



## New England Fishery Management Council

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# FINAL MEETING SUMMARY

## Herring Committee Meeting

Clarion Hotel, Portland ME

March 24, 2009

The Herring Committee met on March 24, 2009 in Portland, Maine to: continue development of management alternatives to be included in Amendment 4 to the Atlantic Herring Fishery Management Plan (FMP); develop alternatives for annual catch limits (ACLs) and accountability measures (AMs)/discuss related changes to Atlantic herring fishery specification process; and continue discussion and development of management alternatives related to catch monitoring.

**Meeting Attendance:** Frank Blount, Chairman, Rodney Avila, Doug Grout, Mike Leary, Sally McGee, Jim Odlin, David Pierce, Mary Beth Tooley, Herring Committee members (Gibson, Rice, Stockwell, and Berg absent); Lori Steele, NEFMC staff; Carrie Nordeen, NMFS NERO; Matt Cieri, ME DMR; Bill Hoffman, MA DMF; Dave Ellenton (Herring AP Chair), Al West, Peter Moore, Chris Weiner, Jeff Kaelin, Herring Advisors; Bob Beal, ASMFC; Jason Stockwell, GMRI; Steve Weiner, Lara Slifka, Tom Rudolph, Glenn Robbins, Sean Mahoney, John Crawford, Roger Fleming, Pamela Lyons Gromen, Bill McWha, Ray Kane, Gary Libby, and several other interested parties.

### *Annual Catch Limits (ACLs) and Accountability Measures (AMs)*

Ms. Steele summarized the ACL/AM component of the Draft Amendment 4 Discussion Document with a brief presentation. Following the presentation, the Committee and audience asked several questions and discussed some of the details of the proposed ACL/AM language:

- Dr. Pierce expressed concern that the Council may not be establishing ACLs/AMs in a consistent manner across all of its FMPs and questioned whether the staff was working together to try to maintain consistency. He cited the proposed use of annual catch targets (ACTs) in some FMPs (monkfish, herring) as one example and noted that the concept of ACTs is something that the Council did not endorse in its comments regarding NMFS' Proposed National Standard 1 Guidelines. He emphasized the need to be clear in the Amendment 4 document and during future specifications regarding how uncertainty is addressed and how precautionary the TACs and other specifications may actually be.
- Ms. Tooley agreed and suggested that the language regarding closure of the fishery at 92% be clarified to reflect closure of the fishery at 95% with an additional 3% set-aside for research in some management areas.

- Mr. Grout suggested that the Committee may want to consider adopting some of the ASMFC management measures from Addendum I as accountability measures in the Herring FMP (days out, bimonthly quotas, etc.).
- Mr. Odlin questioned the need to continue to consider TALFF (total allowable level of foreign fishing) as part of the herring specifications process. Ms. Steele noted that the Magnuson-Stevens Reauthorization Act (MSRA) requires the Council to consider TALFF in any fishery where domestic annual harvesting (DAH) is less than the available optimum yield (OY). Mr. Odlin noted that TALFF has been justified to be zero for many years in the herring fishery and that other FMPs do not consider TALFF allocations on an annual basis like the herring fishery, even if the domestic fleet is not harvesting the available yield from the fishery (haddock, for example). He suggested that the Council eliminate the requirement to annually specify TALFF for the herring fishery.
- Ms. Tooley agreed with Mr. Odlin and noted that Section 201 of the Magnuson-Stevens Reauthorization Act (MSRA) states that allocations of TALFF are discretionary, except that the total allowable level shall be zero for fisheries determined by the Secretary to have adequate or excess domestic harvest capacity. She suggested that the establishment of a limited access program for the Atlantic herring fishery confirms that there is adequate or excess domestic harvest capacity and should justify the elimination of TALFF considerations as part of the specifications for the fishery.

