

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

**Amendment 4 to the Herring Fishery Management Plan (FMP)**

**DRAFT Discussion Document**

This document summarizes the work of the Herring Committee, Advisory Panel, and Plan Development Team (PDT) to date regarding the development of specific management measures and the range of alternatives that may be analyzed in the Draft EIS for Amendment 4 to the Herring FMP. Relevant background and supporting information/analyses provided by the Herring PDT are also included in this document.

At its October 7-9, 2008 meeting, the Council is scheduled to review work completed to date for Amendment 4 and consider/approve the Herring Committee’s recommendations to date regarding the specific management measures and the range of alternatives to be developed for the Amendment 4 Draft EIS. Herring Committee and Advisory Panel recommendations are noted throughout the discussion provided in this document.

**AMENDMENT 4 DISCUSSION DOCUMENT**

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## 1.0 INTRODUCTION/BACKGROUND

The New England Fishery Management Council (Council) is developing an amendment to the Fishery Management Plan (FMP) for Atlantic herring (*Clupea harengus*) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), recently reauthorized as part of the Magnuson-Stevens Reauthorization Act of 2006. In accordance with the National Environmental Policy Act (NEPA), the Council also intends to prepare an Environmental Impact Statement (EIS) that will analyze the impacts of this amendment on both the physical and human environment.

### 1.1 PURPOSE AND NEED

The original Herring FMP and Amendment 1 represent important milestones in the Council's efforts to maintain a sustainably-managed Atlantic herring fishery throughout New England. Recently, concerns about the fishery have led the Council to determine that additional action is needed to further address issues related to the health of the herring resource throughout its range, how the resource is harvested, how catch/bycatch are accounted for, and the important role of herring as a forage fish in the Northeast region. These concerns are reflected in the unprecedented level of interest in managing this fishery by New England's commercial and recreational fishermen, eco-tourism and shoreside businesses, and the general public.

The MSRA reflects an update of the original Magnuson–Stevens Act (MSA) and retains key provisions of the Sustainable Fisheries Act (1996) while making adjustments to the legislation designed to improve national compliance with the Act. One specific focus of this amendment will be the MSRA requirements that NMFS and the Councils establish Annual Catch Limits (ACLs) such that overfishing does not occur in the fishery, and Accountability Measures (AMs) for the overages of harvest levels. The MSRA directs the Councils to follow the recommendations of its Scientific and Statistical Committee (SSC) in setting catch limits for every federally-managed fishery that is not subject to overfishing by the year 2011.

### 1.2 GOALS AND OBJECTIVES

#### 1.2.1 Goals and Objectives – Herring Fishery Management Program (Amendment 1)

The goals and objectives of the Atlantic herring fishery management program were specified in Amendment 1 to the Herring FMP and will continue to frame the long-term management of the resource and fishery:

**GOAL (AMENDMENT 1):** Manage the Atlantic herring fishery at long-term sustainable levels consistent with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act.

**OBJECTIVES (AMENDMENT 1):**

1. Harvest the Atlantic herring resource consistent with the definition of overfishing contained in the Herring FMP and prevent overfishing.
2. Prevent the overfishing of discrete spawning components of Atlantic herring.
3. Avoid patterns of fishing mortality by age which adversely affect the age structure of the stock.
4. Provide for the orderly development of the herring fishery in inshore and offshore areas, taking into account the viability of current and historical participants in the fishery.
5. Provide for long-term, efficient, and full utilization of the optimum yield from the herring fishery while minimizing waste from discards in the fishery. Optimum yield is the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, taking into account the protection of marine ecosystems, including maintenance of a biomass that supports the ocean ecosystem, predator consumption of herring, and biologically sustainable human harvest. This includes recognition of the importance of Atlantic herring as one of many forage species of fish, marine mammals, and birds in the Northeast Region.
6. Prevent excess capacity in the harvesting sector.
7. Minimize, to the extent practicable, the race to fish for Atlantic herring in all management areas.
8. Provide, to the extent practicable, controlled opportunities for fishermen and vessels in other Mid-Atlantic and New England fisheries.
9. Promote and support research, including cooperative research, to improve the collection of information in order to better understand herring population dynamics, biology and ecology, and to improve assessment procedures.
10. Promote compatible U.S. and Canadian management of the shared stocks of herring.
11. Continue to implement management measures in close coordination with other Federal and State FMPs and the ASMFC management plan for Atlantic herring, and promote real-time management of the fishery.

**1.2.2 Goals and Objectives of Amendment 4 (Proposed)**

The goals and objectives of Amendment 4, provided below, were recommended by the Council's Herring Committee at its March 25, 2008 meeting and approved by the Council as part of this Scoping Document. They are specific to Amendment 4; they acknowledge the primary issues to address and form the basis of the management alternatives that will be developed for consideration and analysis in the EIS and public hearing document for Amendment 4.

At this time, it is intended that the management measures considered in this amendment will address one or more of the following:

**GOAL (AMENDMENT 4)**

To develop an amendment to the Herring FMP to improve catch monitoring and ensure compliance with the Magnuson-Stevens Reauthorization Act of 2006

**OBJECTIVES (AMENDMENT 4)**

1. To implement measures to improve the long-term monitoring of catch (landings and bycatch) in the herring fishery;
2. To implement Annual Catch Limits (ACLs) and Accountability Measures (AMs) consistent with the Magnuson-Stevens Reauthorization Act (MSRA);
3. To implement other management measures as necessary to ensure compliance with the new provisions of the MSRA;
4. To develop a sector allocation process or other Limited Access Privilege Program (LAPP) for the Atlantic herring fishery; and
5. In the context of Objectives 1 -4 (above), 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.

***Discussion***

The objectives specific to Amendment 4 may change as the management alternatives are developed and the Council narrows the scope of the amendment. Ultimately, the Council will approve conservation and management measures to address the relevant management issues and meet the goals/objectives that it determines are appropriate to address for Amendment 4, also considering the goals/objectives of the herring management program that were established in Amendment 1.

For example, at its July 30, 2008 meeting, the Herring Committee passed a motion to recommend to the Council that quota allocation programs (individual and group) not be considered further in Amendment 4 (see Section 5.0 of this document for additional discussion). If the Council supports this recommendation and agrees that quota allocations should be eliminated from Amendment 4 (and perhaps addressed in a separate or future action), then the Objectives of Amendment 4 (above) will be revised to reflect the Council's intent with respect to this specific management action.

**XXX**

### **1.3 AMENDMENT 4 – DEVELOPMENT OF ALTERNATIVES AND ANTICIPATED TIMELINE**

The Council and its Atlantic Herring Oversight Committee have held preliminary public discussions on the issues to be addressed in Amendment 4 to the Herring FMP. After gathering information during the scoping period (through June 30, 2008), the Herring Committee began work on developing a range of alternatives to be considered and analyzed in a Draft Environmental Impact Statement (DEIS) and public hearing document for Amendment 4. Committee meetings were held during the scoping period so that background information could be provided by the PDT and scoping comments could be submitted by the public and the Herring Advisory Panel (AP). The Committee met jointly with the Herring AP during July 2008 and met independently during September/October 2008 to continue work on the development of management alternatives and develop recommendations for the Council to review at its meeting in October 2008.

At the October 7-9, 2008 meeting, the Council is scheduled to review work to date and consider the Herring Committee's recommendations regarding specific management measures for further development in Amendment 4. Following this meeting, the Committee will continue to work with the Herring AP and PDT to flesh out the details of the management alternatives that will be forwarded to the Council for approval and incorporation into a Draft EIS (DEIS). Once the DEIS is prepared, the Council will distribute it as well as an abbreviated public hearing document for public review. A 45-day public hearing and comment period will allow interested stakeholders to comment on any aspects of the DEIS, including the alternatives under consideration and the analyses of the impacts prepared by the Council's Herring PDT.

Following a review of all public comments and input from the Herring Advisory Panel and Herring Committee, the Council will choose the final management measures for submission to the Secretary of Commerce as Amendment 4 to the Herring FMP. The Council is scheduled to select the final measures for Amendment 4 in early 2010. If no delays are encountered during the development process, Amendment 4 is scheduled to become effective no later than the start of the 2011 fishing year (January 1, 2011). During the development of Amendment 4, the Council is scheduled to approve one-year herring fishery specifications for 2010 (summer/fall 2009). Once Amendment 4 is completed (if the current timeline is met), the Council will begin work on a three-year specifications package for the 2011-2013 fishing years. The three-year specifications package for 2011-2013 will incorporate information from the upcoming stock assessment for Atlantic herring (Transboundary Resource Assessment Committee, December 2009), and also will incorporate any new measures specified in Amendment 4 that address annual catch limits, accountability measures, and the role of the Council's Scientific and Statistical Committee (SSC).

Currently, the following “milestones” in the development of Amendment 4 are anticipated for (always subject to change):

- **February or April 2009** – Council approves Amendment 4 alternatives for analysis in Draft EIS (more likely to be April);
- **September 2009** – Council approves Draft Amendment 4/Draft EIS and public hearing document, selects preferred alternatives; Council also approves specifications for 2010 fishing year;
- **November/December 2009** – Herring Amendment 4 Public Hearings
- **February 2010 (or April 2010)**– Council reviews public comment, AP recommendations, Committee recommendations, and selects final management measures for Amendment 4;
- **May 2010** – Council staff submits Amendment 4;
- **May 2010 – August 2010** – Committee and Council develop specifications for 2011-2013 fishing years;
- **January 1, 2011** – Amendment 4 implementation deadline; implementation of 2011-2013 herring fishery specifications.

## **2.0 MEASURES TO ESTABLISH A CATCH MONITORING PROGRAM FOR THE ATLANTIC HERRING FISHERY**

### **2.1 INTRODUCTION**

The Council has identified *catch monitoring* as a primary management issue for consideration in Amendment 4 and has directed the Herring Committee to focus on the development of specific management alternatives to improve catch monitoring in the herring fishery. “Catch monitoring” is intended to be comprehensive in nature and relates to improving the collection of information regarding shoreside (landings of herring and other species) and at-sea catch (including bycatch/discards), as well as improving vessel/dealer reporting and real-time quota (TAC) monitoring.

A catch monitoring program for the Atlantic herring fishery that supplements and improves the existing program can take on many forms and include several different approaches. In general, two important elements of the fishery must be adequately documented to improve catch monitoring and ensure that data are as complete and accurate as possible: (1) **at-sea catch**; and (2) **shoreside/dockside landings**. At-sea monitoring should focus on both total catch and bycatch – everything that enters the net and is either pumped aboard the fishing vessel or discarded at sea. Shoreside/dockside monitoring should focus on accurate and real-time accounting of landings and incidental catch – all fish are brought to port and offloaded from the vessel, either to a processing plant, a bait truck/dealer, other fish dealers, or to be disposed of as bycatch.

Another important element of catch monitoring is improving reporting and ensuring real-time monitoring of the management area TACs for the herring fishery. XXX

### 2.1.1 Background – Standardized Bycatch Reporting Methodology

Amendment 2 to the Atlantic Herring FMP was developed by NMFS to ensure that all FMPs of the Northeast Region comply with the Standardized Bycatch Reporting Methodology (SBRM) requirements of the Magnuson-Stevens Act. The purpose of the SBRM amendment was to: (1) explain the methods and processes by which bycatch is currently monitored and assessed for Northeast Region fisheries; (2) determine whether these methods and processes need to be modified and/or supplemented; (3) establish standards of precision for bycatch estimation for all Northeast Region fisheries; and (4) document the SBRMs established for all fisheries managed through the FMPs of the Northeast Region.

Generally, a SBRM can be viewed as a combination of sampling design, data collection procedures, and analyses used to estimate bycatch. The Northeast Region SBRM amendment provides a structured approach for evaluating the effectiveness of the allocation of fisheries observer effort across multiple fisheries to monitor a large number of species. Both precision and accuracy are addressed in analyses conducted using observer data and to determine the appropriateness of the data for use in stock assessments and by fishery managers. A coefficient of variation (CV) of thirty percent (30%) was selected as a standard level of precision based upon the recommendation of the National Working Group on Bycatch.

