

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Hearing Summary

Amendment 4 to the Herring Fishery Management Plan

**Hampton Inn
Fairhaven, Massachusetts
January 7, 2010, 5:00 p.m.**

Hearing Officer: Frank Blount

Council Staff: Lori Steele, Talia Bigelow

Attendance: approximately 6, including Gib Brogan, Ray Kane, Ben Martens, Mike Flaherty, and Eoin Rochford

Mr. Blount introduced the staff in attendance, after which Ms. Bigelow briefed the audience on the Draft Amendment 4 document. After an opportunity to ask questions for clarification, public comments were taken.

Questions for Clarification

- Gib Brogan, Oceana asked a clarifying question on the definition of stocks in the fishery and another on how that relates to National Standard 1
- Gib Brogan, Oceana also asked a clarifying question on the impacts to other fisheries in the amendment.

Public Comments

Gib Brogan, Oceana

We have comments that are remarkably similar to our comments on Amendment 16 for groundfish, as I have been putting this together. Following on with the concepts of stocks in a fishery, including, as the National Standard 1 guidelines say, target stocks, non-target stocks and ecosystem component species, the guidance directed the Councils to establish **ACLs** with **AMs** for these stocks in the fishery but it doesn't require the **ACLs** for the stocks that are not in the fishery. We've had some real concerns about this one. The Council was given the latitude to define this, but in that latitude the Council needs to justify this, and it places on the Council the responsibility to rationally consider which species and stocks to include in each FMP. The APA requires that all of these things be considered reasonably and rationally. From what I read in the draft amendment document, right now there isn't a whole lot of information as far as an analysis of catch in this fishery. There's a lot of raw information, the raw information pulled right out of the SBRM data dump, but there's been no estimation, no interpretation – things that should be included in a NEPA document. It's our feeling that without that full catch analysis that this amendment is deficient and doesn't give the public a full view of what is going on in this fishery. The science center has the capability to make these estimations, and that the true nature may be masked by the volume of this fishery. This is a different fishery than everything else in the region, huge volumes. **There was an attempt in this document that we disagree with, looking at catch of non-target species per 1000 pounds of herring.** We believe that it's an attempt to

mask the true nature of the bycatch by making the denominator much larger. There needs to be a discussion of the effect of the herring fishery on these other fisheries, and it should be the target stocks, the scup, the dogfish, haddock, that drive the process of what stocks to include in this fishery. We suggested this process in our scoping comments, and it wasn't done. The analysis of catch in this fishery wasn't done and until that's done and there is a full discussion of what is going on in the fishery, and a well reasoned decision to include some stocks and exclude some stocks as stocks in this fishery, we believe that this amendment **does not satisfy the requirements to put ACLs in this fishery and also the AMs that are in this fishery.**

Defaulting back to the bare minimum does not cut it, this document needs to go back and be enhanced. We hope that the Council will hold back on this one - with this fishery not requiring ACLs for another year, there is some time to go back and do this analysis and get the fishery under the full requirements of the law and we can move forward.

Ben Martens, Cape Cod Commercial Hook Fishermen's Association

Just to follow up quickly on some of Gib's comments, I think that one of the other subspecies that we think should be involved is the river herring issue. And that's kind of a poster child for **sub-species ACLs**. They're caught, they're killed, they're sold in this fishery and they're not taken into consideration. They need to be looked at and accounted for. Going on to our list of comments, and I will hit on these quickly: as far as the area TACs are concerned, **we believe that the SSC should be involved in the process of setting these sub-ACLs or sub-area TACs**. This is accounting for scientific uncertainty, so we believe the SSC should be involved in that decision, not just the council. There's a lot of times in this document when decisions are put off until Amendment 5 and there is a lot of interpretation saying "oh well we'll know more at Amendment 5" and I feel as though we're glossing over a lot of potential issues within the fishery, by saying that we'll look at this further once we have more data. We aren't taking the highest level approach and looking at this, instead of interpreting this, by saying we have weak data we need to be a little bit more conservative in our decisions, we're running the status quo. I think that we need to start looking at this in the document, before it's moved forward. And then there's also the amount of risk we are willing to take with herring. This goes back to the procedural issues that took place, in that we started out with this level of risk that we thought was appropriate moving forward, and then once we saw the numbers, we decided that we needed to change that level of risk. Our thinking is that at some point we need to set a standard of risk that we are willing to meet in this fishery, and it's not an ad hoc basis of setting and determining risk within a fishery. You set it beforehand, you look at the numbers afterwards, and you have to deal with it at that point. We will be submitting some written comments further on this.

Ray Kane, Commercial Fisherman, Chatham, Massachusetts

- Mr. Kane began by asking if the Committee meeting would be a full day meeting.

Just a couple of comments: nowhere in this amendment do I see herring being spoken as a **forage fish**. And I'll just give a quick example: we addressed it as a forage fish in the Gulf of Maine in Area 1A, and being a tuna fishermen, I have seen what has happened in Area 1A over the years, the past 3 years. They had to go into the reserve to give the harpooners more tuna fish. This was addressed as a forage fish which I don't see it any place in this document and we're going to have to wait for **Amendment 5**, and I am a little nervous. Off Chatham, we had a run

of tuna this past fall but we used to be able to fish from June on through, because they were there, the herring was there. Secondly, let me just get this right now, on this overage payback, I have fished hard TAC fisheries for the better part of my life in the bluefin industry and the striper industry. If there is an overage this year, it's taken care of by next year, so you don't have this delay. Like, if there is an overage in '09 you're not going to take it off until the fishing year '11 and then if there is another catastrophic overage, and I am hearing it being said here that with the AMs its not going to happen, that it won't be substantial but then in '10 if you have an overage it's not taken off until '12 and in these other hard TAC fisheries it's taken off the following year whether it be bluefin tuna, striper. And I think the reason why our groundfish industry is in such dismay today is because, as you well know, Frank, we fished soft TACs forever, and so when you're fishing a hard TAC, that's the idea of fishing a hard TAC. The example this year was there was an underage in Area 2 and they shut it down in April I believe, and by November I think Pat Kurkul opened it up, by the middle of November. So in the same given year when there is an underage they find a way of getting it open for that year. So I think this two year delay, that's got to be looked at again. I know I heard the arguments on the council level but it just doesn't add up. I mean, if you are going to treat one fishery with a hard TAC, and the next fishery with a hard TAC, this fishery has got to be treated in the same sense.

Mike Flaherty, Recreational Fisherman, Wareham, Massachusetts

I didn't intend to speak today but Mr. Kane reminded me of something about the hard TAC or the lack thereof in this fishery. I agree with Mr. Kane that there should be paybacks, I don't consider it a hard TAC unless there are paybacks, the following year.

Mr. Blount and Ms. Steele finished with clarifying information about the next meeting in Portland and the Committee meeting on the 25th of January, 2010.