohibited from releasing fish from the net (slippage), transferring fish to another vessel (that is not carrying a NMFS-approved observer), or otherwise discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer. **Exceptions:***

- 1) pumping the catch could compromise the safety of the vessel/crew*
- 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.*

If a net is released, including the exemptions above, the vessel operator would be required to complete and sign a Released Catch Affidavit providing information about where, when, and why the net was released, as well as a good-faith estimate of the total weight of fish caught on the tow and weight of fish released. Released Catch Affidavits must be submitted within 48 hours of completion of the trip. Exemptions and provisions of this measure can be modified via the annual specifications process.

*For mackerel limited access permitted vessels, NMFS would track the number of slippage events. Once a cap of 10 slippage events (adjustable via specifications) occur in any given year for notified and observed mackerel trips then subsequent slippage events on any notified and observed Mackerel trip would result in trip termination fleet-wide for the rest of that year. The goal is to minimize slippage events. **The only slippages that would count against the cap are non-emergency events, so the exceptions 1, 2, and 3 identified above would not count against the slippage cap.** Operational discards (small quantities of fish that remain in the net) that are made available to the observer for visual access prior to discarding would also not count against the slippage cap. Requirements and provisions of the measure can be modified via the annual specifications process.*

Framework 9 to the MSB FMP (Under Development)

The Mid-Atlantic Fishery Management Council is currently developing options in Framework 9 to the MSB FMP to address the disapproved slippage measures proposed in Amendment 14. The following options are under consideration to apply to vessels participating in the Atlantic mackerel fishery:

Alternative 1 (Status Quo/no action – non-exempted slippage prohibition)

The current prohibition on non-exempted slippages in the mackerel and longfin squid fisheries would still be in place. Violations would be handled through the NOAA enforcement process. Captains are required to submit affidavits regarding the circumstances of any slippage.

Alternative 2 (Trip termination for non-exempted slippage events)

This alternative would require vessels with limited access mackerel permits to return to port following any non-exempted slippage. This measure would serve as an additional accountability measure related to both the general prohibition on non-exempted slippages and the river herring and shad cap.

Alternative 3 (Vacate statistical area for non-exempted slippage events)

This alternative would require vessels with limited access mackerel permits to vacate a statistical area in which any non-exempted slippage occurs (for the remainder of a trip). This measure would serve as an additional accountability measure related to both the general prohibition on non-exempted slippages and the river herring and shad cap.

Alternative 4 (Vacate statistical area for non-safety slippage events)

This alternative would require vessels with limited access mackerel permits to vacate a statistical area in which any slippage besides the safety exemption occurs (for the remainder of a trip). This measure would serve as an additional accountability measure related to both the general prohibition on non-exempted slippages and the river herring and shad cap.

Alternative 5 (Vacate statistical area for non-safety slippage events and trip termination for non-exempted slippage events)

This alternative would require vessels with limited access mackerel permits to vacate a statistical area in which any slippage besides the safety exemption occurs (for the remainder of a trip). In addition, if any non-exempted slippage occurs they would have to terminate the trip. Mechanical and dogfish issues that led to a slippage would thus require leaving a statistical area but not require trip termination. This measure would serve as an additional accountability measure related to both the general prohibition on non-exempted slippages and the river herring and shad cap.

Alternative 6 (Vacate statistical area for slippage events and trip termination for non-exempted slippage events)

This alternative would require vessels with limited access mackerel permits to vacate a statistical area in which any slippage occurs (for the remainder of a trip). In addition, if any non-exempted slippage occurs they would have to terminate the trip. Mechanical, dogfish, and safety issues that led to a slippage would thus require leaving a statistical area but not require trip termination. This measure would serve as an additional accountability measure related to both the general prohibition on non-exempted slippages and the river herring and shad cap.