The SBRM amendment, therefore, establishes a baseline and target levels of observer coverage for accurately monitoring bycatch across the Northeast Region's federally-managed fisheries. However, the Council acknowledges that recent developments in the herring fishery have contributed to the need for improved monitoring of catch in the fishery (landings and discards). For instance, increased concerns about the status of river herring and some groundfish stocks, as well as uncertainty regarding the nature and extent of river herring and groundfish bycatch in the Atlantic herring fishery illustrate the need for more and better bycatch information. Seasonal and annual TAC overages in some management areas, inconsistent and inadequate levels of observer coverage, and the emergence of U.S. at-sea processing operations also argue for a more thorough and accurate catch monitoring program in the fishery. For these reasons, the Council is considering management measures in this amendment to supplement the baseline established in the SBRM and enhance the collection of bycatch information in the Atlantic herring fishery.

### 2.1.2 Catch Monitoring Measures – Additional Questions for the Herring Committee to Consider

**A thorough understanding of the strengths and weaknesses of the existing catch monitoring program is a fundamental first step towards designing a new and better program.** This has been the focus of the Herring Committee and Advisory Panel's discussions during and since the initiation of Amendment 4. The existing catch monitoring program will be described in detail and evaluated to the extent possible as part of the description and discussion of the no action alternative in the Amendment 4 Draft EIS.

Two important elements of a comprehensive catch monitoring program for the Atlantic herring fishery have been generally considered and require further guidance by the Committee and Council – dockside monitoring and at-sea monitoring. To facilitate discussion at the upcoming September 30/October 1, 2008 Herring Committee meeting, Council staff developed the



following list of questions for the Herring Committee to consider regarding the further development of these approaches in Amendment 4. This is not an exhaustive list, and discussing some of these issues will inevitably lead to more questions and issues to resolve. These questions are similar to those discussed by the Groundfish Committee during the development of sector monitoring measures in Amendment 16 to the Multispecies FMP.

The intent of the following list is to raise some issues for the Committee and Council to consider and discuss at the upcoming meeting in order to develop more clear guidance for Council staff, the Herring PDT, and the Advisory Panel to continue to work on the development of catch monitoring alternatives for this amendment.

### ***Dockside Monitoring – Discussion Questions***

- What is meant by ***dockside monitoring***? What would be the specific goals of a dockside monitoring program established in this amendment? What current problems with catch/quota monitoring would the dockside monitoring program intend to address?
- Would all trips by herring vessels need to be monitored, or only a subset? If not all trips, then how is the subset or representative sample determined?
- Would landings need to be weighed by the dockside monitor, or can the monitor witness weighing by another party (e.g. dealer)?
  - If so, what amount of catch needs to be weighed? 100%? 50%?
    - If not 100%, should weighing be random?
  - How should the high volume of landings be measured by the dockside monitor? Should measures be considered to require that all fish be weighed (versus current methods of volumetric measurement)?
  - Would all ports need similar weighing technologies and rules? What infrastructure would be required?
    - If so, how can a plan accommodate smaller ports? Island communities?
  - What if landings are trucked to another port for sale?
  - How would deliveries of herring to island communities for bait be monitored?
- What should be the role of the Agency and independent contractors in a dockside monitoring system?
- Is there a role for video or electronic monitoring systems as part of dockside monitoring at this time?
- What is a reasonable time frame for implementation of dockside monitoring measures? Will the industry have time to develop the necessary infrastructure to accommodate changes to the monitoring system?
- Would the monitor submit a separate report? What would it contain?

### ***At-Sea Monitoring – Discussion Questions***

- What is meant by ***at-sea monitoring***? What would be the specific goals of an at-sea monitoring program established in this amendment? What current problems with at-sea monitoring would the program intend to address?

- How would an at-sea monitoring program established in this amendment differ (or not) from the current observer program administered by NOAA Fisheries (NEFSC Sea Sampling Branch)?
- What is the appropriate extent of observer coverage to meet the desired goal(s)? Is 100% coverage necessary? Or is it sufficient to meet a defined standard, such as the C.V. suggested by NMFS?
- What are the desired roles of government and private parties in an observer system?
- What would be the role of the NMFS observers and any other at-sea monitors? Should they simply ensure that discards do not occur, or play a more active role in information-gathering?
- Who should be responsible for bearing the costs of observer programs?
  - If industry-funded observers are used, how should the program be structured? What are the biggest challenges to address if industry-funded observer programs are considered in this amendment?
  - What reports would industry-funded observers file and how would they be used? Who would maintain the database, and where would the resources come from to do so?
  - Could third-party funding be considered for observer coverage in the herring fishery? If so, how would this approach be structured?
  - Would NMFS require additional resources and manpower to implement and administer industry-funded observer programs? If so, how will these costs be addressed?
- Could electronic monitoring be an effective cost-reduction tool to improve at-sea monitoring?
  - Is there a role for electronic monitoring at-sea in the herring fishery at this time? If so, what technology would be required? What are the costs and who would bear them?
  - In what form would data be collected from an electronic monitoring program, and how would it be utilized? Who would maintain the database?
  - Should the Council consider developing a pilot project to explore possible applications for at-sea electronic monitoring in this amendment? What kind of incentives could be offered to participate in such a program?

### **2.1.3 Development of Management Alternatives for Amendment 4 Draft EIS**

The Herring Committee, in consultation with the Herring AP and PDT, has reviewed and discussed numerous detailed scoping comments regarding the establishment of catch monitoring measures in this amendment. In addition, the Committee has received reports and presentations from individuals on the Herring PDT who work closely with the NOAA Fisheries Sea Sampling (Observer) Program as well as portside/dockside samplers and those who have participated in related research projects.

The catch monitoring measures under consideration in this amendment are still in the early stages of development, as the issues are quite complicated, and input regarding the kinds of approaches that should be considered has been very extensive.

As they currently stand, the measures under consideration for catch monitoring in Amendment 4 are simply listed individually so that each approach can be evaluated independently in terms of costs, benefits, and the nature and utility of the information it may generate. Eventually, the Committee intends to merge the measures described in the following subsections to formulate more comprehensive management alternatives for further consideration and analysis in the Draft EIS for Amendment 4.

## **2.2 MEASURES/ALTERNATIVES TO IMPROVE REAL-TIME QUOTA MONITORING, REPORTING, AND COMPLIANCE (WORK IN PROGRESS)**

Increasing compliance with reporting will help to improve the accuracy of landings data and quota/TAC monitoring, which will lead to more effective management of the herring fishery. The Council is considering management measures to provide for real-time quota monitoring to the extent possible. The following subsections describe the measures that are currently under consideration/development by the Herring Committee to improve real-time quota monitoring, reporting, and compliance. Some of these measures may ultimately be incorporated into the management alternatives for the Draft EIS, while others may be considered but rejected, based on available information/analysis and feedback from the industry, Herring Advisory Panel, and other interested stakeholders.

At the March 2008 Herring Committee Meeting, during the development of the Scoping Document for Amendment 4, NMFS Regional Office staff presented a summary to the Herring Committee detailing the current program for monitoring landings in the Atlantic herring fishery and the process by which NMFS currently ensures compliance with the management area TACs. Several Herring Committee and audience members asked questions about how the TACs are monitored, and several individuals identified issues of concern and potential areas for improving the current process.

At the May 22, 2008 Herring Committee meeting, individuals from the NEFSC Sea Sampling (Observer) Program provided a detailed presentation on the structure of the current observer program and the data collected on observed vessels participating in the Atlantic herring fishery. Numerous individuals from the Observer Program attended the meeting with summary handouts and visual displays illustrating how observers work to collect data on fishing vessels. Following the observer presentation, a Herring PDT member provided an overview of portside bycatch sampling work in the herring fishery, which has been conducted by the ME Department of Marine Resources (see May 22, 2008 Meeting Summary for more detailed information and presentation slides).

At the July 30, 2008 Joint Committee/Advisory Panel Meeting, NMFS Regional Office presented a “permit holder letter” that was released on July 29, 2008 by NOAA Fisheries. The intent of the letter is to provide detailed examples and clarify the current notification and reporting requirements for vessels participating in the Atlantic herring fishery. NMFS staff

answered a number of questions for the Committee and Advisory Panel members, as well as the audience. The Committee and Advisory Panel engaged in a general discussion with the Regional Office about current reporting and notification requirements.

The following management measures under consideration have been identified by the Herring Committee, Advisory Panel, and PDT during the discussions related to the current catch monitoring program; these measures would be intended to address some of the potential problems or inadequacies associated with the current catch monitoring program that have been identified by NMFS, the industry, and/or other stakeholders. As the Committee and Council continue to move forward with the development of the catch monitoring alternatives in Amendment 4, it will also be important to detail the strengths and weaknesses of the measures under consideration so that the catch monitoring alternative that is ultimately adopted in Amendment 4 is successful and efficient, and provides accurate and real-time data to the extent possible.

### **2.2.1 Summary of Current TAC/Quota Monitoring Program (Status Quo)**

The following outline characterizes the current program for monitoring the management area TACs in the Atlantic herring fishery. It represents the status quo with respect to quota monitoring and reporting and ultimately will be incorporated into the “no action alternative” for this amendment. NMFS Regional Office staff presented this outline to the Herring Committee as a starting point for discussion when considering measures to improve catch monitoring in this amendment. It is important to understand the current monitoring/reporting structure in order to identify strengths, weaknesses, and areas that require improvement.

#### **Data Sources**

##### **Primary:**

- IVR reports from vessels – one report/week for limited access permit holders (including negative reports when no herring caught) and for open access permit holders that catch 2,000 lb or more on any trip in a week

##### **Supplemented by:**

- Dealer landing reports from SAFIS (dealer reporting system)
- Using VMS to attribute dealer landings to herring management area based on time spent in area by vessel on herring trips

#### **Quality Control and Compliance**

- IVR Database Quality Control and Compliance – FSO does compliance, corrections, and makes contact with vessels
  - o Weekly compliance report checking for duplicate reports, reviewing multiple trips per week, correcting negative entries, missing IVR reports, reviewing required permits to land, etc.
- SAFIS Dealer Database Quality Control and Compliance
  - o FSO checks dealers landings against required permits, IVRs and VTRs from vessels checked against dealer reports

- Atlantic Coastal Cooperative Statistics Program (ACCSP), FSO, and Northeast Fisheries Science Center (NEFSC) perform multiple levels of audits on all dealer-reported data and investigate issues as necessary.
- Ad hoc checks of trip declarations, trip limits, area fished, observer call-in, etc.
- Potential violations are sent to the Office of Law Enforcement

### **Area Fishery Monitoring**

- FSO reviews multiple data sources to monitor the area herring TACs, including VMS, declared herring trips, observer program call-ins, herring pre-landing reports, port agent comments, IVR catch reports, and SAFIS dealer landing reports.
- FSO publishes a weekly herring monitoring report to the NERO website ([http://www.nero.noaa.gov/ro/fso/reports/reports\\_frame.htm](http://www.nero.noaa.gov/ro/fso/reports/reports_frame.htm)), which displays how much of the herring TACs has been caught based on preliminary data. This report is generated by:
  - Tabulating IVR reports of herring landings and discards
  - Supplementing with additional dealer landings for vessels where total dealer landings are greater than total IVR landings
  - Attributing these dealer landings to fishery management area based on
    - IVR, if available, if not then,
    - VMS - where vessel spent the most time - if available, if not then,
    - The fleet's activity for the week

### **Other Monitoring**

- **Border Transfer (BT)** (TAC = 4,000 mt)
  - U.S. catcher vessels only; vessels report weekly through IVR
  - Foreign carrier vessels do not report
  - Foreign dealers report through SAFIS same as U.S. dealers do, entering the foreign country as the state and the U.S. catcher vessel permit number
    - BT landings are identified by selecting the foreign country as landing state in SAFIS
    - FSO identifies the corresponding IVR landings and includes these landings from area fishery landings for the purposes of quota monitoring
    - BT landings are not posted separately because of confidentiality restrictions, but are tracked separately by FSO and counted against the management area TACs
    - FSO will report these on the weekly herring monitoring report on NERO website ([http://www.nero.noaa.gov/ro/fso/reports/reports\\_frame.htm](http://www.nero.noaa.gov/ro/fso/reports/reports_frame.htm))

- **Maine Weir Fishery** (500 mt set-aside from Area 1A TAC)
  - Inshore, state fishery managed by Maine
  - Vessels will report weekly through IVR, as directed by Maine managers and using an identifying code
  - Dealers report through SAFIS
    - Maine weir landings will be identified by selecting the identifying code in IVR
  