**1. MOTION: JIM ODLIN/MARY BETH TOOLEY**

Eliminate consideration of TALFF from the specifications, and eliminate consideration of JVpt, JVP, IWP, and the reserve from the specifications

**Additional Discussion on the Motion:** Mr. Odlin stated that the justification for eliminating these specifications relates to the establishment of the limited access program for the herring fishery and the continued position of the Council that there is adequate capacity in the U.S. fishery. Mr. Rudolph asked for clarification regarding the “reserve” in the specifications. Dr. Pierce recalled that the specification of a reserve was related to the intent to allow for expansion of the U.S. fishery without providing opportunities for foreign fishing; some fish were to be held in reserve to be allocated if/when the TACs were fully utilized, but these fish were never allocated and were generally considered “paper fish.” Mr. Odlin noted that the reserve was a more viable concept when the ABC for the fishery was much larger than it is now.

**MOTION #1 CARRIED UNANIMOUSLY.**

**2. MOTION: DAVID PIERCE/MARY BETH TOOLEY**

To strike all references to the ACT from the Amendment 4 Draft Discussion Document

**Additional Discussion on the Motion:** Ms. Steele noted that the current measures to close the directed fishery in a management area when 95% (or in some cases 92%) of the TAC is projected to be reached represents an ACT, as described in the NMFS Final National Standard 1 Guidelines. She encouraged the Committee to “take credit” for the existing accountability measures in the Herring FMP. Dr. Pierce felt that eliminating the ACT references from the Amendment 4 Discussion Document is more consistent with the Council’s position that ACTs are not required by the MSRA. Mr. Rudolph asked some general questions regarding the ACL/AM presentation given by Ms. Steele. He suggested that an ACT may be helpful to ensure

that harvest under a research set-aside can be allowed regardless of the status of catch in the management area, and he emphasized the need to focus on all catch when monitoring the ACLs, not just landings.

**MOTION #2 CARRIED 6-1-0.**

**3. MOTION: DAVID PIERCE/DOUG GROUT**

Request NMFS to provide the Council with advice regarding how downward adjustments of the ACLs to account for herring harvested by Canadian fisheries (primarily the NB weir fishery) will impact the Service's ability to secure a US/Canadian understanding on resource sharing

**Additional Discussion on the Motion:** Dr. Pierce expressed his continued concern about how Canadian catch of herring is addressed through the specifications process. He stated that subtracting Canadian catch off the top before setting U.S. catch levels puts the U.S. at a disadvantage regarding negotiations for sharing the herring resource in the future. Mr. Kaelin expressed support for this motion and also noted that the industry was not offered an opportunity to review the Terms of Reference (TOR) for the upcoming TRAC stock assessment for herring. He requested that the Committee raise this concern with NMFS and the Council, and the Committee agreed to follow-up on this issue and provide an opportunity for industry input into stock assessment TORs.

**MOTION #3 CARRIED UNANIMOUSLY.**

Ms. Tooley expressed concern about the proposed use of ACLs and sub-ACLs in the Draft Amendment 4 Discussion Document. She expressed support for an approach that would establish an overall ACL for the fishery that is equivalent to OY and set TACs for each management area that would not be considered ACLs, but that still would be subject to accountability measures if/when necessary. She felt that small overages in a management area may not require accountability measures, especially if TACs in other areas were not fully utilized, and she expressed support for a process that would provide an opportunity to evaluate the impacts of a TAC overage before implementing accountability measures.

**4. MOTION: MARY BETH TOOLEY/JIM ODLIN**

That in the herring FMP, the ACL will equal OY, and any TAC overages in any area of the fishery will be addressed through accountability measures if it is determined if there is any biological harm to the stock

**Additional Discussion on the Motion:** Ms. McGee questioned the interpretation of "biological harm" and asked for clarification. Ms. Tooley stated that her intent was to allow the specifications process to continue to evaluate removal rates of the various stock components through analyses that compare trade-offs associated with different TAC distributions, and to allow that process to guide the Council's selection of TACs and determine if/when a negative biological impact may occur. She felt that automatically triggering accountability measures if an overage occurs in one management area may be unnecessary if no negative biological impact results from the overage, which may be the case especially when TACs are not fully utilized in other areas. Dr. Cieri noted that determining "biological harm" may be difficult given the current limitations of the data and analyses. He also reminded the Committee that the stock is

currently assessed as one meta-complex but highlighted the importance of reducing the risk of overfishing the individual spawning components. Ms. Tooley suggested some clarifications to the wording of her motion.

