



New England Fishery Management Council

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FINAL REPORT

NEFMC Herring Advisory Panel

Holiday Inn, Peabody, MA

May 31, 2012

Meeting Attendance:

Herring Advisory Panel: Doug Grout, Herring Committee Chairman (Chaired the Advisory Panel meeting), Jeff Kaelin (acting Co-Chairman, newly-elected Chairman), Jennie Bichrest, Peter Baker, Peter Mullen, Vito Calomo, Don Swanson, Bob Westcott, Chris Weiner, Gib Brogan, Dave Ellenton (10 of 14 advisors present); Lori Steele and Rachel Neild, NEFMC staff; Carrie Nordeen, NMFS NERO staff, several other interested parties.

The Herring Advisory Panel (AP) met on May 31, 2012 in Peabody, Massachusetts to: review the Draft Environmental Impact Statement (DEIS) for Amendment 5 to the Herring Fishery Management Plan (FMP); review/discuss alternatives to allocate observer coverage on limited access herring vessels and options for funding and utilizing service providers; measures to maximize sampling at sea, address net slippage, and maximized retention alternative; proposed adjustments to the FMP; measures to address river herring bycatch; management measures to address midwater trawl access to groundfish closed areas; and elect a Herring Advisory Panel Chairman. The primary purpose of this meeting was for the Advisory Panel to develop recommendations and comments regarding management measures to be included in Amendment 5 for Committee and Council consideration.

When the meeting began, the AP decided to elect a Chairman. Through brief discussion and deliberation Jeff Kaelin was elected new AP Chairman. Jeff Kaelin will provide the report at the upcoming Herring Committee meeting. He will not vote at this meeting (except to break a tie) and will serve as Co-Chair with Doug Grout.

Ms. Steele presented an overview of the Draft Amendment 5 document. This included an overview of the alternatives presented in the four major "categories": (1) Proposed adjustments to the Fishery Management Program; (2) Measures to address catch monitoring at-sea; (3) Management Measures to address river herring bycatch; and (4) Management measures to address midwater trawl access to groundfish closed areas.

Alternatives to Allocate Observer Coverage on Limited Access Herring Vessels and Options for Funding and Utilizing Service Providers

The AP discussed the observer coverage alternatives in Amendment 5, which raise issues that are very challenging for all stakeholders. Much of the discussion dealt with funding and whether 100% observer coverage is warranted. The concerns and comments regarding this issue include:

- Some were in favor of the 100% observer coverage, but it should only last for a certain amount of time (ex. “sunset clause” of 2 years).
- Industry would support 100% observer coverage to prove that the fishery has little bycatch if there is a way to have both the federal government and industry pay collectively (a recommendation of industry funds \$325 was proposed by Jennie Bichrest).

1. MOTION: Vito Calomo/Peter Mullen

That all observer coverage, whatever the percentage may be, be financed through Federal Funds (Funding Option 1)

Discussion: Mr. Brogan expressed concern about what happens when there is an external operating constraint and there are very limited or no funds. Mr. Calomo felt that the funds for observer coverage could be generated through political means. Mr. Mullen expressed concern about industry-funded observer coverage at high levels because there is a race to fish right now in the herring fishery. Mr. Baker opposed the motion and recommended status quo. Ms. Bichrest suggested a mix of federal funds and industry funds with industry paying between \$300 and \$400. Mr. Calomo stated that he didn’t want to put a dollar amount on the fishery but maybe the industry would participate 20% of the cost. Mr. Ellenton felt that it was difficult to find funds and would like to know what the vessels are going to have to pay each year. Mr. Weiner supported government funding for the observer coverage but felt it would take Congress to intervene to get the funds, and the smaller boats are getting out of the industry because of the costs.

The Motion #1 FAILED 4-5.

2. MOTION: Gib Brogan/Chris Weiner

To support Alternative 2, 100% observer coverage for all Category A and B vessels starting in 2013. Funding will be through Option 2 – Federal and Industry Funds – shared according to the following industry/agency cost-sharing schedule, to mirror the cost-sharing program adopted in the West Coast Groundfish Fishery:

In 2013, the split would be 20% industry/80% agency. In 2014, the split would be 40% industry/60% agency. In 2015, the split would be 60% industry/40% agency. In 2016, the split would be 80% industry/20% agency. In 2017, it would be 100% industry funding.