- **Research Set-Aside (RSA)** (TAC = 3% from each management area TAC)
  - Vessels apply through NMFS Sustainable Fisheries Division
  - Vessels will report weekly through IVR using an identifying code for RSA
    - FSO will select these and corresponding dealer landings and exclude from the management area fishery TAC
    - FSO will report these on the weekly herring monitoring report on NERO website ([http://www.nero.noaa.gov/ro/fso/reports/reports\\_frame.htm](http://www.nero.noaa.gov/ro/fso/reports/reports_frame.htm))
  
- **U.S. At-Sea Processing (USAP)** (TAC = 20,000 mt from Areas 2 and 3 only)
  - Processing vessels must be permitted as herring dealers
  - Catcher vessels report weekly through IVR
  - Processing vessels report through SAFIS as other dealers, entering “Domestic JD 970999” as the port code.
    - USAP landings are identified by selecting “Domestic JD 970999” port as landing port in SAFIS
    - FSO identifies the corresponding IVR landings and excludes these landings from area fishery landings
    - FSO will report these on the weekly herring monitoring report on NERO website ([http://www.nero.noaa.gov/ro/fso/reports/reports\\_frame.htm](http://www.nero.noaa.gov/ro/fso/reports/reports_frame.htm))
  
- **Area 2 New York Inshore Herring Landings**
  - Non-federally permitted vessels land herring in NY and are not required to report through IVR
  - Federally permitted dealers report these herring through SAFIS as usual; herring management area is unknown
    - FSO identifies NY landings without federal permit numbers in SAFIS and attributes them to the Area 2 TAC
  
- **Total Allowable Level of Foreign Fishing** (TAC = 0 mt)
  - No fishing allowed
  - Not currently monitored by FSO

### 2.2.2 Section 648.2 and 648.4 – Regulatory Definitions and Vessel Permits

Establishing a catch monitoring program for the Atlantic herring fishery in Amendment 4 provides an opportunity to review and possibly modify/clarify existing regulatory definitions and current permit/reporting provisions as they pertain to reporting Atlantic herring fishing activity. Some modifications may help to improve reporting compliance, ensure accuracy and completeness of data, and improve consistency between databases.

#### Existing Regulatory Definitions (Status Quo)

**Section 648.2 Atlantic herring carrier** means a fishing vessel that may receive and transport herring caught by another fishing vessel, provided the vessel has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel.

**Section 648.4(a)(10) (ii) currently specifies the following provisions for an Atlantic herring carrier:**

An Atlantic herring carrier must have been issued and have on board a herring permit and a letter of authorization to receive and transport Atlantic herring caught by another permitted fishing vessel. The letter of authorization exempts such a vessel from the VMS and IVR vessel reporting requirements as specified in §648.7 and subpart K of this part, except as otherwise required by this part. An Atlantic herring carrier vessel must request and obtain a letter of authorization from the Regional Administrator, and must report all herring carried from each vessel on a given trip in its Fishing Vessel Trip Report. The Fishing Vessel Trip Report must include the vessel name. Carrier vessels under a letter of authorization may not conduct fishing activities except for purposes of transport or possess any fishing gear on board the vessel; must be used exclusively as an Atlantic herring carrier vessel; and must carry observers if required by NMFS. There is a minimum enrollment period of 7 calendar days. While operating under a valid LOA, such vessels are exempt from any herring possession limits associated with the herring vessel permit categories. Herring carrier vessels under an LOA may not possess, transfer, or land any species except for Atlantic herring, except that they may possess Northeast multispecies transferred by vessels issued either an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, consistent with the applicable possession limits for such vessels.

**Section 648.2 Atlantic herring dealer** means:

- (1) Any person who purchases or receives for a commercial purpose other than solely for transport or pumping operations any herring from a vessel issued a Federal Atlantic herring permit, whether offloaded directly from the vessel or from a shore-based pump, for any purpose other than for the purchaser's own use as bait; or
  - (2) Any person owning or operating a processing vessel that receives any Atlantic herring from a vessel issued a Federal Atlantic herring permit whether at sea or in port.
- This means that any Atlantic herring carriers that sell fish (i.e., “receive for commercial purpose other than solely for transport”) are considered Atlantic herring dealers and are subject to dealer reporting requirements. This is an important clarification. *To improve*

*reporting, the Council may want to consider clearly distinguishing Atlantic herring carriers from Atlantic herring carrier/dealers in this amendment.*

**Section 648.2 Atlantic herring processor** means a person who receives unprocessed Atlantic herring from a fishing vessel issued a Federal Atlantic herring permit or from an Atlantic herring dealer for the purposes of processing; or the owner or operator of a fishing vessel that processes Atlantic herring; or an Atlantic herring dealer who purchases Atlantic herring from a fishing vessel with a Federal Atlantic herring permit for resale as bait.

**Section 648.2 Dealer** means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part, unless otherwise exempted in this part.

**Section 648.2 Processing, or to process, with respect to the Atlantic herring fishery**, means the preparation of Atlantic herring to render it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage, including but not limited to cooking, canning, roe extraction, smoking, salting, drying, freezing, or rendering into meat or oil.

**Section 648.2 Transfer** means to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel.

### **Possible Modifications/Additions/Clarifications to Consider**

**Option:** *The Council may want to consider revising some of the existing regulatory definitions to clarify which vessels are authorized to engage in certain herring-related activities and what reporting requirements may apply to these vessels.*

**TBD**

**Option:** *The Council may want to consider establishing a regulatory definition of “transfer at sea” for the purposes of the Atlantic herring fishery to clarify provisions related to each vessel engaged in the operation.*

**TBD**

**Option:** *The Council may want to consider establishing a regulatory definition of “discard” specific to the Atlantic herring fishery to further clarify the handling of partially/fully dumped bags and any fish not pumped onto the vessel.*

**TBD**



**Option:** *The Council may want to consider establishing a new herring carrier/dealer permit that would be required for carrier vessels that sell Atlantic herring to any entity.*

- *The permit would require compliance with federal dealer reporting requirements at any time the vessel is in possession of a (new) carrier/dealer LOA. A “dealer identifier” would have to be developed for carrier/dealers for the purposes of reporting.*
- *This measure would also require the establishment of two LOAs for carrier vessels: one for vessels that only transport fish, and one for vessels that transport and sell fish.*

**TBD**

### **2.2.3 Possible Modifications to the Interactive Voice Response (IVR) Reporting Requirements**

Currently, vessels participating in the Atlantic herring fishery are required to call-in and report their herring catch on a weekly basis through the Interactive Voice Response (IVR) system. The IVR system is an automated, phone-based reporting method initially created for multispecies dealer reporting. It was later modified to include Atlantic herring catch reports in response to the need for real-time quota monitoring. The regulations specify that the owner or operator of any vessel issued a limited access Atlantic herring permit must submit an Atlantic herring catch report via the IVR system each week, regardless of how much herring is caught (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator. In addition, the owner or operator of any vessel issued an open access permit for Atlantic herring that catches 2,000 pounds of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

The main reason for utilizing the IVR system in the Atlantic herring fishery is to monitor the Total Allowable Catch (TAC) limits set for the four herring management areas. As part of the Atlantic herring fishery specification process, each management area is annually assigned a TAC (in metric tons). Although vessels are also required to report catches with vessel trip report (VTR) forms, near real-time data is obtained through the IVR system allowing the TACs to be monitored. When the catch in a management area is projected to reach 95% of its specified TAC (or 92% in areas with research set-asides), the Regional Administrator enacts a closure for all directed herring fishing, and all vessels are restricted to a herring possession limit of 2,000 pounds to accommodate incidental catch.

The IVR system currently requires vessel owners/operators to submit herring catch reports through the IVR system even during weeks when the vessel may not have fished and/or may not have caught any herring. These are considered “negative reports,” i.e., reports of zero catch. NMFS supports the continuation of negative IVR reporting in the herring fishery and has indicated that other fisheries are moving towards implementing this requirement where applicable. Negative IVR reports ensure that catch/landings data are more complete and affirm

an action relative to vessels' fishing activity during any given week. Negative reports help to resolve potential problems with "missing" data; for example, if a vessel has been submitting herring catch reports through the IVR system and does not fish or catch herring for several weeks, the negative reports allow database managers to know that the vessel did not fish or catch herring during those weeks, versus making assumptions about the vessel's fishing activity and/or applying a proxy level of catch for the vessel's missing reports. Data gaps must be addressed in a timely fashion in order to use the IVR system for real-time quota monitoring, so if negative reports are not filed, it is less clear whether the available data accurately characterize catch in the fishery for quota monitoring purposes.

During the scoping process and ongoing discussions regarding the development of Amendment 4, several possible modifications to the herring IVR reporting system have been proposed for further consideration. The intent of these measures would be to improve reporting compliance and the accuracy and timeliness of quota monitoring information.

*In this amendment, it will be important to clarify and ensure, to the extent possible, that all catch is required to be reported through both IVRs and VTRs.* Management area TACs represent total allowable catch, which includes landings and discards. Monitoring the TACs in a timely and effective manner will require improved reporting and documentation of bycatch/discards in the fishery. Observer reports, confirmed by industry members, indicate that herring vessels (trawlers and purse seiners) sometimes release hauls for various reasons (too many fish to pump to vessel; fish too small, bycatch, etc). The amount of fish released should be reported as discard through the IVR and counted toward TAC monitoring, in addition to being reported on VTRs. Efforts should be made in this amendment to improve IVR and VTR reporting of discards in the Atlantic herring fishery.

Current regulations for VTR reporting in **Section 648.7** require vessels to submit the following information on VTRs: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; haul weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, **landed or discarded**; and, in the case of skate discards, "small" (i.e., less than 23 inches (58.42 cm), total length) or "large" (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

Current regulations for IVR reporting in **Section 648.7** state the following for IVR reporting: The owner or operator of a vessel issued a permit to fish for Atlantic herring must report catches (retained and discarded) of herring each week to an IVR system, as specified in paragraphs (b)(2)(i)(A) and (B) of this section. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, week in which species are caught, **pounds retained, pounds discarded**, management areas fished, and pounds of herring caught in each management area for the week. The IVR reporting week begins on Sunday at 0001 hrs (12:01 AM) local time and ends Saturday at 2400 hrs (12 midnight).

Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern Time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed.

### **ALTERNATIVE X: Trip-by-Trip IVR Reporting**

#### *Limited Access Permit Holders (Categories A, B, C)*

- All limited access permit holders (Category A, B, and C) would be required to submit an Atlantic herring catch report via the IVR system on a trip-by-trip basis.
- Negative reports would continue to be submitted on a weekly basis (status quo).
- **Option:** Limited access permit holders also would be required to report their first page VTR serial number for the trip; this will establish a mechanism to more accurately match/link trips between the IVR, VTR, and dealer databases.
- Offloading to herring carrier/dealer vessels would be considered the same as offloading to a shoreside dealer for the purposes of IVR reporting.

#### *Open Access Permit Holders (Category D)*

##### *Option 1*

- Open access permit holders would be required to submit an Atlantic herring catch report via the IVR system on a trip-by-trip basis for any trips on which herring is caught (landed or discarded).
- Negative IVR reports would not be required for open access permit holders.
- **Option:** Open access permit holders also would be required to report their first page VTR serial number for the trip; this will establish a mechanism to more accurately match/link trips between the IVR, VTR, and dealer databases.
- Offloading to herring carrier/dealer vessels would be considered the same as offloading to a shoreside dealer for the purposes of IVR reporting.

##### *Option 2*

- Open access permit holders that possess a Letter of Authorization (LOA) to transfer Atlantic herring at sea would be required to submit an Atlantic herring catch report via the IVR system on a trip-by-trip basis for any trips on which herring is caught (landed or discarded). These permit holders also would be required to report their first page VTR serial number for the trip; this will establish a mechanism to more accurately match/link trips between the IVR, VTR, and dealer databases.
- Negative IVR reports (weekly) would be required for open access permit holders that possess a LOA to transfer Atlantic herring at sea. The current LOA would be revised to include this requirement.
- Open access permit holders that do not receive a LOA to transfer Atlantic herring at sea would continue to be subject to current (status quo) IVR reporting requirements (weekly reporting for vessels that catch 2,000 pounds of Atlantic herring on any trip in a week, negative reports not required).