**MOTION #4 PERFECTED:**

That in the Herring FMP, the ACL will equal OY, and any TAC overages in any area of the fishery will be addressed through accountability measures if it is determined if there is any negative biological consequence to a subcomponent in the stock

Ms. Tooley described an example of how an overage would be addressed based on the intent of her motion. If an overage in Area 1A occurs, for example, the Herring PDT would examine total removals of the inshore stock component from all management areas and evaluate whether or not the overage in Area 1A increased the risk of overfishing the inshore component, based on total removals of the inshore component from all areas. If the risk of overfishing increased, and/or if total removals were higher than the analysis indicates they should have been, the Council can take action to address the overage in the following fishing year. Ms. Steele clarified that this motion would require a one-year lag time associated with this approach, as the review/analysis of the impacts of the overage would be conducted during the year following the overage, and any necessary corrective action would be taken in the year following the review.

- Mr. Weiner felt that this approach seems to increase the workload associated with ACLs/AMs and defeats the purpose of setting ACLs, which includes minimizing the risk of overfishing the stock components.
- Mr. Mahoney emphasized the need to consider forage issues in the ACL/AM process and suggested that analyses of any negative biological consequence on the stock components should be broadened to include consideration of negative impacts on predator fish.
- Mr. Fleming expressed opposition to the motion and urged the Committee to vote it down.
- Mr. Paquette expressed opposition to the motion and also asked the Committee to continue to consider incorporating river herring as a non-target stock in the fishery. Mr. Crawford emphasized this point and asked the Herring Committee to consider the rationale/consequences of defining the stocks in the fishery based on Atlantic herring only.
- Ms. Gromen expressed concern about the motion and stated that in terms of protecting the stock components, the motion appears to be reactive rather than proactive.

**5. MOTION TO SUBSTITUTE MOTION #4: DAVID PIERCE/DOUG GROUT**

That in the Herring FMP, the stock-wide ACL will be equal to OY, and the potential for overages of Area TACs (sub-ACLs) will be minimized through accountability measures for each area

**Additional Discussion on the Motion:** After some discussion regarding the intent and meaning of this motion, Dr. Pierce clarified that the intent is to maintain consistency with the approach proposed in the document and to consider the management-area TACs sub-ACLs, whether they are called that or not. Ms. McGee expressed support for the approach proposed in the document because of the importance of considering impacts on the individual stock components, particularly the inshore component. Mr. Rudolph expressed support for this motion as a substitute motion but emphasized the need to incorporate an accountability measure to address

overages. He noted that there have been some overages in Area 1B in previous years that he believes had a negative impact on the backside of Cape Cod.

**SUBSTITUTE MOTION #5 CARRIED 6-1-0.**

**SUBSTITUTE MOTION #5 VOTED AS MAIN MOTION:**

That in the Herring FMP, the stock-wide ACL will be equal to OY, and the potential for overages of Area TACs (sub-ACLs) will be minimized through accountability measures for each area

**SUBSTITUTED MAIN MOTION #5 CARRIED 5-2-0.**

*Opportunity for Public Comment*

Following a lunch break, Mr. Blount provided an opportunity for public comment on items not specifically on the agenda, before returning to the ACL/AM discussion.

- Mr. McWha urged the Herring Committee to consider time/area closures, in coordination with the Mid-Atlantic Council, to address concerns about river herring and shad. He also suggested that the Council consider establishing a Fishery Management Plan for river herring.
- Ms. Gromen emphasized the Amendment 4 objective to consider the importance of herring as a forage species and suggested that more discussion be added to the document regarding the current buffer between MSY and OY and there that buffer may be addressed in the new ACL structure that is being developed in the amendment.
- Mr. Crawford followed-up with suggestions to incorporate more of the new scientific information regarding forage and predator-prey issues and felt that the needs of predators should be discussed in more detail in the document.
- Mr. Moore expressed concern about funding related to some of the ongoing scientific research and reminded the Committee that it is equally important to consider the needs of the industry that depends on the herring resource and the legal requirement to provide an opportunity for the fishery to achieve OY on a continuing basis. He urged the Council to maintain transparency in the scientific process and to be clear about the role of the SSC.
- Mr. Paquette asked for further clarification/discussion from the Committee regarding the decision to name only Atlantic herring as the stock in the fishery for the purposes of setting ACLs/AMs and questioned when/how that decision was made. Ms. Steele quoted from the National Standard Guidelines and clarified that the decision to identify stocks in the fishery remains in the Council's hands and can be modified any time at the Council's discretion.

