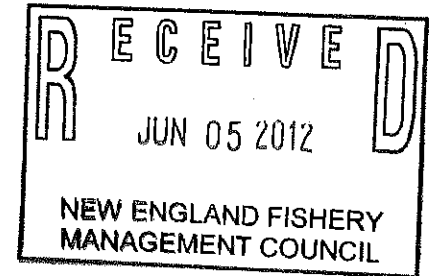


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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

JUN - 5 2012



C.M. "Rip" Cunningham, Jr., Chairman
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Dear Rip:

We have reviewed the Draft Environmental Impact Statement (DEIS) for Amendment 5 to the Atlantic Herring Fishery Management Plan (Herring FMP) and have evaluated the potential effectiveness and feasibility of the alternatives under consideration. The New England Fishery Management Council (Council) has spent years developing this amendment, and there are many alternatives that offer clear improvements to the Herring FMP and can be implemented by NOAA Fisheries Service.

We support the consideration of the following alternatives in Amendment 5:

- Modifying the herring transfer at-sea and offload definitions to better document the transfer of fish;
- Expanding the possession limit restrictions to all vessels working cooperatively, consistent with requirements for pair trawl requirements;
- Eliminating the vessel monitoring system (VMS) power down provision for limited access herring vessels, consistent with VMS provisions for other fisheries;
- Establishing an "At-Sea Herring Dealer" permit to better document the transfer and purchase of herring;
- Allowing vessels to enroll as herring carriers with either a VMS declaration or letter of authorization;
- Expanding pre-trip and pre-landing notification requirements, as well as adding a VMS gear declaration, to all limited access herring vessels to help facilitate monitoring;
- Reducing the advance notice requirement for the pre-trip notification from 72 hours to 48 hours;
- Expanding vessel requirements related to at-sea sampling to help ensure safe sampling and improve data quality;
- Establishing a river herring catch cap in a future framework to directly control river herring fishing mortality; and
- Allowing the joint Sustainable Fisheries Coalition/University of Massachusetts School for Marine Science and Technology/Massachusetts Department of Marine Fisheries bycatch avoidance program to investigate providing real-time, cost-effective information on river herring distribution and fishery encounters.

Several issues that are considered in Amendment 5 have been the subject of much debate and public comment. These issues include: Increasing observer coverage; addressing net slippage;



improving dealer data; addressing river herring bycatch; and addressing midwater trawling in groundfish closed areas. NOAA Fisheries Service supports improvements to fishery dependent data collections, be it through expansion of monitoring at sea or greater quality assurance of the dealer data. We also share the Council's concern for reducing bycatch and unnecessary discarding, and appreciate the Council's work on addressing these issues.

However, some specific alternatives in Amendment 5, if adopted, would require still more thought, more robust rationale, and further justification by the Council. As we have commented previously, we share the Council's desire/need to have better data about the fishery, and we support the motive and concept of the alternatives that aim to do this. However, we must be mindful of the burden and technical details of implementing the alternatives. Additionally, we cannot give our full support for alternatives for which the agency is not likely to have sufficient resources to execute.

The following sections detail our concerns with the specified alternatives. I have noted in this section which alternatives we believe require further justification by the Council and those that we believe have serious implementation issues that we cannot overcome.

Alternatives to Allocate Observer Coverage

Amendment 5 includes alternatives that increase the level of observer coverage in the herring fishery using NOAA Fisheries Service or industry funds to support the additional coverage. While we share the Council's interest in improving fishery-dependent data, our current and anticipated budgets do not provide support for expanded levels of observer coverage. The available funds must be distributed for observers in all of our Northeast fisheries, and we are under increasing pressure to increase observer coverage in all fisheries. We simply cannot afford to support any alternatives that increase the observer coverage level in the herring fishery under agency funding. We acknowledge that the analysis in Amendment 5 demonstrates that an industry-funded observer program would put substantial financial burden on the herring industry. If the Council proceeds with an industry-funded observer program, it must carefully weigh the benefits of such a program against the costs to the industry.

Under the industry-funded observer program alternative, Amendment 5 contains a Sub-Option that would exempt states from observer service provider requirements. To ensure data quality standards, we believe that all observer service providers should be held to the same requirements. The requirements include such things as standards of conduct, reporting requirements, conflict of interest statements, and emergency action plans. I therefore recommend that the Council adopt the alternative that requires states to comply with all observer service provider requirements.

Alternatives to Address River Herring Bycatch

Analyses in the DEISs for Herring Amendment 5 and the Mid-Atlantic Fishery Management Council's Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish FMP (MSB FMP) suggest that time/area management alternatives considered in Amendment 5 are unlikely to effectively minimize the bycatch of river herring due to the variable distribution of river herring. Analyses in Amendment 14 suggest that time/area management for river herring would require the use of large areas to ensure that time/area management was not just redistributing fishing effort, possibly in a way that increased river herring catch. Maps of Northeast Fisheries Science

Center spring and fall survey catches indicate that the seasonal and inter-annual distribution of river herring is highly variable in time and space. River herring distribution is highly variable because river herring undergo extensive coast-wide migrations, largely influenced by water temperature. In addition, the incidental catch of river herring and effort pattern of fleets encountering river herring (i.e., midwater trawl, small-mesh bottom trawl) are also highly variable in time and space because those fleets target species that are highly migratory (e.g., herring, mackerel, squid, whiting).

To address our concern about time/area management, a river herring catch cap, implemented through a future framework, would be the most effective alternative in Amendment 5 at controlling the catch of river herring. Further, due to the mixed nature of the herring and mackerel fisheries, especially during January through April in Herring Management Area 2, the potential for the greatest river herring catch reduction would come from the implementation of a joint river herring catch cap for both the herring and mackerel fisheries. A catch cap has the potential to directly control river herring fishing mortality with less compliance and administrative burden than time/area management.