Discussion: Ms. Bichrest stated that she would not support this because she feels that the level of funding coming from the industry should be more clearly defined. Mr. Ellenton felt that there is a lot more to the industry than just herring vessels and everyone should contribute. Mr. Kaelin felt that the coverage should have a limited time frame and suggested that west coast cost-sharing be explored where the agency still covers all the administrative costs. Mr. Swanson said he would support Alternative 2 with some kind of industry funding, but felt it is too early to set

percentages as the motion prescribes. Mr. Westcott suggested to bring the observer coverage up to 50%, then revisit it in a year and see how much industry will have to pay. Mr. Weiner stated that he supports Alternative 2 and hopes that the federal government will fund as much as possible, and he is uncomfortable voting on percentages.

MOTION #2 PERFECTED THROUGH A FRIENDLY AMENDMENT:

To support Alternative 2, 100% observer coverage for all Category A and B vessels starting in 2013. Funding will be through Option 2 – Federal and Industry Funds. The AP strongly emphasizes that as much Federal funding be allocated to observer coverage in this fishery as possible.

The perfected motion #2 FAILED 4-5.

3. MOTION: Vito Calomo/Peter Mullen

To support Funding Option 2 – Federal and Industry Funds – with a maximum contribution of 20% by the industry.

Discussion: Mr. Weiner felt that 20% could be too limiting. Mr. Mullen wants the observer coverage tied into science and stated that no fishery needs 100% observer coverage. Ms. Steele stated that conceptually, this is a start but reminded the Advisory Panel that high coverage levels would not get funded under this approach. Mr. Ellenton wanted to know what the 20% would cover and felt that 20% could end up being a very high dollar amount.

MOTION #3 PERFECTED THROUGH A FRIENDLY AMENDMENT (Jennie Bichrest):

To support Funding Option 2 – Federal and Industry Funds – with a maximum contribution of \$325 per sea day by the industry.

Discussion: Mr. Ellenton expressed concern about not having a sunset clause (possible a year or two) in the observer program; he felt that this shouldn't be open ended. Mr. Brogan asked about the legal constraints for cost sharing. Ms. Steele explained that there are many details that would have to be worked out. Mr. Swanson felt that Alternative 4 would give you as much coverage as possible and it is clear that 100% isn't going to be funded. Mr. Westcott suggested to separate the federal government out and purely address just an industry funded program with \$325/day. Mr. Kaelin stated that in the scallop fishery, vessels are compensated for those costs with extra scallops; he feels that 100% coverage is not necessary and may not even be possible because that amount of data can't be managed efficiently. Mr. Kaelin expressed support for the motion because it limits costs and is a step in the right direction and reflects a commitment from the industry to contribute. Mr. Baker asked how the \$325 was derived. Ms. Bichrest stated that the information was received from O'Hara Corporation, Lund's, and West Coast Fisheries.

The perfected motion #3 CARRIED 5-4 with Chairman Kaelin voting in favor to break the tie.

Discussion on the Measures to Maximize Sampling at Sea, Measures to Address Net Slippage, and Maximized Retention Alternative

- Mr. Grout suggested that measures to maximize/improve sampling at-sea in Section 3.2.2 have already been put in place on a voluntary basis. Ms. Steele confirmed this and stated that these measures have been proposed to become part of the regulations in Amendment 5. Mr. Grout asks if there is any opposition. **The Herring AP unanimously supports the Measures to Maximize/Improve Sampling.**
- Mr. Grout discussed the Measures to Address Net Slippage in Section 3.2.3 of Amendment 5. Mr. Weiner expressed support for the trip termination measure with the 10 event option. Mr. Brogan felt that there should be something put in place to ensure accountability and is uncomfortable with the affidavit because it does not include third-party verification. Mr. Ellenton submitted that Cape Seafoods and Western Seafoods are not in support of these measures. **No Herring AP recommendation regarding Measures to Address Net Slippage.**

Discussion of FMP Adjustments

- Mr. Grout discussed Section 3.1.1– Regulatory Definitions. **No objections from the Advisory Panel to the proposed regulatory definitions.**
- The Advisory Panel reviewed Section 3.1.2 – Administrative and General Provisions. **No objections from the Advisory Panel to the proposed administrative and general provisions.**

Section 3.1.3.2 Measures to Address Carrier Vessels

Mr. Kaelin stated that he appreciated the Agency’s response on this issue and felt that it can help to minimize the double counting of herring. He also stated that it reflects a good response by the agency to create flexibility.

4. **MOTION: Bob Westcott/Jennie Bichrest**
To support Option 3 for carrier vessels (Dual Option for Carriers – VMS or LOA).
Motion #4 CARRIED 3-0-6.

Section 3.1.3.3 Measures to Address Transfers at Sea

Mr. Kaelin stated that his organization supports the no action option (status quo). He noted that the Enforcement Committee suggested that option 2 is enforceable but option 3 is not.

5. **MOTION: Chris Weiner/Don Swanson**
To support the No Action Option for Transfers At Sea (Option 1).
Motion #5 Carried 5-1-3.