*ACLs/AMs (continued)*

Dr. Pierce expressed concern about the link between the Council's Scientific and Statistical Committee (SSC) and consideration of management uncertainty that is suggested in the document. He feels that decisions about management uncertainty lie with the Council and that the role of the SSC and the Council in the ACL-setting process should be made as clear as possible. He suggested that the SSC only address scientific uncertainty. Ms. McGee noted that the document does not require the SSC to address management uncertainty but instead provides the Council with another technical body to seek guidance from regarding these issues. She

emphasized the use of the word “may” with respect to consulting with the SSC regarding management uncertainty and/or the ACLs under consideration. Ms. Tooley noted that the MSRA language does authorize the SSC to provide other kinds of guidance to the Council but agreed that the roles of the Council and the SSC should be clarified as much as possible.

**6. MOTION: DAVID PIERCE/RODNEY AVILA**

Modify the language in the middle of p. 22 so that it reads “Management uncertainty should be identified and discussed by the Herring PDT to assist the Council in setting ACLs” and Strike “and SSC” from the last sentence

**Additional Discussion on the Motion:** Dr. Pierce clarified that the intent of the motion is not to eliminate the Council’s ability to seek guidance on management issues from the SSC, but rather to clarify the role of the SSC and the Council and ensure that the Council maintains discretion over issues related to management uncertainty. Mr. Fleming expressed opposition to the motion and felt that the language proposed in the document is clear that the Council *may* ask the SSC for guidance regarding management uncertainty. He stated that the motion seems to argue against basing decisions on the best available science and questioned why the Council would not want to seek advice from the technical experts. He also agreed that providing advice regarding management uncertainty is well within the scope of SSC responsibilities outlined in the MSRA.

**MOTION #6 CARRIED 6-1-0.**

Ms. Tooley noted that while the Amendment 4 Discussion Document provides good information regarding the importance of herring as a forage species and other related issues, it is lacking discussion of the importance of herring as a predator species. She noted that the Amendment 4 objective 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.” Dr. Pierce referenced a presentation made by the NEFSC (Mike Fogarty) regarding this issue and highlighted considerations relative to estimates of natural mortality. **The Herring Committee agreed by consensus that additional discussion should be added to the document regarding herring as predators and competitors, and other important ecosystem considerations.**

***Accountability Measures***

The Herring Committee reviewed/discussed the possible options for accountability measures outlined in the Draft Amendment 4 Discussion Document. Ms. Tooley suggested that the amendment include language to eliminate the public comment period associated with the current in-season adjustment provisions, to improve the timeliness of this accountability measure. She also felt that the herring management program already includes numerous accountability measures and that a wide range of additional options may not be necessary at this time. Ms. Steele noted that some of the options for precautionary AMs are not fully fleshed out and agreed that some may not be necessary, especially if the catch monitoring program developed in this amendment further improves the timeliness and accuracy of catch data (to ensure that ACLs will not be exceeded).

**7. MOTION: MARY BETH TOOLEY/JIM ODLIN**

To eliminate Options 2 and 3 from consideration as Precautionary AMs, on p. 29 of the Draft Amendment 4 Discussion Document

**Additional Discussion on the Motion:** Mr. Blount clarified that this motion would move those options to the “considered but rejected” category in Amendment 4. Dr. Pierce expressed support for the motion and reminded the Committee that the ASMFC management measures will continue to serve as precautionary AMs. He urged the Committee to use caution in terms of complicating the ability to coordinate management measures with the ASMFC.