Alternative 7 (Vacate statistical area for non-dogfish slippage events and trip termination for non-exempted slippage events)

This alternative would require vessels with limited access mackerel permits to vacate a statistical area in which any slippage besides the dogfish exemption occurs (for the remainder of a trip). In addition, if any non-exempted slippage occurs they would have to terminate the trip. Mechanical and safety issues that led to a slippage would thus require leaving a statistical area but not require trip termination. This measure would serve as an additional accountability measure related to both the general prohibition on non-exempted slippages and the river herring and shad cap.

In Development: For Alternatives 3-7, include sub-options for "miles away" move along rules as a consequence for slippage events.

The Mid-Atlantic Fishery Management Council is scheduled to select final measures for Framework 9 at its February 2014 meeting.

3.4 ADDITIONAL DISCUSSION RE. DEVELOPMENT OF FRAMEWORK 4 OPTIONS

If the Council determines that additional slippage provisions should be developed in Framework 4 to the Herring FMP, the Herring PDT recommends that the Amendment 5 catch monitoring measures, including the full sampling requirements and slippage provisions, form the basis of any alternatives/options to be further considered/analyzed. When Amendment 5 is implemented, all limited access herring vessels will be subject to the full sampling provisions and limitations on slippage described on p. 7 of this document under the no action alternative (Section 3.0). limited access herring vessels will be prohibited from slipping catch on trips with an observer on board unless:

1. Pumping the catch or bringing all fish aboard 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.

If the catch is slipped for any of the reasons stated above, the vessel operator will be required to complete and sign a **Released Catch Affidavit** providing information about where, when, and why the net was released, as well as a good-faith estimate of the total weight of fish caught on the tow and weight of fish released. Released Catch Affidavits will be required for all slippage events and must be submitted within 48 hours of completion of the fishing trip.

Framework 4 management measures should therefore build on the Amendment 5 provisions; the Council should consider whether additional consequences or restrictions are necessary to further discourage and minimize slippage and clearly identify the goals/objectives of the additional measures. NMFS' disapproval of this measure related to the structure of and justification for the consequence measures (trip termination after ten slippage events per gear type and management area). To address NMFS's concerns, options for consequence measures in Framework 4 could apply to all observed slippage events. Slippage will be prohibited unless under the three exceptions identified above; additional consequence measures would be intended to minimize the use of the exceptions allowed under the Amendment 5 provisions.

Possible Consequence Options for Slippage Events?

- *Trip Termination Option?* Following the release of the net for one of the three exemptions specified above, the vessel would be required to terminate the fishing trip.
- *Management Area Option?* Following the release of the net for one of the three exemptions specified above, the vessel would be required to exit the management area; the vessel may continue to fish but may not fish in the management area for the remainder of the trip (note that this is not feasible for purse seine vessels and essentially equates to trip termination for these vessels);

- *Statistical Area Option?* Following the release of the net for one of the three exemptions specified above, the vessel would be required to exit the statistical area; the vessel may continue to fish but may not fish in the statistical area for the remainder of the trip;
- *RH/S Catch Cap Area Option?* Following the release of the net for one of the three exemptions specified above, the vessel would be required to exit the RH/S Catch Cap Area; the vessel may continue to fish but may not fish in the RH/S Catch Cap Area for the remainder of the trip (note that there is no RH/S catch cap proposed for the Georges Bank Catch Cap Area (Area 3), but Framework 3 does specify a Georges Bank Catch Cap Area);
- *Combination Option?* The Council could develop an option that applies different consequence measures (trip termination, move-along) depending on the type of slippage event, similar to the Mid-Atlantic Council's Alternatives 5-7 under consideration in Framework 9 to the MSB FMP (see Section 3.3, p. 14).
- *Other Area-Based Option?* Similar to the "miles away" sub-options that the Mid-Atlantic Council is considering under Alternatives 3-7 in Framework 9 (Section 3.3, p. 14), the Council could develop an option that requires a vessel to move a specified distance following the release of the net for one of the three exemptions specified above.