- Offloading to herring carrier vessels would be considered the same as offloading to a shoreside dealer for the purposes of IVR reporting.

### **Additional Options and Outstanding Issues**

#### ***IVR Reporting Deadlines – Trip-Level***

1. **Option 1** – For permit holders that would be subject to a requirement to report catch via the IVR system on a trip-by-trip basis, the deadline for reporting would be within **24 hours** of offloading or prior to starting the next fishing trip, whichever is less. This option is based on the current provisions for IVR reporting in the Tilefish FMP:
  - (ii) *Tilefish vessel owners or operators.* The owner or operator of any vessel issued a limited access permit for tilefish must submit a tilefish catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator...
2. **Option 2** – For permit holders that would be subject to a requirement to report catch via the IVR system on a trip-by-trip basis, the deadline for reporting would be within **6 hours** of offloading or prior to starting the next fishing trip, whichever is less.

#### ***IVR Weekly Reporting Deadlines***

1. **Option 1 – Status Quo (No Action)** – For permit holders that would be subject to a requirement to report catch via the IVR system on a weekly basis (proposed in the alternative described above for open access permit holders and negative reports for limited access permit holders), the current reporting deadline would apply. The IVR reporting week begins on Sunday at 0001 hrs (12:01 AM) local time and ends Saturday at 2400 hrs (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern Time, each Tuesday for the previous week.
2. **Option 2**– IVR reporting deadlines could be changed from Tuesday midnight (current) to Monday midnight – this would provide better lead time for projections and management area closures. For permit holders that would be subject to a requirement to report catch via the IVR system on a weekly basis (proposed in the alternative described above for open access permit holders and negative reports for limited access permit holders), weekly Atlantic herring catch reports and negative reports must be submitted via the IVR system by midnight, Eastern Time, each Monday for the previous week.

#### **2.2.4 Outreach Program(s) to Improve Reporting Compliance and Consistency**

The Council may require and work with NMFS to structure an outreach program for improving reporting compliance by vessels and dealers once Amendment 4 is implemented. The Atlantic herring fishery is discrete enough that NMFS could work with the majority of participants in the fishery to standardize and clarify reporting requirements and better ensure that landings/catch data are provided to NMFS in a consistent and complete format.

### **OPTIONS TBD**

### 2.2.5 Dockside Monitoring/Weighmaster Programs

The Council may consider implementing a shore-based monitoring program for landings that includes some form of third party verification, perhaps in the form of what is commonly referred to as a “weighmaster.” Some general information about DFO’s Canadian Dockside Monitoring Program (DMP) is provided with this document to give some perspective on how a DMP may be structured. Canada’s DMP is called a “weighmaster” program, but the individuals/companies involved do not weigh the fish; they provide independent, third party verification of landings for DFO and the industry. There are six approved Dockside Monitoring Companies that provide weighmaster services for DFO and the industry. DFO approves these companies, but the fishermen may select which company they want to employ.

#### *Summary of Canadian Dockside Monitoring Program (DMP)*

##### Agency Responsibilities:

- The Canadian Department of Fisheries and Oceans (DFO) will oversee Dockside Monitoring Companies (DMCs) participating in the DMP
- DFO will certify DMCs eligible to participate in the DMP
- DFO will review/approve training programs developed by DMCs
- DFO will develop protocols to increase accuracy of landings data

##### DMCs must:

- Submit corporate paperwork
- Be in good financial standing
- Develop a plan to operate on a 24-hour basis
- Develop a training plan for dockside observers, including:
  - Industry fish-handling practices, offloading methods, and weigh-out practices and protocols
  - Role and purpose of data in fisheries management
  - Fish identification
  - Ethics
  - DMP policies and procedures
  - Recording and reporting procedures
  - Weights and measures
  - Data quality
  - Communication skills and conflict management
- Establish criteria to prevent perceived conflicts of interest
- Establish a plan to ensure data quality
- Reapply for certification every 2 years
- Submit to routine audits to ensure accurate and timely data
- Deploy dockside observers to monitor offloading and record deployment levels
- Document and forward incident reports (e.g., failure to offload catch)

- Protect the confidentiality and privacy of data
- Maintain all hail reports and landings records for 2.5 years
- Facilitate collection of logbook data
- Report data to DFO on a weekly basis

Dockside observers must meet several requirements, as follows:

- Successfully complete high school education or equivalent
- Be a Canadian citizen or legal equivalent
- Submit to a background check and have no fisheries-related convictions
- Be independent from vessels they observe (to prevent conflicts of interest)
- Be physically fit
- Successfully complete DMC training
- Conduct a minimum number of landings observations each year
- Obtain a dockside observer license
- Duties:
  - Arrive at landing station at least 15 minutes before scheduled offloading
  - Record gear type, logbook weight by species, product type, area fished, vessel number, and weight of fish using certified scales.
  - Confirm that all fish are offloaded by checking holds
  - Confirm that landings match logbook entries
  - Maintain a line-of-sight at all times during offloading procedures
  - Verify and record weigh-out information

Vessel requirements:

- Call the IVR system 6 hours before departure
- Submit a hail report to the DMC at least 3 hours before returning to port:
  - Vessel and captain name
  - Vessel permit number
  - Logbook page number
  - Accurate weight of fish on board by species
  - Date and time of landing and offloading
  - Location of offloading
  - Dealer purchasing fish

***Additional Considerations Re. Weighmaster Programs (Modified from Groundfish Amendment 16 Discussions)***

It should be noted that the Council has recently developed measures for shoreside monitoring of sector landings for consideration in Amendment 16 to the Multispecies (Groundfish) FMP. The proposed provisions are somewhat different than those in Canada; however, the description of the specific management measures under consideration is still a work in progress and not available at this time.

**OPTIONS TBD – See Section 2.1.2 of this Discussion Document for Questions to Consider Re. Dockside Monitoring**

**Objectives:** In considering a weighmaster program, the Council should define its objectives for the program. These objectives would shape the scope and detail of any program implemented. Objectives could include:

- To provide accurate and timely landings information for all or a portion of landed catch;
- To validate dealer landings reports through independent, third-party observation of landings; and/or
- To ensure compliance with offloading and reporting requirements.

**Scope:** The Council should evaluate whether a weighmaster program should observe all herring landings, or a representative subset of all herring landings.

**Questions the Council Should Consider When Developing a Weighmaster Program**

- How will a weighmaster program be implemented?
- How involved can/should NMFS be with the implementation of a weighmaster program?
- How would weighmasters operate?
- Should weighmasters apply for certification to operate from NMFS?
- Should weighmasters operate in specific ports or across the entire region (e.g., through area coordinators who distribute weighmasters similar to the Observer Program)?
- What is the payment mechanism for an industry-sponsored weighmaster program?

**NMFS Recommendations (Groundfish):**

1. Weighmasters should validate dealer landings, but not actually weigh fish, unless necessary to accommodate ports without adequate facilities.
2. All landings should be observed at the point of first offload, regardless where the product is finally sold – some accommodation must be made to weigh fish at point of first offload.
3. Vessels should coordinate landing operations with the weighmaster:
  - Via hail report at least 6 hours prior to landing, including date/time and port of landing, landings amount, area fished, and other pertinent data, as appropriate, or
  - During landings window (e.g., 6 am to 6 pm)

## 2.2.6 Other Related Issues/Measures

### 2.2.6.1 Additional Measures to Improve Monitoring and Reporting

The Herring Committee/Council may want to explore additional options to improve monitoring and reporting in the herring fishery. Some suggestions that have been raised, but not yet fully discussed, are provided below for further consideration.

*Option?: Requiring vessel trip reports (VTRs) to be submitted on a weekly basis (versus the current monthly requirement)*

This measure could facilitate timely cross-checking between VTRs and weekly dealer reports. NMFS made this suggestion during the development of Amendment 16 to the Multispecies (Groundfish) FMP, although the status of this measure with respect to Amendment 16 is unclear at this time.

*Option?: Eliminating the VMS “power down” provision for limited access herring vessels;*

This measure would prohibit limited access herring vessels from turning off their VMS units when in port unless specifically authorized by NMFS through a Letter of Exemption, consistent with VMS provisions for the multispecies, scallop, and surf clam/ocean quahog fleet:

- The Northeast Fisheries Regulations allow vessels holding certain permits to turn off their VMS units during periods when the vessel will be out of the water or during extended periods of no fishing activity. The request must be made in advance of the intended exemption period, and a “Letter of Exemption” must be issued by NMFS. Vessels may not turn VMS units off until they receive a LOE approval from NMFS.
  - **All Vessels.** May request a Letter of Exemption from NMFS if the vessel is expected to be out of the water for more than 72 consecutive hours.
  - **Limited Access Multispecies, Limited Access Scallop and Surfclam/Ocean Quahog Vessels (Proposed to Add Limited Access Herring Vessels).** May sign out of the VMS program for a minimum of 30 consecutive days by obtaining a Letter of Exemption from NMFS. The vessel may not engage in ANY fisheries until the VMS unit is turned back on.

NMFS Office of Law Enforcement (OLE) strongly supports this measure to enhance the enforceability of TAC monitoring and other related regulations for the Atlantic herring fishery.

### 2.2.6.2 Increased Coordination with States

The Council should work with ASMFC to improve reporting by state-permitted herring vessels. This may include requiring fixed gear fishermen to report herring catch through the IVR system, which is something the Council recommended in Amendment 1 to the Herring FMP.

ASMFC staff has indicated that ME DMR is in the process of generating a list of State-permitted fixed gear fishermen to coordinate reporting with NMFS. NMFS has agreed to assign a “dummy number” for each of these fishermen to use when they call-in to report their herring catch, since vessels (not fishermen) are usually assigned numbers to use for reporting through the IVR



system. This process is ongoing, and ME DMR hopes to have the list complete before the end of this fishing year so that IVR reporting for fixed gear fishermen can commence during the 2009 fishing year.

### **Additional discussion/information TBD**

## **2.3 MEASURES TO ADDRESS TRANSFERS AT SEA**

NMFS has indicated that the current provisions and allowances for transfers of herring at sea are problematic and may be one of the most challenging problems when trying to resolve differences between databases and/or ensure completeness of Atlantic herring catch/landings data.

The Letters of Authorization (LOAs) issued by NMFS for the Atlantic herring fishery currently allow an unlimited amount of herring (or the amount allowed by the vessels' herring permit) to be transferred at-sea (a) from herring catcher vessels to carriers; (b) between federally-permitted herring vessels; and (c) from herring catcher vessels to non-permitted vessels for personal use as bait (see example LOAs distributed at July 30, 2008 Meeting). As a result, many transfers of herring at-sea may not be captured in both of the databases (IVR and dealer) used for in-season monitoring of catch and landings, which can lead to incomplete catch data and inconsistencies between datasets.

VTR records indicate that 933,862 pounds of herring were reported as "sold for bait" by vessels, presumably as transfers at sea. To date, during the 2008 fishing year, **25** unique vessels have been issued a Letter of Authorization to transfer Atlantic herring at-sea. VTR records for the 2008 fishing year are incomplete, and since most activity occurs during summer/fall, only 76,625 pounds have been reported as "sold for bait" in 2008 to date. Of the reported bait transactions during 2007 and 2008 to date, only 24 were for 10,000 pounds or more. The largest transaction reported was for 20,000 pounds. However, it is unclear what percentage of the total transfers at sea and/or bait transactions between vessels these numbers may represent because this activity may be under-documented due to the current reporting system and allowance of at-sea transfers to occur in this fishery without restriction on the amount or nature of the transfer. NMFS suspects that transfer at-sea activity may be substantially higher than the current data indicate; addressing this issue could help to resolve some discrepancies between databases and provide for more complete and accurate records of the activity occurring in this fishery.

In Amendment 4, the Herring Committee/Council is considering measures to minimize transfers at sea and/or standardize reporting requirements for vessels transferring/receiving herring. Management measures currently under consideration to address transfers of herring at sea include **(work in progress, subject to further modification/revision)**:

***Option 1: Restricting transfers of herring at sea to only vessels with Category A or B limited access herring permits;***

This measure would allow only vessels participating in the limited access directed fishery for Atlantic herring (Category A or B permits) to transfer herring at sea.