Alternatives to Address Net Slippage

I am concerned about the effectiveness and legal justification for the alternatives designed to reduce slippage events in the herring fishery. Alternatives that require trip termination and/or catch deduction lack a well explained basis for the threshold to trigger trip termination (i.e., either 5 or 10 slippage events in a management area) and the amount of catch deduction (i.e., 100,000 lb). Both the termination trigger and the catch deduction require clear and supportable rationale and justification. Once the threshold to trigger trip termination has been reached, all vessels that slip catch, regardless of the reason for slipping (including safety or mechanical failure), would be required to return to port. The Council must provide sufficient rationale for requiring vessels to terminate a trip after the trigger while allowing the specified number of slippage events prior to the trigger without consequence. Further, the trip termination alternatives may create the situation of the vessel operator having to choose between trip termination or bringing catch aboard the vessel despite a safety concern or mechanical failure. Such a provision must be consistent with National Standard 10 of the Magnuson-Stevens Fishery Conservation and Management Act and requires additional detailed explanation from the Council. For NOAA Fisheries Service to approve a measure like this, the Council must provide a rational basis that we can support in relation to requirements of the Magnuson-Stevens Act, the Administrative Procedure Act, and other applicable law. Additionally, we are concerned that slippage requirements are triggered when an observer is aboard the vessel. Requirements for a vessel to terminate a trip or report a slippage deduction (i.e., 100,000 lb) should not depend on the presence of an observer. NOAA Fisheries Service acknowledges that observers are helpful when evaluating compliance with slippage requirements, but implementing requirements contingent on the presence of an observer unduly places the observer in a compliance/enforcement role and creates the potential for conflict between the vessel's crew and the observer.

We also do not believe there is utility in requiring released catch affidavits for slippage events, as the affidavit will not provide any new information that is not currently collected by NEFOP. NEFOP recently implemented protocols for observers to collect detailed information on discard,

including slippage, in the herring and mackerel fisheries, such as why catch was discarded, the estimated amount of discarded catch, and estimated composition of discarded catch. For 2010, NOAA Fisheries Service determined the amount of discards in the herring fishery by extrapolating observer data to the entire herring fishery. The amount of observed herring discards (“Atlantic herring” and “herring not known”) was divided by the amount of observed fish landed. That discard ratio was then multiplied by the amount of all fish landed for each trip to calculate total amount of herring discards in 2010. The amount of discards was determined for each management area and gear type. Given this new data collection, requiring vessel operators to complete a slipped catch affidavit whenever catch is slipped and an observer is aboard is an unnecessary reporting burden for the industry. As we strive to improve management of the herring fishery, observer data, both on discards and slipped catch, are the best information to understand and account for discarding.

Reporting Requirements for Dealers

Dealers are currently required to report the weight of purchased fish. A variety of methods are used by dealers to determine the weight of fish, including weighing fish on scales and estimating weights, based on volumetric measures. Because Option 2 allows dealers to continue using scales and/or volumetric estimates to determine the weight of fish, there is no appreciable difference between Option 2 and status quo.

Sub-Options 2A and 2B require dealers to document how they estimate the relative composition of mixed catch in order to facilitate quota monitoring. However, this qualitative information cannot be incorporated into quota monitoring because we use the weights provided by the dealers, regardless of the methods used to determine weights. Additionally, we are unable to evaluate, either annually or for individual transactions, the sufficiency of the information submitted.

Sub-Option 2C requires vessel owners/operators to review and validate catch data for their vessels in Fish-On-Line. This Sub-Option has the potential to improve quota monitoring and year-end catch determinations by highlighting data reporting issues. However, vessels are currently able to review both vessel and dealer reported data via Fish-On-Line and discover data issues. The Council should consider whether the utility of Sub-Option 2C outweighs the additional reporting and administrative burden associated with the requirement.

The Council should also be aware that if any of these Sub-Options become requirements, they would also become compliance measures that would affect future vessel permit issuance (similar to vessel trip report and VMS compliance).

Alternatives to Address Midwater Trawl Access to Groundfish Closed Areas

Amendment 5 considers an alternative that would prohibit midwater trawling in groundfish closed areas, unless the vessel has an experimental fishing permit. Analyses in the DEIS suggest that midwater trawl vessels are not catching significant amounts of groundfish either inside or outside the groundfish closed areas. Additionally, the majority of groundfish bycatch by midwater trawl vessels is haddock, and the catch of haddock by midwater trawl vessels is already managed through a haddock catch cap. The data do not indicate that prohibiting midwater trawling in groundfish closed areas is necessary for groundfish conservation.

In summary, I urge the Council to select alternatives that effectively monitor herring, minimize bycatch in the herring fishery, and do not significantly expand the compliance and administrative burden of the herring fishery without a commensurate benefit to data quality. Alternatives in Amendment 5 have complimentary alternatives in the Amendment 14 to the MSB FMP. Given the significant overlap between the herring and mackerel fisheries, I also encourage the Council to consider the recommendations by the Mid-Atlantic Fishery Management Council on Amendment 14 to the MSB FMP when recommending monitoring and bycatch measures for Amendment 5.

Finally, various reviewers noted technical issues with the DEIS that will need to be addressed in the final EIS. My staff will provide those comments directly to Council staff. I appreciate the time and effort that the Council and Council staff have put into this amendment and I look forward to working with the Council to complete this action.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Morris', with a long horizontal flourish extending to the right.

Daniel S. Morris
Acting Regional Administrator