Section 3.1.4 Trip Notification Requirements

Mr. Calomo felt that small seiners targeting menhaden or mackerel that catch herring should not have an observer on board or be expected to notify NMFS. Mr. Kaelin stated that we should have VMS on every boat in the fishery and be subject to notification requirements. Mr. Kaelin also stated that there are only a couple hundred Category D boats involved in this fishery. Mr. Baker felt that a well-designed observer program that dealt with 100% coverage on A and B vessels will cover 95% of the fishery. Mr. Mullen felt that what is in place right now is working just fine. Ms. Steele stated that the Herring PDT discussed a 48 hour call in versus the 72 hour call in. Mr. Brogan stated that costs associated with no shows and cancelled trips were high and were reduced going to 48 hours in other fisheries.

- 6. MOTION: Peter Mullen/Dave Ellenton**
To support 48 hours lead time for notification requirements.
Motion #6 CARRIED unanimously.

Section 3.1.5 Dealer Reporting Requirements

- 7. MOTION: Peter Baker/Chris Weiner**
To support Option 2 – require dealers to accurately weigh all fish.

Discussion: Mr. Kaelin supports Option 2 and felt that option 2B is consistent with option 2; however he opposed option 2C because he felt that it was unworkable. Mr. Kaelin also stated that option 2C is not a good idea because people will adamantly not want to double check the dealer reports at the settlement house. Ms. Bichrest stated that there is no method to how the fish is supposed to be weighed. Ms. Bichrest stated that she originally supported to weigh the fish, but said that this option is too vague.

MOTION #7 PERFECTED THROUGH A FRIENDLY AMENDMENT (Peter Baker):

To support Option 2 – require dealers to accurately weigh all fish. The AP generally supports Option 2B and is concerned with Option 2C, and would like further clarification regarding how the requirement for weighing fish will be administered.

Discussion: Mr. Ellenton stated that most dealers are already weighing fish. Ms. Steele stated that this is true, but that this would implement the regulations as a requirement throughout the fishery. Mr. Weiner was unclear how this measure developed from the intent for independent third party verification of landings. Ms. Bichrest stated that this is too vague to support. She wondered how accuracy would be determined for enforcement purposes. Mr. Mullen supported measuring and certifying the capacity of the boats and the trucks as the method to weigh the fish. Mr. Kaelin stated that the mackerel fishery has to measure the boats by using volumetric measurement to limit the vessels ability to expand.

Motion #7 CARRIED 6-3-0.

Section 3.1.6 Open Access Permit Provisions for Limited Access Mackerel Vessels

Ms. Steele gave an overview of this measure and expressed uncertainty regarding the number of vessels that may be allowed to qualify for this permit. Mr. Kaelin stated the herring fishery has a 25,000 pound incidental catch for mackerel and that he believes in giving people the opportunity to retain the fish in an effort to minimize the discards and match the incidental catch allowances in both fisheries. Mr. Swanson felt that this could impact the river herring bycatch in Area 2. Mr. Kaelin felt that this concern doesn't reflect a true problem, and that it could be addressed if there was a notification program and observer coverage put in place. Mr. Weiner asked if there was a concern for the herring industry to increase directed fishing for herring by new boats and the potential impact on the herring quota. Mr. Kaelin wondered why there is concern about catch by Category D permit holders now but not during the observer coverage discussions.

8. MOTION: Bob Westcott/Vito Calomo

To support Option 2 – Increase the Open Access Possession Limit to 20,000 Pounds in Areas 2/3 for Limited Access Mackerel Vessels.

Motion # 8 CARRIED 6-1-2.

Discussion of Management Measures to Address River Herring Bycatch

Ms. Steele gave an overview of the Management Measures to Address River Herring Bycatch. Mr. Baker asked if there is feasibility of monitoring the triggers. Ms. Steele stated that monitoring a catch cap may be easier than monitoring a trigger, especially if there is a lag for a triggered management action. Mr. Westcott asked if SMAST was taken into account when selecting measures. Mr. Grout stated that the Council received the preliminary SMAST report at its last meeting. Mr. Kaelin felt that bycatch avoidance SMAST is the only way to go because one does not know where the fish will be from day to day. Mr. Kaelin felt the other alternatives seem too complicated for reporting and monitoring and that industry funding could really help. Mr. Brogan stated that the SMAST approach is a great tool but what brings everyone to the table is a backstop, in which an overarching catch cap is the motivation to further such a program. Mr. Brogan felt that there is need for consequences of an exceeding catch cap to drive the bycatch avoidance program. Mr. Calomo stated that he was confused because the State of Maine has a commercial fishery for 1.1 million pounds of river herring and now we are closing areas for herring fishing based on much smaller numbers. Mr. Mullen stated that the SMAST program should be financed to keep it going. Mr. Kaelin suggested that if there is a cap, it should be set initially somewhere close to what equates to the directed fishery.