- Transferring and receiving vessels would be required to possess a limited access Category A or B permit for the herring fishery.
  - Herring carrier vessels operating under a Carrier LOA would be exempt from this requirement.
- + This measure limits at-sea transfers to the limited access directed fishery permit holders only. These are the vessels that do not operate under a possession limit for herring, improving at-sea enforceability.

***Option 2: Prohibiting the transfer of herring at sea to non-permitted vessels, even for personal use as bait;***

This measure would allow only vessels that possess a federal Atlantic herring permit to transfer herring at sea.

- Transferring and receiving vessels would be required to possess a Category A, B, C, or D permit for the herring fishery. The Category D permit is an open access permit, so any vessel can obtain this permit, but possession of this permit subjects the vessel to VTR and other reporting requirements.
- + This measure may improve reporting compliance. Requiring a federal permit of some sort by all vessels engaged in the transfer activity reduces the likelihood that some herring catch, even in small amounts, will not be documented.

***Option 3: Modify provisions for transfers of herring at sea so that they are similar to the current provisions for the transfer of small mesh multispecies at sea;***

Under this option, vessels may transfer Atlantic herring at-sea from one vessel to another, for use as bait, **up to XXX pounds (500? 1,000? Other?), per trip**, provided:

- The transferring vessel possesses a limited access permit for Atlantic herring (Category A, B, or C);
- The transferring vessel has a LOA issued by the Regional Administrator on board; and
- The receiving vessel possesses a written receipt for any herring purchased at sea
  - **Option:** additional requirement for the receiving vessel to possess a Federal herring permit?
  - **Option:** additional requirement for receiving vessel to submit copies of bait receipts from at-sea purchases?
- Herring carrier vessels operating under a Carrier LOA would be exempt from this requirement.

**Other Possible Options?**

- *Establish a Letter of Authorization for At-sea Bait Buyers that includes some reporting requirements (possibly less burdensome) and a requirement for written receipts;*
- *Restricting transfers of herring at sea for use as bait (by restricting the permit holders that are allowed to engage in the activity and/or the amount of fish allowed to be transferred);*
- *Requiring a VMS or IVR report every time a transfer at sea occurs;*
- *Require vessels that engage in transfers at sea to submit a “transfer at sea logbook.”*

**2.4 MEASURES TO ELIMINATE REPORTING REDUNDANCIES (WORK IN PROGRESS)**

Duplicative/redundant reporting requirements is an issue that was identified by the herring industry during the scoping process for this amendment. Participants in the herring fishery are currently required to declare a herring trip via the Vessel Monitoring System (VMS), call-in to request an observer prior to leaving port, provide a pre-landing notification through VMS, call-in herring catch through the IVR reporting system, and submit vessel trip reports (VTRs, logbooks) and electronic dealer reports. While developing a comprehensive catch monitoring program in this amendment, there may be opportunities to streamline some of the reporting requirements and consequently reduce the burden on the industry as well as compliance, monitoring, and enforcement costs.

***Options for Modifications to Declarations In/Out of Fishery;***

Efforts should be made to clarify declarations in/out of the Atlantic herring fishery and call-in/reporting requirements in such a way that vessels directing on herring and/or mackerel (and/or whiting) are reporting in the same manner.

The existing DOF (or Declare Out of Fishery) declaration is used whenever the vessel’s activity will be any activity other than: (1) a limited access scallop trip, (2) a multispecies or monkfish DAS trip, (3) a general category scallop trip, (4) a herring trip or a (5) surfclam/ocean quahog trip. The DOF declaration is also the appropriate declaration for any vessel movement away from the dock/mooring when no fishing activity is intended.

Currently, some mackerel vessels declare out of the herring fishery when they are targeting mackerel so that they are not subject to the observer call-in requirement and the pre-landing notification. However, these vessels are prohibited from keeping herring they may catch incidentally while fishing for mackerel or other species if they are declared out of the fishery. This creates a complex situation where vessels are “changing fisheries” (and are consequently subject to different requirements) sometimes on a trip-by-trip basis, and this may increase bycatch on trips where herring is unexpectedly encountered, which can happen in what is sometimes a mixed fishery.

This problem could be confounded if/when the Atlantic mackerel fishery becomes a limited access fishery (with potentially different call-in and reporting requirements). In Amendment 4, the Council may consider:

- **Option? Establishing a second type of herring trip declaration for “Herring/Mackerel.”** Vessels declaring a herring/mackerel trip would be subject to the same call-in and reporting requirements as herring vessels, but the observer program managers could utilize the information to more effectively deploy observers on the appropriate trips (depending on the goals of the observer program). This declaration would be appropriate for vessels that intend to target mackerel on a trip, but may encounter and retain herring.
- **Option? Modifying current regulations** to allow vessels to keep Atlantic herring they may catch incidentally while targeting other species when they are declared out of the fishery, as long as the catch is reported – As an example, vessels that declare out of the fishery would not call-in to request an observer before leaving port, but if they catch herring while fishing for mackerel or another species, they could land the herring, if the catch is reported and a pre-landing notification is given through VMS.

*Note: This option is problematic because it would provide no incentive for vessels to declare into the fishery prior to leaving port. The declaration into the herring fishery includes a requirement to call and inform the observer program of the trip that is about to occur, providing an opportunity for an observer to be deployed. Eliminating the incentive for the observer call-in may decrease the ability of the program managers to effectively allocate observer sea days on the appropriate trips in the herring fishery.*

- **Option? Seasonal declarations in/out of the fishery** – the Atlantic mackerel fishery is primarily a winter fishery (December – April), so there may be an opportunity to apply the requirements for declaring in/out of the herring fishery in a seasonal manner, to reduce complexity and burdens on vessels participating in the mackerel fishery.

**Option?:** *Consider modifications to the current call-in requirement for requesting an observer before leaving port;*

The call-in requirement for vessels to request an observer before leaving port was established in response to concerns about haddock bycatch and the establishment of the haddock catch cap in the herring fishery. Although developed for a very specific purpose, this requirement has been helpful to the observer program to determine the schedule of observer coverage and know better where and when herring trips will occur. It also helps NMFS to estimate and target specific levels of coverage in the fishery during the fishing year.

If the call-in program is set up in the most efficient manner, it can help to reduce operating costs for the observer program, as fishing trips are more predictable and less time is spent determining when/where observed trips should occur. However, there may be some modifications to the current program that would both improve efficiency and reduce the burden on the industry. If the burden can be reduced, then vessels may be less inclined to DOF to avoid the call-in requirement.

- A **more efficient system** to examine call-in compliance and evaluate enforcement’s response to non-compliance could be explored by NMFS;
- **Additional options for notification** could be considered (fax, email, website);
- The **timing of the requirement could be changed** from at least 72 hours prior to something shorter (36 or 48 hours, for example);

- **Option?:** Vessels could be required to supply “intended target species” information to assist the observer program managers in identifying trips where vessels may be targeting herring versus vessels targeting mackerel or other species that may encounter herring. This may assist in the allocation of available sea days for observers to be deployed in the herring fishery. (Also see suggested option for a “Herring/Mackerel Trip Declaration” above.)
- The call-in requirement could be incorporated into a more comprehensive monitoring/reporting system for the fishery.

## 2.5 MEASURES TO ADDRESS AT-SEA MONITORING

### DETAILED OPTIONS TBD – See Section 2.1.2 of this Discussion Document for Questions to Consider Re. At-Sea Monitoring

#### *Observer Coverage – Goals/Objectives? How Much Coverage?*

One of the most important elements of an at-sea monitoring program, and one of the initial decisions that must be made, concerns the goals and objectives of the program – specifically:

- What are the observers going to measure? (catch/bycatch, species, gear types, etc.)
- What are the priorities?
- Should observer data be used to estimate bycatch of species x across the entire fishery or gear type? If so, what is the level of precision that should be achieved by using observer data to estimate bycatch?

A statistical approach to determining the appropriate level of observer coverage in a fishery would to (1) set a goal (usually based on precision and expressed as a *coefficient of variation*, CV) and then (2) use existing information to determine the level of coverage needed to achieve the goal. A CV is a normalized measure of dispersion of a probability distribution. The CV is generally defined as the ratio of the standard deviation to the mean.

As part of the development of the omnibus amendment to address standardized bycatch reporting methodology (SBRM), the National Working Group on Bycatch (NWGB) concluded that, “*for fishery resources, excluding protected species, caught as bycatch in a fishery, the recommended precision goal is a 20-30% CV for estimates of total discards (aggregated over all species) for the fishery; or if total catch can not be divided into discards and retained catch then the goal is a 20-30% CV for estimates of total catch.*” (NMFS 2004) As the NWGB pointed out, “Ideally, standards of precision would be based on the benefits and costs of increasing precision” (NMFS 2004). They also noted that under some circumstances, attaining the precision goal alone would not be an efficient use of the public resources. **The tradeoffs associated with increasing precision to meet a specified goal are very important to understand when developing an observer program.**

To begin to explore this issue relative to catch monitoring in Amendment 4, the Herring PDT has provided a *sample approach* to determining levels of observer coverage necessary to meet a specific goal. The following exercise was conducted by the PDT using existing observer data for two years during which there was more observer coverage of these two gear types (2004 and 2005), combined with the methodology and formulas specified by the SBRM amendment to calculate variance and to estimate the number of trips necessary to achieve certain levels of precision.

Table 1 and Table 2 illustrate how the SBRM methodology can be used to develop a statistical approach to sampling the herring fishery to meet a specific goal – in this example, the goal is estimating river herring bycatch on midwater trawl and pair trawl vessels with a certain level of precision (as expressed by the CV). Observer records for midwater trawl and pair trawl vessels during 2004 and 2005 were used to generate discard/kept ratios of river herring/total herring. These ratios were used in formulas specified by the SBRM amendment to first calculate variance, and then determine, based on available information, how many sea days/observer trips would be necessary to achieve that level of precision. This exercise highlights a few key points with respect to designing an observer program:

- There are costs associated with increasing precision of bycatch estimates resulting from observer data. The lower the CV, the higher the precision, and the more sea days/observer trips are required to achieve that level of precision.
- When discard/kept ratios are small (see 2004 single midwater trawl D/K ratio in Table 2, for example), observed bycatch events are rare, so capturing these events in the future will require more coverage. These tradeoffs must be thoroughly explored when designing an appropriate observer program and prioritizing available resources.
- The D/K ratios, and therefore the target number of sea days and percent coverage, will vary by species and by gear type. The example provided in Table 1 and Table 2 characterizes the statistical approach that can be taken to evaluate levels of coverage and identify priorities, but the specific formulas must be applied to each species and gear type individually when designing a program. Ultimately, a statistically-sound program should be developed based on both the top priorities for coverage and the resources that will be available to support it.

**Table 1 Sample Approach to Determining Appropriate Levels of Observer Coverage – Based on 2005 Bycatch Data for River Herring**

<b>PAIR TRAWL (2005)</b> D/K = 0.031787			
<b>Target Coefficient of Variation (CV)</b>	<b>Target No. Trips</b>	<b>Target No. Sea Days</b>	<b>Target % Coverage (of total trips)</b>
10%	91.82	137.73	35.18
20%	31.18	46.77	11.95
30%	14.84	22.27	5.69
40%	8.56	12.84	3.28
50%	5.55	8.32	2.12
<b>MIDWATER TRAWL (2005)</b> D/K = 0.074375			
<b>Target Coefficient of Variation (CV)</b>	<b>Target No. Trips</b>	<b>Target No. Sea Days</b>	<b>Target % Coverage (of total trips)</b>
10%	159.00	238.51	30.52
20%	51.55	77.33	9.89
30%	24.24	36.37	4.65
40%	13.92	20.88	2.67
50%	9.00	13.49	1.73

**Table 2 Sample Approach to Determining Appropriate Levels of Observer Coverage – Based on 2004 Bycatch Data for River Herring**

<b>PAIR TRAWL (2004)</b> D/K = 0.0343432			
<b>Target Coefficient of Variation (CV)</b>	<b>Target No. Trips</b>	<b>Target No. Sea Days</b>	<b>Target % Coverage (of total trips)</b>
10%	112.73	169.09	12.64
20%	31.13	46.70	3.49
30%	14.11	21.17	1.58
40%	7.99	11.99	0.90
50%	5.13	7.70	0.58
<b>MIDWATER TRAWL (2004)</b> D/K = 0.000016933			
<b>Target Coefficient of Variation (CV)</b>	<b>Target No. Trips</b>	<b>Target No. Sea Days</b>	<b>Target % Coverage (of total trips)</b>
10%	153.69	230.53	67.41
20%	77.71	116.56	34.08
30%	42.60	63.90	18.69
40%	26.10	39.15	11.45
50%	17.42	26.13	7.64

***Possible Measures to Consider – For Further Discussion/Development***

(Presented by NEFSC Sea Sampling Branch at May 22, 2008 Herring Committee Meeting)

- Requirement to bring closed codend on board whenever possible and open it onboard for the observer to inspect
- Requirement to provide accurate details to the observer regarding why a bag may be partially pumped and fish released
- Provide observer notice when pumping may be coming to an end
- Notify the observer of any known marine mammal in the net
- Provide the observer with a safe sampling station – this may include a safety harness (if grating systems are high above the deck), a safe method to obtain basket samples, and a storage space for baskets and gear
- Provide assistance in obtaining basket samples and sorted discards
- In pair trawl operations, require additional communication between the boats if fish are being pumped to both vessels with only one observer
- Require completion of a Catcher Vessel Log (or some version) in a catcher/processor operation
- Require a flow scale on a processing vessel since there is no other method to estimate volume of catch

***Other Options?***

- Requirement to use two observers on larger vessels and/or pair trawl operations
- Electronic monitoring (video cameras), mounted at the grate, on pair trawl trips if two observers cannot be deployed
- Requirement for full retention?
- Other?



