

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Hearing Summary

Amendment 4 to the Herring Fishery Management Plan

**Holiday Inn By The Bay
Portland, Maine
January 11, 2010, 5:00 p.m.**

Hearing Officer: Frank Blount

Other Council Members in Attendance: Mary Beth Tooley, Terry Stockwell

Council Staff: Talia Bigelow

Attendance: approximately 8, including Michele Gryga, Stephen Robbins, Chris Weiner, Jeff Kaelin, Sean Mahoney, Al West, and Matt Cieri

Mr. Blount began the meeting 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

- A member of the audience asked a clarifying question on the organization of the Alternatives and Options presented in the Draft Amendment 4 document

Public Comments

Jeff Kaelin, Winterport ME, Lunds Fisheries, Cape May, NJ, Clerk, Sustainable Fisheries Coalition

We are going to file written comments before the end of the day tomorrow to Paul, and I wanted to whip through them now, with you. There are a couple of areas where there are some questions that we still have. We think, for the most part, **the approach the Council has taken in implementing these new changes are something that we'd support.** As a result of the herring fishery being managed with a hard quota, utilizing catch limits and accountability measures since the 2000 fishing year, we don't see a lot of need to change how the fishery is being managed today and I think for the most part the document does indicate that there should be changes. We think the herring FMP has been successful throughout this several year period in fully accounting for management uncertainty in the fishery and for the most part this amendment seems to support that view but we do have some significant concerns with the document and have some recommendations for changes being made to it. The comments that we've made follow the structure of the document. In 2.1.2 the important considerations are two things that we are concerned about. First, concerning individual stock components; we think that references in the document to overfishing individual stock components are inappropriate since the herring resource continues to be assessed as a coastal stock complex and there are no reference points or current data available to the Council to allow for rational consideration of overfishing individual stock components.

On the importance of herring as forage species, we wanted to point out this has been a plan priority since 1999 and **we'd like to see the language in the document removed where it states that the Council may determine that a buffer between ABC and OY is appropriate because of Scientific Uncertainty including the importance of herring as a forage species.** We believe its completely inappropriate to consider a separate buffer for Management Uncertainty relative to forage demands on the resource with the result being lower herring catch quotas than would otherwise be acceptable under the **ABC**. One of the stated objectives in **Amendment 5** is to consider the health of the herring resource and the important role of herring as a forage fish and a predator fish throughout its range. The characterization of this management goal in this amendment is incomplete and we think the consideration of it in Amendment 4 is misplaced in the context of potentially further reducing **OY** below **ABC**. When Steve Cadrin addressed the council on June 23rd I think he made it clear that the role of herring as both a predator and as prey, termed consumption, is appropriate for consideration in future stock assessments. A portion of a buffer for **Scientific Uncertainty** concerning resource size and demands on it can appropriately be contributed to predation of herring in the system today. In other words the 40% buffer for **Scientific Uncertainty** used to set **OY** in the herring fishery this year, for the next three fishing years already takes into account the important role of herring as a forage fish. There is no need to take another whack at the fishery other than what we have already done. Right now there is an assumption in the stock assessment that 20% of the 2-plus herring resource is consumed by predators or die of old age on an annual basis. This is the same assumption made in managing the groundfish complex. Herring fishermen take even a smaller proportion of the herring resource than this amount each year. After these removals are accounted for about half of the herring resource remains in the water to produce the surplus production that provides food for the predators and sustainable harvest by fishermen in the future. We don't think there is any scientific need for reductions in the current, conservative and sustainable herring TACs in order to further protect the importance of herring in the marine ecosystem. Dr. Overholtz and Dr. Link's work, which is considering consumption trends by herring predators in today's ecosystem suggesting annualized or age specific estimates of predation is good work, it needs to be associated into the assessment. Its not yet, and the role of herring as predator also needs to be considered in the next assessment. We do look forward to this additional scientific investigation but we think that the concept of further reducing **OY** for this reason is inappropriate.