**MOTION #7 CARRIED 5-2-0.**

The Committee discussed possible options for consequential accountability measures and clarified the percentage closure reflected in Option 1 (95%). Committee members also discussed Option 2, which would establish payback provisions for overages. Ms. Nordeen described timing issues associated with determining the extent of an overage and deducting the overage from the quota for the following year; she suggested that a lag time of one year may be necessary. Ms. McGee asked whether a deduction for an overage could consider the potential loss of productivity that may result from the overage, rather than just a straight subtraction of the overage from the following year. Dr. Cieri described the difficulties associated with evaluating lost productivity, and Ms. McGee suggested that this aspect needs to be discussed in more detail in the document.

**Herring Committee members discussed options for overage paybacks and agreed by consensus that Option 2 (Consequential AMs) could be split into two sub-options:** the first option would simply deduct an overage in the following fishing year, while the second option would incorporate a review to determine whether the overage had a negative biological impact before any deduction is made. The second option also would require a one-year lag time to review the impacts of an overage.

Following the discussion of accountability measures, the Committee briefly addressed the issue of identifying stocks in the fishery and generally supported moving forward with Atlantic herring as the stock in the fishery for the purposes of setting ACLs and AMs at this time. Dr. Pierce suggested that additional rationale be added to the document to support this determination. He expressed concern about delaying this amendment further by complicating the ACL component at this time and expressed the importance of developing a comprehensive catch monitoring program in a timely manner to address concerns related to river herring, other species, and bycatch in the fishery. Ms. Tooley suggested that the Committee/Council maintain a consistent approach to identifying stocks in the fishery and that concerns related to other species and bycatch can be addressed through mechanisms other than setting ACLs. Ms. McGee encouraged the Herring Committee to continue to consider ways to address concerns about river herring in this amendment.

### ***Dockside Monitoring Programs***

Ms. Steele presented a memo to the Herring Committee describing issues associated with establishing a dockside monitoring program for the herring fishery in Amendment 4. She noted that it is important for the Committee/Council to identify some objectives for a dockside monitoring program during the development of Amendment 4 so that the details of the program can be fleshed out and different options can be compared. The structure of the dockside program and the level of sampling depends on what information is to be generated from the program. Several outstanding issues or potential challenges are also outlined in the memo and should be discussed/addressed by the Committee in order to move forward with the development of an appropriate monitoring program.

Mr. Odlin agreed and felt that the objectives of a dockside monitoring program should relate to the second and fourth scenarios described in the March 23 memo from staff: collect information to generate accurate estimates of bycatch in the fishery and confirm the accuracy of self-reporting of herring catch. Ms. Tooley suggested that the ASMFC should discuss the options for dockside monitoring and provide feedback regarding the ability of the States to implement and administer a dockside monitoring program. She suggested that the Council send a letter to ASMFC asking for feedback regarding the dockside monitoring options. Mr. Odlin suggested that the Committee first agree on the objectives of the dockside monitoring program to better frame the issues and questions for the ASMFC.

The Committee discussed some issues related to funding a comprehensive dockside monitoring program over the long-term.

- Mr. Grout confirmed that securing funding through the States may be difficult because each State would have to work through their legislature to develop an appropriate tax or fee. He mentioned that there could be opportunities for funding through the Atlantic Coastal Act, but funds have recently been cut back significantly. ACCSP is a competitive program that was intended to only fund starting costs for information collection, so it may not provide a long-term opportunity.
- Mr. Odlin suggested that the most viable option may be to simply leave it to the industry to work with private service providers. However, it is not clear whether the States can act as service providers.
- Dr. Pierce noted that a special trust has been developed in Massachusetts, which allows the Commonwealth to collect money from the industry to allocate to specific tasks or projects.
- Ms. McGee suggested that the Committee consider the provisions for dockside monitoring and funding that have been developed in Amendment 16 to the Multispecies FMP.

#### **8. MOTION: JIM ODLIN/MARY BETH TOOLEY**

That the objective of the dockside monitoring program be to confirm the accuracy of self-reporting through a third party and collect additional information about bycatch

**Additional Discussion on the Motion:** Ms. McGee suggested that the levels of coverage for the dockside monitoring program should be high enough to extrapolate estimates of catch/bycatch across the fishery. She emphasized the importance of developing a program that is comprehensive enough for the data to be useful for managers. Mr. Leary felt that dockside



monitoring should be utilized to verify herring landings but that bycatch estimates should be derived from observer coverage and at-sea monitoring. Ms. Tooley suggested that a combination of at-sea and dockside monitoring would probably be necessary to achieve the desired CVs (measure of precision) in the most cost-effective way for this fishery.