### **3.0 MEASURES/ALTERNATIVES TO ESTABLISH ANNUAL CATCH LIMITS (ACLs) AND ACCOUNTABILITY MEASURES (AMS)**

#### **3.1 INTRODUCTION/BACKGROUND**

The M-S Act was reauthorized in 2007 (Magnuson-Stevens Reauthorization Act, MSRA), and one new requirement is to establish annual catch limits (ACLs) and accountability measures (AMs) in order to end and/or prevent overfishing in all FMPs. Section 302 (h)(6) states: (Each Council shall) develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its Scientific and Statistical Committee or the peer review process established. Section 303 (a)(15) states: (Any FMP shall) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

NMFS has provided some informal input on what these new requirements may entail, but official guidance on how Councils must comply with these new requirements is not anticipated in the immediate future. The Proposed Rule for the revised National Standard guidelines was published by NMFS on June 9, 2008, and the comment period on the Proposed Rule extends through September 22, 2008. Following a review of public comments, NMFS will publish a Final Rule with guidelines on complying with the MSRA and the National Standards, including the implementation of ACLs and AMs to meet National Standard 1 (preventing overfishing).

In general, the proposed regulations include details about how FMPs must prevent overfishing while achieving optimum yield (OY) on a continuing basis. There are general definitions of several new and existing terms. The Proposed Rule also describes what is required in an FMP related to National Standard 1 – prevent overfishing. There is guidance on what is a “fishery” and which stocks are and are not required to have ACLs and AMs. There are also detailed descriptions of exceptions to these requirements, guidance for international fisheries, and various requirements for describing data collection and estimation methods.

The Herring FMP is required to be in compliance with these new regulations by 2011 because the Atlantic herring fishery is not subject to overfishing at this time. The Atlantic herring fishery has been managed using hard TACs since the 2000 fishing year. The TACs are developed through the fishery specification process and are based on an Allowable Biological Catch (ABC) that has been reduced to OY based on biological, economic, ecological, and other considerations. The Herring FMP, therefore, has already laid the foundation for complying with the ACL and AM requirements of the MSRA. The related measures considered in this amendment are likely to be refinements to the fishery specification process, measures to ensure the effectiveness of the TACs, and/or measures to address TAC overages.

According to preliminary guidance from NMFS, FMPs should set ACLs based on recommendations from the Council’s Scientific and Statistical Committee (SSC) for all managed fisheries. The “overfishing limit” (OFL) identified in the MSRA essentially corresponds to a maximum sustainable yield (MSY) value for the fishery, while the proposed “annual catch

target” (ACT) corresponds with optimum yield (OY). Between those values, NMFS recommends that acceptable biological catch (ABC) and an annual catch limit (ACL) be established as well. According to NMFS Proposed Rule:

$$\text{OFL} > \text{ABC} \geq \text{ACL} \geq \text{ACT}.$$

Setting ABC from the OFL should account for scientific uncertainty in estimating the true OFL, while setting the ACT below the ACL should account for management uncertainty in achieving the ACT. However, separating and quantifying sources of uncertainty is very difficult and may not be feasible in many cases. Additional guidance regarding this issue is anticipated.

The final guidelines may not be finalized before the Council must move forward with developing specific measures in this amendment to comply with ACL and AM requirements. Therefore, revisions may be considered once final guidance is available so that the Council can approve and NMFS can implement these regulations by 2011. In the meantime, the measures proposed in this section will attempt to address provisions in the proposed guidance recognizing that those regulations are not final. The Council has also identified a number of outstanding issues associated with the proposed guidance as drafted, and it is currently unclear how the Council will proceed related to some of the proposed guidance.

### 3.2 HERRING PDT DISCUSSION

To date, the Herring Plan Development Team (PDT) has generally discussed issues associated with setting ACLs and AMs for the herring fishery and bringing the Herring FMP into compliance with the MSRA requirements. The herring fishery specification process currently utilizes an overfishing limit (OFL), which equates to an allowable biological catch that is based on the most recent scientifically-accepted estimate of MSY for the stock complex. Note that the Herring FMP’s specification of ABC, the *allowable biological catch*, is different from the MSRA’s specification of ABC, the *acceptable biological catch*.

Uncertainty is addressed through the specifications by setting OY for the fishery at a level lower than MSY, and the ACLs are set for each management area such that the sum of the management area ACLs equal OY for the fishery (see Table 3).

**Table 3 Establishing ACLs and AMs for the Atlantic Herring Fishery: General Relationship Between Current Herring Specifications and ACLs**

SPECIFICATION	2007 (NMFS and Council)	2008 and 2009 (Council Recommendation)	2008 and 2009 (NMFS Final Rule)
Allowable Biological Catch (ABC)	194,000	194,000	194,000
U.S. Optimum Yield (OY)	145,000	145,000	145,000
Domestic Annual Harvesting (DAH)	145,000	145,000	145,000
Domestic Annual Processing (DAP)	141,000	141,000	141,000
Total Joint Venture Processing (JVPt)	0	0	0
Joint Venture Processing (JVP)	0	0	0
Internal Waters Processing (IWP)	0	0	0
U.S. At-Sea Processing (USAP)	20,000 (Areas 2 and 3 only)	20,000 (Areas 2 and 3 only)	20,000 (Areas 2 and 3 only)
Border Transfer (BT)	4,000	4,000	4,000
Total Allowable Level of Foreign Fishing (TALFF)	0	0	0
RESERVE	0	0	0
TAC Area 1A	50,000 (5,000 Jan-May)	50,000 (48,500 fishery, 5,000 max Jan-May)	45,000 (43,650 fishery, 5,000 max Jan-May)
TAC Area 1B	10,000	10,000 (9,700 fishery)	10,000 (9,700 fishery)
TAC Area 2	30,000	30,000 (29,100 fishery)	30,000 (29,100 fishery)
TAC Area 3	55,000	55,000 (53,350 fishery)	60,000 (58,200 fishery)
Research Set-Aside	N/A for 2007	Area 1A RSA 1,500 Area 1B RSA 300 Area 2 RSA 900 Area 3 RSA 1,650	Area 1A RSA 1,350 Area 1B RSA 300 Area 2 RSA 900 Area 3 RSA 1,800

Currently, the Atlantic Herring FMP includes measures that close a management area to directed fishing when 92% of the TAC is projected to be reached (3% research set-aside and 5% set aside for bycatch when the area closes) to minimize the risk of a TAC overage in any area. In addition, existing regulations authorize the Regional Administrator to adjust any management area TACs during the fishing season, after consultation with the Council. In-season adjustments proposed by the Regional Administrator must be consistent with the Herring FMP objectives and other provisions. The TAC adjustments can be made by the Regional Administrator upwards (to better achieve OY) or downwards (to prevent overfishing). These are considered as Accountability Measures (AMs), which already exist in the herring fishery. If there is a need to consider additional AMs, once the Final Guidelines are published, the Council may do so in this management action.

The interpretation of some of the requirements and metrics specified in the MSRA may change as the final guidelines are drafted by NMFS; the Herring PDT awaits further guidance from the

Agency and the Council in order to develop measures in this amendment to ensure the FMP's compliance with the MSRA requirements.

### **3.3 HERRING AP COMMENTS**

At its April 30, 2008 meeting, the Herring Advisory Panel discussed issues related to the establishment of ACLs and AMs in the herring fishery and the related questions raised in the Amendment 4 Scoping Document. Several advisors agreed that the Herring FMP has already laid the foundation for ACLs and AMs by establishing hard TACs that require a fishery closure prior to being reached. One advisor stated that the FMP also addresses accountability measures because the TACs are hard TACs that close the fishery, and the closure of the fishery is an accountability measure in itself. Another advisor expressed concern about some of the TAC overages that have occurred in Areas 1A and 1B and suggested that additional accountability measures may be necessary. He also added that the Advisory Panel and the Committee shouldn't spend too much time developing the measures for ACLs and AMs yet because further guidance from NMFS is necessary to understand how ACLs and AMs should be set and what the role of the Council's SSC should be in this process. One advisor agreed but felt that it is important for the public to understand how forage needs are already accounted for in stock assessments and the establishment of ACLs.

#### **AP MOTION: Mary Beth Tooley/Vito Calomo**

That the Advisory Panel feels that the current stock assessment and specification process in place for the Atlantic herring resource and fishery fully accounts for the role of herring as forage

**Motion #10 carried 9-3-1.**

#### **AP MOTION (PERFECTED): Jeff Kaelin/Mary Beth Tooley**

That the Council solicit advice from the NEFSC concerning the role of herring as a predator of other important fisheries resources under management by the Council

**The perfected motion #11 carried 12-0-1.**

The Herring PDT will explore these issues further with the Committee and the Advisory Panel during the development of the Draft EIS for Amendment 4, and once additional guidance is available regarding the measures under consideration in this amendment that relate to the establishment of ACLs and AMs.

#### 4.0 ALTERNATIVES TO ADDRESS INTERACTIONS WITH THE ATLANTIC MACKEREL FISHERY AND RELATED BYCATCH CONCERNS

The limited access permit program implemented in Amendment 1 to the Herring FMP established three types of herring limited access permits: (1) a limited access directed fishery permit that allows access to all management areas with no possession limit (Category A); (2) a limited access directed fishery permit that allows access to Areas 2/3 only with no possession limit (Category B); and (3) a limited access incidental catch permit that allows access to all management areas with a possession limit of 25 mt (55,000 pounds) and a restriction of one landing per calendar day (Category C). The limited access Category C incidental catch permit was developed primarily to address the incidental catch of herring by mackerel vessels that do not qualify for a directed fishery permit in any of the management areas. Qualification criteria for the limited access incidental catch permit were less restrictive and spanned a longer qualifying time period (15 mt in any calendar year from 1988 – 2003).

Amendment 1 also established an open access incidental catch permit for vessels that do not qualify for either of the limited access permits (Category D). The possession limit associated with the open access incidental catch Category D permit is 3 mt per trip in all management areas, with a restriction of one landing per calendar day.

As of August, 2008, the following information is available about vessel permitting:

**Table 4 Amendment 1 Limited Access Permits Issued as of August, 2008**

2008 Permits Issued (LA = limited access)			
Category A (LA All Areas)	Category B (LA Areas 2/3)	Category C (LA Incidental)	Category D (Open Access)
41	4	42	2,219

Since the implementation of Amendment 1, concerns have been raised about vessels participating in the Atlantic mackerel fishery that do not qualify for any of the limited access herring permits, either because they do not have adequate herring landings history between 1988 and 2003, or because they are new participants in the mackerel fishery. These vessels are currently required to fish with the open access incidental catch permit to retain any herring, and they may encounter herring in amounts larger than 3 mt on some fishing trips. Without a permit that allows them to retain an adequate amount of herring, these vessels may be forced to discard any herring they catch incidentally. As the mackerel fishery continues to grow, a herring bycatch problem could become an increasing concern.