On the impacts of the Canadian fishery, we support the approach the Council has taken to allow the specification process to project actual fishery performance in setting specs for the fishery. We think that this way that you use the average of the ten years, and remove the highest and lowest number is really appropriate and responsive. We're not in favor, however, of the Council taking any formal action at this time, either through joint management or a formal resource sharing agreement with Canada concerning herring.

On the state/federal ACL issues **we do agree with the Councils determination that there shouldn't be additional reductions in ABC to account for State waters landings, when setting TACs or sub-ACLs** – that the adequacy of the existing reporting requirements in the herring fishery already make sure we are counting those fish. On discards we also support the determination that all available information regarding discards in the fishery, of herring in the fishery, indicates that they are low and largely insignificant relative to the landings in the fishery.

We don't know of any evidence suggesting that further deductions for discarding herring in the fishery are necessary, **ACL** or **sub-ACL** deductions, due to concerns that discards may increase in the future, or that they are not adequately being documented through the current observer program and self reporting requirements.

On **AMs** we support your recommendation that current plan requirements to close management areas at 95%, setting aside the issue of RSAs, addresses the **AM** requirements of the MSA amendments fully.

On goals and objectives we support the primary goal of the amendment to ensure compliance with the new MSA measures and support objectives 1 and 2 to implement these provisions in the FMP. We are opposed to objective 3 in **Amendment 4**, as I said earlier, which suggests the need for additional consideration of the role of herring as forage when setting specs in the fishery, since this information is already taken into account in the stock assessment before the SSC establishes a value for **ABC**.

On alternatives for establishing **ACLs**, we support the modification of the specs process to ensure the FMPs complies with the new requirements of the act as I said before; there's parts of this thing that repeats itself, as does the document. I am trying to go as fast as I can.

On definitions we in favor of the Councils determination that for the purposes of this amendment and the FMP the stock of the fishery is the target stock Atlantic herring and **support the Councils determination that incidental bycatch in the herring fishery will continue to be addressed and minimized to the extent possible, consistent with other MSA requirements** and supports the language that states that the herring FMP will not identify non-target species for management through the **ACLs** until the primary FMP identifies a **sub-ACL**, and I comment on that later with haddock and Amendment 16. And that's good, we're glad we are finally there. They are difficult issues for the council to wrestle with.

On options for specs, we still have some disagreement I think within the industry about eliminating **IWP** specification while you can still have offshore processing. I realize that is something that isn't going to be resolved very easily; I think the agency has already said you can't discriminate against inshore and offshore processors. The majority of people think they are fine with getting rid of the specs for **JVP, IWP** and **TALFF** but I think other people would like to get at eliminating offshore processing, I'm not sure how to deal with that issue tonight.

On alternatives for **AMs**, on the overage deduction, **we support Option 1's approach addressing ACL/sub-ACL overages equal to the amount of ACL/sub-ACL that was exceeded in the next period.** But we are concerned that if an overage due to agency errors not closing the fishery on time, may occur, and we don't want to see the industry penalized. There is still some concern over this deduction being biologically significant – if it's a ton I'm not sure that makes sense. I know that the Council discussed that issue at length and there were emotions about it. And we think the overages need to be biologically significant.

We believe the need for overages to be deducted during the specification process would be eliminated if the Council were to allow for a catch share system to be implemented in the herring

fishery. We're not completely there yet as an industry, but we would ask that developing a catch share system be in the herring fishery to be added to the list of council priorities in 2010, which the Council will consider later this month, either as a part of **Amendment 5** or by authorizing work to begin on a catch share system as Amendment 6 to the herring FMP. We think that would really eliminate any concern about overages, obviously we haven't had any except one year, I think. We'd like to see the Council begin work on a catch share system for the herring fishery.