**9. MOTION TO AMEND MOTION #8: DAVID PIERCE/DOUG GROUT**

To have two objectives for a dockside monitoring program that include Scenarios #2 and #4 in the March 23, 2009 Memo:

- To sample enough landings events to estimate bycatch across the herring fishery
- To confirm the accuracy of self-reporting

**Additional Discussion on the Motion:** The intent of this motion would be to expand the current portside sampling program (ME and MA) and utilize the dockside monitors to also confirm self-reporting of the landed weight of Atlantic herring. Dr. Pierce also stated that the intent of this motion would be to utilize a combination of at-sea and dockside monitoring to generate estimates of bycatch that are consistent with the CVs desired by the Council.

- Mr. Ellenton stated that there is currently a very robust dockside monitoring program in Massachusetts that is of no cost to the industry. He questioned the need to confirm the accuracy of self-reported landings and noted that the dealer weighout reports already provide a confirmation of the captains' estimates. IVR reports appear to be very close to dealer weighout reports, and they are utilized to monitor TACs and close the fishery, so this indicates that there must be some confidence in the catch estimates.
- Mr. Kaelin stated for the record that the herring industry is not interested in paying for a dockside monitoring program and that the industry is willing to work in a partnership with other groups to secure other sources of funding.
- Mr. Libby suggested that the Council should consider taxing imported seafood and using the money to support programs for the domestic fishing industry.
- Mr. Ellenton noted that no matter what mechanism is used to report landings, someone will always raise questions/concerns regarding the accuracy of the data. He asked NMFS to comment on the accuracy of self-reported catch information and the degree of confidence in the estimates provided by the captains. Ms. Nordeen stated that NMFS is currently using the best available information to monitor catch/landings but acknowledged the concerns that have been expressed regarding the existing information. She also informed the Committee that in the absence of a limited access privilege program (LAPP), NMFS cannot accept taxes from the industry, and she suggested that the most realistic scenario for funding would likely be utilization of a third party or private company.

**MOTION #9 TO AMEND CARRIED UNANIMOUSLY.**

**AMENDED MOTION #9 VOTED AS MAIN MOTION:**

To have two objectives for a dockside monitoring program that include Scenarios #2 and #4 in the March 23, 2009 Memo:

- To sample enough landings events to estimate bycatch across the herring fishery
- To confirm the accuracy of self-reporting

**AMENDED MAIN MOTION #9 CARRIED UNANIMOUSLY.**

*Other Business*

Ms. Steele briefed the Herring Committee about two issues under Other Business: (1) application for transshipment permits for Canadian herring carriers under the Border Transfer (BT) allowance; and (2) recent information regarding NMFS' review of haddock bycatch in Closed Area I and plans to discuss this issue at the upcoming Council meeting (April 7-9, 2009).

- Mr. Ellenton asked about recent utilization of the BT specification (4,000 mt). Mr. West stated that last year, BT utilization was less than 100 tons and that while it does not reach the 4,000 mt specification, Bumblebee still applies for the carrier permits because the need for transshipment is uncertain. Transshipment by carriers is the best way to transport herring to the Canadian cannery while maintaining quality, especially in the summertime. Mr. West also noted that the U.S. has received considerably more fish from Canada in the last five years than have been sent to Canada. He encouraged the approval of the Canadian carrier permit applications as an expression of support for open transport with Canada. He also noted that the Canadian cannery is a permitted dealer for herring, so the fish that are transported to Canada are documented by both the vessel (in the VTR/IVR reports) and the cannery (in the dealer weighouts).
- The Committee briefly reviewed information provided by NMFS regarding haddock bycatch in Closed Area I. Dr. Pierce asked if additional information was available regarding the number of trips observed in the closed area and the levels of coverage in recent years. The Committee agreed that more detailed discussion of this information will occur at the April 2009 New England Fishery Management Council meeting.