At its April 30, 2008 meeting, the Herring Advisory Panel briefly discussed issues raised in the Amendment 4 Scoping Document regarding the interaction of the Atlantic herring and mackerel fisheries and the potential for herring bycatch on mackerel vessels that may not possess a limited access permit for herring. One advisor described the issue and suggested that there may be about

12 vessels in the southern New England/Mid-Atlantic region that may receive limited access mackerel permits but do not have a limited access herring permit and would therefore continue to be limited to 3 mt of herring per trip. The concern about herring bycatch on mackerel vessels appears to be primarily in Areas 2 and 3 where the herring TACs are not yet fully utilized, so the advisors agreed that there may be an opportunity to allow the vessels in these areas to retain additional amounts of herring.

**HERRING AP MOTION (April 30, 2008): Jeff Reichle/Vito Calomo**

To recommend that any vessels issued a limited access mackerel permit that do not have a limited access herring permit be allowed to retain up to 25 mt of herring as incidental catch in the mackerel fishery (Motion carried 9-0-3).

At its July 30, 2008 joint meeting with the Herring Advisory Panel, the Herring Committee discussed this issue and passed the following motion, directing the Herring PDT to draft management alternatives for consideration and provide additional information:

**HERRING COMMITTEE MOTION (July 30, 2008): MIKE LEARY/DANA RICE**

As an alternative in Amendment 4, that Area 2/3 Category D Incidental Limit be Raised to 25 mt (Motion carried unanimously).

**Additional Discussion on the Motion:** One advisor suggested that the Committee may want to consider limiting this measure to only vessels with mackerel permits. The mackerel fishery is an open access fishery now, but the Mid-Atlantic Council is in the process of developing a limited access program in an amendment. Another advisor asked about whether this could apply to vessels fishing for whiting in Area 1, but the Committee agreed that the intent of the motion is to consider increasing the trip limit only in Areas 2 and 3 because the Area 1A TAC is already fully utilized. The Committee also agreed that the PDT could develop options that incorporate the suggestion regarding possession of a mackerel permit.

#### **4.1 PROPOSED MANAGEMENT ALTERNATIVES**

The management alternatives currently under consideration in Amendment 4 to address this issue were developed by the Herring PDT based on Herring Committee and Advisory Panel guidance (see above) and are described below. Herring PDT comments/recommendations are included below for the Herring Committee's consideration as the alternatives are further refined. Background information and analysis used to develop the proposed measures are provided by the Herring PDT in Section 4.2 of this document.

***Herring PDT Comments/Recommendations***

The Herring PDT provides the following comments and recommendations at this time regarding the development of management alternatives to address this issue in Amendment 4:

- Available fishery data do not indicate that the current 3 mt possession limit of herring for open access permit holders is problematic at this time; it does not appear to be resulting in bycatch/regulatory discards for vessels fishing in any of the management areas and reporting their herring landings and discards through the logbooks.

- The overlap between the Atlantic herring and mackerel fisheries is universally recognized as an important fishery management issue that the Council has always intended to accommodate in the most appropriate manner. If the Category D vessels have not been targeting mackerel or taking trips where they may encounter a mix of herring and mackerel (and/or other species) more recently (for a variety of reasons), VTR records may not reflect a bycatch problem at this time and may not fully characterize the potential for this problem to exist in the future. The industry has stated that these vessels have not been fishing for mackerel as much in recent years because (1) they are smaller vessels, and the mackerel fishery shifted into offshore areas; and (2) concerns about encountering herring in quantities larger than 3 mt on “mixed” trips and consequently being in violation of the herring possession limit have influenced their decisions about taking these trips at all.
- Because the data do not indicate that a bycatch problem exists at this time, the Herring PDT expressed concern with increasing the open access incidental catch possession limit in Areas 2 and 3 to as much as 25 mt (55,000 pounds) at this time. This is the same amount of herring that is allowed under the current Category C limited access incidental catch possession limit, so increasing the limit for the open access permit to this amount essentially negates the benefit/effect of having a limited access incidental catch permit in Areas 2 and 3.
- Although the TACs are not fully utilized in Areas 2 and 3 at this time, the Herring PDT is concerned that increasing the open access possession limit to 25 mt, especially in Area 2, may create additional opportunities for vessels to target herring directly under the open access permit. This outcome could very well be likely given the (low) levels of landings that have been documented by open access permit holders in recent years. Increasing the possession limit for open access permit holders to 25 mt could create a “loophole” that is inconsistent with the intent of the herring limited access program, as well as the open access permit, implemented in Amendment 1. The Council created the open access possession limit permit in Amendment 1 to minimize the potential for directed herring fisheries to develop while still providing controlled opportunities for vessels in other fisheries to catch small amounts of herring and minimize their bycatch. Decisions regarding increased opportunities in these areas should be made with adequate consideration of overall fleet capacity and the long-term effects of over-capacity.
- Moreover, if additional opportunities for directed fishing in Areas 2/3 result from an increase in the open access possession limit, new vessels could create fishing history in these areas. This is a **very** important consideration if quota allocation programs are going to be developed for the herring fishery. Increasing the open access possession limit to a level that allows for directed fishing and the establishment of any substantial amount of fishing history could increase the number of participants to be considered in a sector allocation or individual quota allocation program, should the Council choose to develop one in the future.
- **Based on the concerns about increasing opportunities for directed fishing in Areas 2/3, the Herring PDT recommends the following:**
  - An additional alternative that proposes an increase in the open access possession limit for Areas 2/3 less than 25 mt (10,000 pounds is proposed, see Alternative 4, Section 4.1.4); an alternative like this would help to bound the range of alternatives under consideration in this amendment and would provide the Council with greater flexibility when selecting final measures;

- The possession limit associated with the open access herring permits could be added to the list of measures that can be implemented through a framework adjustment to the Herring FMP. This will provide a mechanism to modify the open access possession limit (increase or decrease) in a more timely manner in the future.
- **Needs additional discussion with NMFS**
- The Herring PDT seeks guidance from the Committee regarding the current draft alternatives (described below) as well as any additional alternatives that should be developed for further consideration. It is unclear at this time whether the Herring Committee is interested in exploring options for incidental catch in Areas 2/3 based on a percentage of total catch, a ratio of herring/mackerel landings, and/or TAC set-asides to address these issues. However, these approaches could be more complicated to administer and enforce than the current alternatives under consideration.

#### 4.1.1 Alternative 1 – No Action

Under this alternative, no action would be taken in Amendment 4 to address herring/mackerel fishery interactions and concerns about the potential for herring bycatch in the directed mackerel fishery.

- The open access incidental catch permit for herring (Category D) would continue to apply to all management areas.
- Vessels that obtain the open access incidental catch herring permit would continue to be restricted by a possession limit of 3 mt of herring per trip (6,600 pounds) in all management areas and limited to one landing per calendar day up to the 3 mt possession limit.
- When the TAC in a management area is projected to be reached and the directed fishery closes, incidental catch in the area would be limited to 2,000 pounds per trip, as it is currently.
- Open access permit holders catching more than 2,000 pounds of herring per week would continue to be required to report their catches on a weekly basis through the IVR reporting program.

#### 4.1.2 (Draft) Alternative 2 – Increase the Open Access Possession Limit to 25 mt in Areas 2/3 Only

Under this alternative, two open access permits for herring would be created, one for Area 1 and one for Areas 2/3:

1. The current provisions for the Category D permit, including the 3 mt possession limit, reporting requirements, and landings restrictions, would apply to an open access permit for Area 1 (1A and 1B), as described in the no action alternative;
2. An open access incidental catch permit would be created to apply to Areas 2/3 only; this permit would be associated with a **25 mt (55,000 pounds)** possession limit for herring; all other provisions currently associated with the current open access Category D permit would apply:



- Vessels that obtain the open access incidental catch herring permit for Areas 2/3 only would be restricted by a **possession limit of 25 mt** of herring and limited to **one landing per calendar day** up to the 25 mt possession limit.
- When the TAC in a management area is projected to be reached and the directed fishery closes, incidental catch in the area would be limited to 2,000 pounds per trip, as it is currently.
- Open access permit holders catching more than 2,000 pounds of herring per week would continue to be required to report their catches on a weekly basis through the IVR reporting program.

#### **4.1.3 (Draft) Alternative 3 – Increase the Open Access Possession Limit to 25 mt in Areas 2/3 for Vessels that also Possess a Federal Mackerel Permit**

Under this alternative, two open access permits for herring would be created, one for all areas and one for mackerel fishery participants in Areas 2/3 only:

1. The current provisions for the Category D permit, including the 3 mt possession limit, reporting requirements, and landings restrictions, would apply to an open access permit for all management areas, as described in the no action alternative;
2. **A new open access incidental catch permit would be created for mackerel fishery participants in Areas 2/3 only**; this permit would be associated with a **25 mt (55,000 pounds)** possession limit for herring; all other provisions currently associated with the current open access Category D permit would apply:
  - Vessels that do not qualify for a limited access herring permit and possess a federal permit for Atlantic mackerel would be eligible for this herring permit. *(The Atlantic mackerel fishery is currently an open access fishery, but it is assumed that once a limited access program is implemented for the mackerel fishery, this alternative would require possession of a federal limited access mackerel permit.)*
  - **Vessels that obtain the open access incidental catch herring permit for mackerel fishery participants in Areas 2/3 would be restricted to fishing for herring in Areas 2/3 only, under a possession limit of 25 mt (55,000 pounds) of herring and limited to one landing per calendar day up to the 25 mt possession limit.**
  - When the TAC in a management area is projected to be reached and the directed fishery closes, incidental catch in the area would be limited to 2,000 pounds per trip, as it is currently.
  - Open access permit holders catching more than 2,000 pounds of herring per week would continue to be required to report their catches on a weekly basis through the IVR reporting program.

#### ***Additional Discussion – Mackerel Limited Access Program***

While the mackerel fishery is currently an open access fishery, the Mid-Atlantic Council is in the process of developing Amendment 11 to the Squid, Mackerel, and Butterfish FMP, which will implement a limited access program for mackerel. The Mackerel Committee is close to

finalizing a range of alternatives for the proposed mackerel limited access program and is resolving outstanding issues so that the document can move forward through the public hearing process. The Draft EIS for Mackerel Amendment 11 is scheduled to be approved by the Council in late 2008 or early 2009, with implementation anticipated for late 2009 or early 2010. If this schedule is met, the mackerel limited access program would likely be implemented prior to the measure in Amendment 4 to the Herring FMP, so this alternative would apply to vessels that possess a limited access permit for mackerel.

Alternatives under consideration for the limited access program for the Atlantic mackerel fishery are based on a multi-tiered approach to a limited access permit structure, with each tier specifying different criteria for limited access qualification. Proposed qualification for a “Tier 3” mackerel permit, for example, include poundage thresholds for herring and/or possession of a herring limited access permit in order to address the overlap between the two fisheries and minimize problems that may result if herring vessels do not receive limited access permits for mackerel. Additional information will be made available as the Mid-Atlantic Council finalizes the limited access alternatives under consideration in Amendment 11.

#### **4.1.4 (Draft) Alternative 4 – Increase the Open Access Possession Limit to 10,000 Pounds in Areas 2/3 Only**

Under this alternative, two open access permits for herring would be created, one for Area 1 and one for Areas 2/3:

1. The current provisions for the Category D permit, including the 3 mt possession limit, reporting requirements, and landings restrictions, would apply to an open access permit for Area 1 (1A and 1B), as described in the no action alternative;
2. An open access incidental catch permit would be created to apply to Areas 2/3 only; this permit would be associated with a **10,000 pound** possession limit for herring; all other provisions currently associated with the current open access Category D permit would apply:
  - Vessels that obtain the open access incidental catch herring permit for Areas 2/3 only would be restricted by a **possession limit of 10,000 pounds** of herring and limited to **one landing per calendar day** up to the 10,000 pound possession limit.
  - When the TAC in a management area is projected to be reached and the directed fishery closes, incidental catch in the area would be limited to 2,000 pounds per trip, as it is currently.
  - Open access permit holders catching more than 2,000 pounds of herring per week would continue to be required to report their catches on a weekly basis through the IVR reporting program.