I think what this amendment does is allow haddock catch cap to be modified as part of the regular fisheries specifications process, we think that's the appropriate way to look at this, we know that the .2 is low, and we also know that observer coverage is higher than it was when that was set. We think it would be appropriate to modify that catch cap amount as a **sub-ACL** through the specs process as actual fishery need and performance would indicate. We think this is a good approach towards creating that flexibility

On the overfishing definition it was our understanding that this **Amendment 4** would be used to modify the existing overfishing definition to be consistent with other FMPs under the council jurisdiction. I don't see anything in this draft that gets to that issue that I know has been discussed at the PDT meetings.

Again in 5.1.1.4 the important role of herring in the Northeast Region Ecosystem, We agree its an important consideration in setting **ABC**, consistent with the stock assessment advice available to the SSC. We'll reiterate that we strongly oppose that draft documents contention that this consideration should also guide setting **OY, ACLs or sub-ACLs** in the herring fishery. There is no scientific evidence that current catches in the herring fishery are threatening the maintenance of the important role of Atlantic herring in the ecosystem. Given the conservative levels of **OY** that we enjoy.

On this point we continue to be frustrated that neither this document, not the Councils advice nor the Agency advice is clear on this issue; this has provided an opportunity for the forage first advocates, including the National Collation on Marine Conservation , the PEW Environment group and the Herring Alliance, to suggest to fishery managers and the public that this important issue is not already being taken into account when managing the Atlantic herring fishery. And as we pointed out earlier this has been a goal in the herring plan since 1991.

Mr. Kaelin then clarified where his comments should be sent.

Sean Mahoney, Conservation Law Foundation

We will be submitting comments as part of the herring alliance, and I just wanted to touch on a couple of things very briefly tonight. First of all I want to commend the Council and the Committee for utilizing the SSC in working through issues that had been presented to the herring fishery over the last year or so. MSA and the National Standard Guidelines make it clear that the best available science is what should be driving these things and we think that its gotten off to a good start with the way the SSC has operated and how the Committee has responded to the advice by the SSC. We do think that one of the things that needs to be made clear in the Draft **Amendment 4** document is the Council's level of risk that the Council is willing to accept with respect to **ABCs, ACLs**, etcetera, so that it's clear to the SSC. As we saw this past fall it wasn't

really clear to the SSC and it lead to a lot of additional work and time and effort. That's it for the warm and fuzzy. We do remain concerned that the cart is before the horse, somewhat here, in that we have split **Amendment 4** so that we are dealing with the **ACLs and AMs in Amendment 4** and not dealing with the monitoring aspects for the fishery until **Amendment 5**. It's hard to think that the current monitoring system is adequate to make the new **ACLs and AMs** a meaningful change. We continue to have concerns about that. We also are concerned with the lack of an **ABC** control rule in the amendment and we will detail our concerns there. At a minimum we think that the approach used by the SSC, this past fall, should serve as the guideline, or as the guidepost for how the Council moves forward with the control rule aspect of Amendment 4. I think the last comment we'd make, tonight, would be with respect to river herring. The National Guideline made clear that in addressing the fishery its to consider the Council and the Service is to consider all stocks in the fishery and its pretty clear that in addition to the directed fishery for Atlantic herring, river herring and other species are catch in this fishery weather as incidental, or as bycatch, weather kept of discarded. We believe that the MSA and the National Standard 1 makes clear that **ACL** should be set for all fish, for all stocks in the fishery, and that would include river herring. And we will have some specific comments on what we believe should be added to the rule or added to the draft amendment in our written comments. I guess the last thing I would want would just be clarification because we will be submitting by email. Is there someplace other than what was in the Federal Register. Should we send them to Paul?

- Ms. Bigelow clarified where to submit comments.

Chis Weiner, American Bluefin Tuna Association and Choir, Speaking on Behalf of Self

- Mr. Weiner began by asking for clarification in regards to the effect of the amendment on the specifications process currently underway (the 2011-2013 specifications)

My comments; there is a ton of stuff in here that is very technical and to be honest I haven't followed it that much. But I am looking at the more big picture things and when I read this I thought it more impacted down the road because the way I look at it is that I think the specs that are in are going to probably stay in. So these are more long term things. I think that right now the quotas for the next few years are so low that a lot of this stuff doesn't, you know. The way I look at it is, we don't know what's going to happen in the future, so I want to make a few comments on what we do in the future, because I think this will impact that as much as anything else.