9. MOTION: Peter Baker/Vito Calomo

That the AP opposes trigger-based options in the river herring alternatives because they are infeasible and unworkable.

Discussion: Mr. Baker stated that the data collection requirements, timing, and turnaround time are not capable of doing it in a time frame that will protect river herring and that the focus should be on measures that are more likely to work. Mr. Westcott stated that the SMAST program has been transmitting information to the fleet within three days.

Motion #9 CARRIED unanimously.

10. MOTION: Dave Ellenton/Vito Calomo

That the AP supports River Herring Alternative 2, Option 4 – Two-Phase Bycatch Avoidance Approach Based on SFC/SMAST/DMF Project as the preferred alternative.

Discussion: Mr. Ellenton felt that this program is very fast, working well and has the ability to get away from the fish much quicker than anything NMFS can do. Mr. Baker felt that SMAST is a good tool to avoid bycatch and to stay under a specified cap. Mr. Baker further stated that having a cap around the directed fishery landings doesn't seem unreasonable; herring and mackerel ACLs are set based on recent catch, so there is no reason that the same can't be done with river herring. Mr. Baker asked if there should be a friendly amendment for a catch cap backstop. Mr. Ellenton declined. Mr. Kaelin felt that a cap may be premature at this time; he stated that Phase 2 will likely be the regulatory phase to implement the SMAST bycatch avoidance program and suggested that it may be more appropriate to implement a cap at that time, so that it can be tied to the industry's impact on the resource, especially if the program will potentially be funded by the industry in the future.

Motion #10 CARRIED 6-2-1.

11. MOTION: Gib Brogan/Peter Baker

To support Section 3.3.5, Establish a River Herring Catch Cap, with the cap number set at a proxy value equivalent to the average catch of river herring by limited access herring vessels over the previous five-year period, to be adjusted when new information is available.

Discussion: Mr. Brogan stated that one should set a line in the sand based on what the fishery has been catching over previous years, and then change the catch cap value over time; which at least puts the mechanism in place to provide the necessary compliment to the SMAST program. Mr. Calomo asked what would happen if the abundance of river herring increases. Mr. Brogan stated that with an active avoidance program, the fishery should, in theory, be doing better if they are actively trying to avoid river herring bycatch. Mr. Calomo stated that we should let SMAST do the work first, then define a real cap. Mr. Ellenton asked how accurate are the catch estimates for the last five years? Ms. Steele reported that there are high CV's and the data are variable, but the 2010 data are the best to date for river herring catch estimates.

Mr. Brogan said that this can go many different ways in terms of setting a proxy and one could look at the scallop example; a cap can be set based on historical numbers, a percentage of biomass estimate, projected catch, etc.; as long as there is a cap number, it provides that backstop. Mr. Baker stated that AP should send a message to the Council that a cap should be developed so the SMAST program has something to attempt to stay under. Mr. Kaelin stated that he has no problem supporting the idea that this is going to be frameworked, but to have a specific cap number that would apply today would be problematic; he stated that the industry wants to avoid river herring but cannot be so limited initially that fishing for mackerel is precluded if/when the mackerel come back. Mr. Weiner suggested more vague wording to express support for a cap. Mr. Mullen generally agreed with the motion but felt that it is premature.

Motion #11 FAILED 2-5-2.

Discussion of Management Measures to Address Midwater Trawl Access to Groundfish Closed Areas

12. MOTION: Dave Ellenton/Jennie Bichrest

To support Alternative 1 – No Action – for Measures to Address Midwater Trawl Access to Groundfish Closed Areas.

Discussion: Mr. Baker stated that he would oppose this motion because he felt that it wouldn't help the rebuilding of the groundfish resource and protection of nurseries. Mr. Mullen stated that he doesn't know how many hours of observer coverage we have in the groundfish closed areas, but the data show very little bycatch, so he has no problem taking 100% observer coverage. Mr. Ellenton stated that midwater trawlers continue to display that there is no problem with groundfish bycatch. Mr. Kaelin also stated that it has been demonstrated that the fishery is not having an effect that would impede groundfish recovery; he feels that existing Closed Area I rules should be repealed especially if the Council is considering increasing observer coverage throughout the fishery.

Motion #12 CARRIED 5-4.

As an aside, Mr. Kaelin wanted to speak on an earlier issue regarding observer coverage and put a statement in from Jim Ruhle, who supports focusing additional observer coverage on the vessels with the biggest bycatch problems.

The Herring Advisory Panel meeting adjourned at approximately 4:30 pm.