For example, with discards; let me find the section, I think it says that right now they are insignificant and meaningless, or something like that. "Discards in the fishery can be very low and largely insignificant relative to the landings". I would argue that the whole point of **Amendment 5** is to be able to make comments like that. Maybe based on what we have right now, maybe that shows low discards, but I think a lot of people want to see what happens in **Amendment 5** and then make decisions like that. So maybe for the next two to three years this might not impact because we have the data that we have but I would just say I don't know if this sets in stone the discards rate and all that but I would say down the road we need to be able to, if we get more information one way or the other, then we can make decisions on what the discards are. If we find out that discards are a lot higher, are we going to be able to react by anything done here? I don't know but I would just say I think we need to see what happens, lets try and get a

better monitoring system in place so we can make definitive statements like that because personally I think the data that we have is not very good. I think that is why we spent the last two years working on getting a better monitoring system and until we do that I just think we are just playing with the same old data. I would just feel more comfortable, I'm not saying you have to deduct anything now, I'm just saying lets keep it open so that if we find out. We might find out that this is right and there is no, you know, who knows what we are going to find out. I think we need to focus more on putting **Amendment 5** in place and make sure that works, because right now I think we are just playing with the same old data that we already all agreed, or a lot of people agreed, needs to be better.

In terms of discards, I think it says "within the additional 5% of the TAC". I don't know if that's enough or not, I think we should get a little better monitoring before we just assume things like that. In regards to that, in terms of the 5% overage and everything, I think that one thing that I don't understand about this is are we going to have **sub-ACLs**, are we not going to have **sub-ACLs**, because when we talk about overages, you never have an overage, in my opinion, or maybe some day down the road, but you are never going to have an overage of the whole, overall, quota. I mean, I don't think we have ever even come close to it. Are we talking about putting in **ACLs** per area? And if so I think that's something I would completely agree with because I think that unless you have, the sub-quotas, the area quotas are what matter in my opinion. Those are the quotas that people butt up against. Area 3 is huge; will it get butt up against some day? I don't know but the point is that unless you are doing something to take care of the sub-quotas I don't see what the point of any of this would be. For example do you go over Area 1A's quota one year? I think this year, someone told me recently the numbers showed up just slightly over 100%, a small portion. As the quota gets smaller, maybe a 5 % overage might not sound large, but the smaller your quota is the better the chance you have of having a large, a higher percentage overage. So right now, what's the quota, 26,000? 5% is only 1,300 tons so, I don't know the fleet as well as some of the people in this room but you can catch that in a day.

So I am just saying, I think you need to look at **sub-ACLs** and in the tuna fishery you have an overage, you pay it back and I don't see the point of quotas. Hard quotas maybe, I don't know what technically a hard quota is but in my book a hard quota is if you go over it you pay it back. I think the best thing to do is have a system in place that you make sure you don't have overages so you make sure you shut it down early enough but I think if you go over you should pay it back, in my opinion. Part of that is this idea that we have to wait two years to pay it back; I think that highlights just how much we need a better monitoring system. If we can't, we have to wait two years to pay back an overage because we can't count the numbers in time, that blows my mind, especially with only what, 15, 20 boats in the fishery? I don't see how that's so difficult. I'll stop rambling, the point is I think you should have, I think **sub-ACLs**, you should be dealing with it on an area by area basis, I don't see the point of just throwing one on the overall quota and calling it a day because everyone in this fishery knows that what matters is the area quotas. As a tuna fisherman, I think the quotas are low now but in the future everyone should be assuming that things could go back to big quotas, some day, and you don't want to be pushing things under the rug now because they don't seem like a big deal because the quotas are so low. I mean, three years isn't a long time, I know it's a long time for the people dealing with the small quotas but lets not make a problem now that we have to deal with again later. I would just keep

some of this open ended, lets see what happens with the monitoring system and go from there. I will submit written comments too.