## 4.2 BACKGROUND INFORMATION/ANALYSIS

### 4.2.1 Trends in the Atlantic Mackerel Fishery

The Atlantic mackerel fishery continues to evolve. U.S. commercial landings of Atlantic mackerel from 1982 to 2006 and annual quotas (1994-2006) are summarized in Table 5 and Figure 1. U.S. commercial landings of Atlantic mackerel increased gradually from less than 3,000 mt in the early 1980s to around 10,000 mt in 1990. In the 1990s, U.S. management policy eliminated the directed foreign Atlantic mackerel fishery in the EEZ. Atlantic mackerel landings by U.S. vessels in the 1990s ranged from 4,700 mt in 1993 to 15,500 mt in 1996 and 1997. U.S. landings were approximately 12,500 mt in 1999 and declined to 5,600 mt in 2000. After 2000, Atlantic mackerel landings increased markedly from 12,300 mt in 2001 to 59,000 mt in 2006.

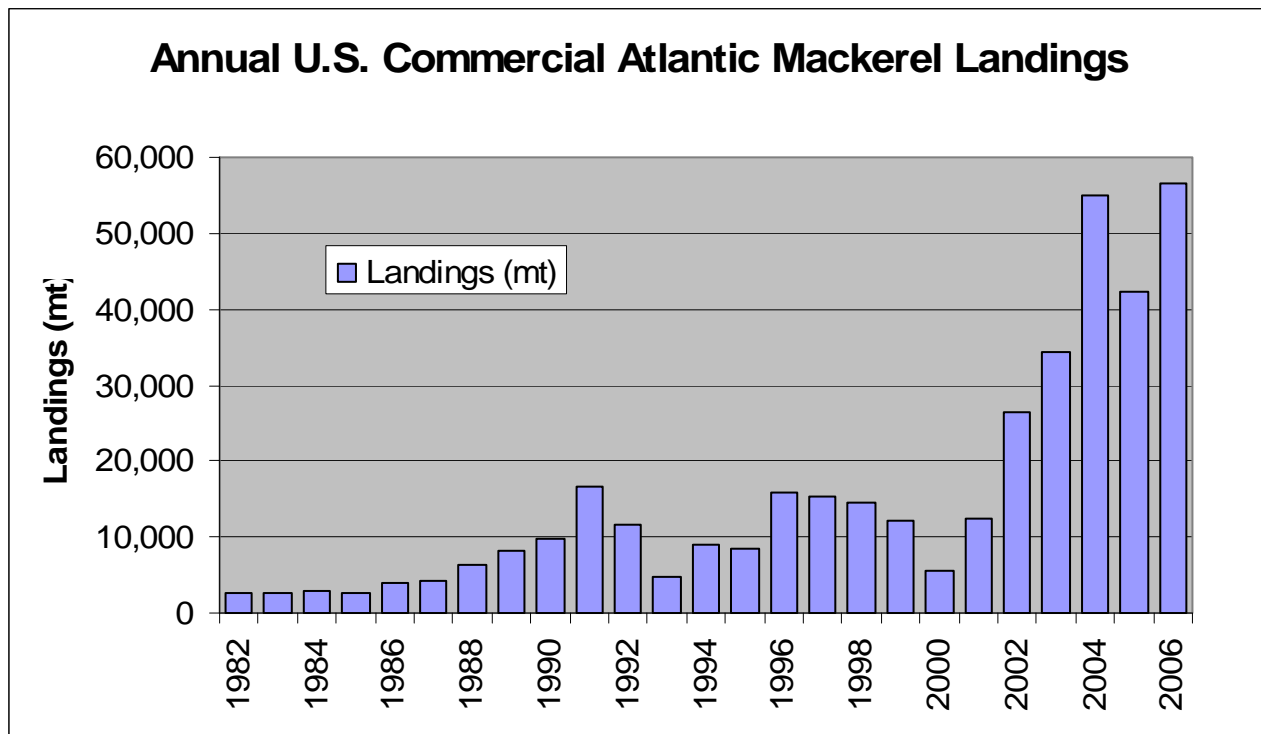
**Preliminary information suggests that mackerel landings dropped significantly in 2007 to about 25,545 mt valued at about \$6.6 million.**

Based on data from the Northeast Region Dealer Weighout database, the vast majority of commercial Atlantic mackerel landings are taken by trawl gear (Table 5). Among trawl types, midwater otter trawls and paired midwater otter trawls have become increasingly important in recent years. From 2002-2006, paired midwater trawls comprised 38% of commercial Atlantic mackerel landings, while unspecified midwater trawls also accounted for 40% of the landings, and bottom otter trawls comprised only 14% of the landings. By comparison, from 1996-2000, paired midwater trawls landings comprised only 2% of the total commercial Atlantic mackerel landings, while unspecified midwater trawls accounted for 22% of the landings, and bottom otter trawls accounted for 71% of the landings.

**Table 5 U.S. Commercial Atlantic Mackerel Landings (mt) 1982 – 2006, by Major Gear Type and Recent Quota Specifications**

YEAR	BOTTOM TRAWL	MIDWATER TRAWL	PAIR TRAWL	ALL OTHERS	TOTAL	INITIAL OY (IOY)	% of IOY LANDED
1982	1,908		19	744	2,671		
1983	890		410	1,342	2,642		
1984	1,235	118	396	1,045	2,795		
1985	1,481		249	905	2,635		
1986	3,436		2	514	3,951		
1987	3,690		0	649	4,339		
1988	5,770		0	562	6,332		
1989	7,655		0	589	8,245		
1990	8,847		0	1,031	9,878		
1991	15,514	564	223	285	16,585		
1992	11,302		1	458	11,761		
1993	3,762	479		412	4,653		
1994	8,366	1		551	8,917	120,000	7%
1995	7,920	50		499	8,468	100,000	8%
1996	13,345	1,295		1,088	15,728	105,500	15%
1997	13,927	628		847	15,403	90,000	17%
1998	12,095	571	1,363	495	14,525	80,000	18%
1999	11,181	99		752	12,031	75,000	16%
2000	4,551	736		362	5,649	75,000	8%
2001	584	11,396		360	12,340	85,000	15%
2002	4,008	11,669	10,477	376	26,530	85,000	31%
2003	5,291	17,212	11,572	222	34,298	175,000	20%
2004	5,884	23,170	20,499	5,440	54,993	170,000	32%
2005	5,437	8,410	18,894	9,468	42,209	115,000	37%
2006	10,349	24,413	19,360	2,519	56,640	115,000	49%

Source: Unpublished NMFS dealer weighout data.

**Figure 1 Annual U.S. Commercial Atlantic Mackerel Landings (mt) 1982-2006**

Source: Unpublished NMFS dealer weighout data.

#### 4.2.2 2007 Fishery Data

To begin to evaluate the extent to which there may be a problem with herring bycatch on non-permitted mackerel vessels, permit data were queried for all vessels that reported landings of Atlantic mackerel in logbooks during the 2007 fishing year. 2007 was the year during which Amendment 1 to the Herring FMP was implemented, including the limited access permit program. However, it should be noted that Amendment 1 did not become effective until June 1, 2007, after the majority of the 2007 mackerel fishery season had already occurred (Jan-April).

Table 6 summarizes the Amendment 1 (herring) permit category and the average herring landings for vessels that participated in the mackerel fishery during 2007, based on vessel trip reports (VTRs). Note that since Amendment 1 to the Herring FMP was not implemented until June 1, 2007, there are three vessels with no herring permits in 2007 (they possessed open access permits for herring prior to the implementation of the Amendment 1 limited access permit program). Herring landings were insignificant and mackerel landings were less than 1,000 mt for these vessels during 2007.

According to Table 6, every vessel that landed more than 1,000 mt of Atlantic mackerel during 2007 qualified for and obtained a limited access directed fishery permit to fish in all management areas for herring (Category A). These vessels are therefore allowed to fish for and land herring in unrestricted amounts until a TAC is reached in a management area and the area closes. All other vessels with mackerel landings (71) reported less than 1,000 mt total for the fishing year.

Thirteen of these vessels qualified for an unrestricted herring limited access permit for all areas (Category A), two qualified for unrestricted limited access permits in Areas 2/3 only (Category B), and two qualified for limited access incidental catch permits with a 25 mt possession limit restriction. There were 51 vessels that reported mackerel landings in 2007 that did not qualify for a limited access permit but obtained the open access incidental catch permit with an associated herring possession limit of 3 mt. These 51 vessels averaged 17 mt of herring landings total during the 2007 fishing year. It is important to keep in mind that this analysis considers activity during the 2007 fishing year only, and 2007 saw a substantial reduction in the Atlantic mackerel fishery (see Section II of this document for additional information).

**Table 6 Amendment 1 Permit Category for Vessels with Reported Mackerel Landings in 2007**

2007 Mackerel Landings		Herring Permit Category					Total
		A	B	C	D	None	
<b>&lt; 1,000 mt</b>	Number of Vessels	13	2	2	51	3	<b>71</b>
	Avg 2007 Herring Landings (mt)	2,043	Cannot report	Cannot report	17	0	<b>401</b>
<b>1,000 - 2,000 mt</b>	Number of Vessels	8					<b>8</b>
	Avg 2007 Herring Landings (mt)	2,119					<b>2,119</b>
<b>2,000 - 4,000 mt</b>	Number of Vessels	5					<b>5</b>
	Avg 2007 Herring Landings (mt)	3,395					<b>3,395</b>
<b>Total number of vessels</b>		26	2	2	51	3	<b>84</b>
<b>Overall Avg 2007 Herring Landings (mt)</b>		2,326	Cannot report	Cannot report	17	0	<b>743</b>

*The Amendment 1 limited access permit program was implemented on June 1, 2007.*

Herring permit data were also queried to characterize the location of the vessels that reported Atlantic mackerel landings in their logbooks during 2007 (Table 7). Table 7 describes the same set of vessels that are described above in Table 6. The majority of Category A mackerel vessels (limited access herring permits for all management areas) are homeported in Massachusetts, New Jersey, and Rhode Island. The majority of Category D mackerel vessels (open access herring permit for 3 mt) are homeported in New Jersey, New York, and Rhode Island, which is consistent with trends in participation and activity in the Atlantic mackerel fishery. It is likely that the Category D vessels from NY, NJ, and RI are some of the vessels for which there may be concern about potential herring bycatch, especially if their activity in the mackerel fishery increases.

**Table 7 Amendment 1 Permit Category and Home Port State for Vessels with Reported Mackerel Landings in 2007**

Home Port State	Herring Permit Category					
	A	B	C	D	None	Total
CT				3		3
MA	12			6	1	19
ME	1			2		3
NC	1			2		3
NE	1					1
NH	2				1	3
NJ	5			7		12
NY				17	1	18
RI	4	2	2	14		22
<b>Total</b>	<b>26</b>	<b>2</b>	<b>2</b>	<b>51</b>	<b>3</b>	<b>84</b>

*The Amendment 1 limited access permit program was implemented on June 1, 2007.*

Observer data from 2007 also were queried to see the extent to which vessels fishing without a limited access herring permit may be discarding herring (primarily Atlantic mackerel vessels). Of all the observed trips which landed and/or discarded herring or mackerel, there were only two trips by vessels without a limited access herring permit in 2007. In neither case were herring discards larger than a couple hundred pounds. However, with so few observations, little can be drawn in the way of conclusions from this data set.

### ***2007 Landings from Bottom Trawls in Area 2***

During the 2007 fishing year, a total of 19,535 metric tons of Atlantic herring were landed from Area 2. Table 8 characterizes the Area 2 landings by gear type. In 2007, bottom trawl gear accounted for 36% of the herring landings from Area 2 (7,009 mt). This is a significant increase over 2005 and 2006 levels, which were approximately 1,500 metric tons. However, it is important to note that about one half of the 7,009 metric tons Area 2 bottom trawl landings are from one vessel. For data confidentiality reasons, details about this vessel cannot be reported.

Table 9 characterizes the 2007 Area 2 bottom trawl landings by the remaining 60 bottom trawl vessels, which landed 3,415 mt, based on vessel trip report (VTR) data. Table 9 breaks out the number of vessels that landed less than 10 mt of herring and those that landed greater than 50 mt of herring by State landed. Included in the count of vessels that landed greater than 50 mt of herring are seven (7) vessels that landed greater than 100 mt of herring during 2007. The majority of the bottom trawl vessels are landing small quantities of herring (less than 10 mt total in 2007), suggesting that the herring may be incidental catch while fishing in Area 2 for other species.

The majority of Area 2 herring landings from bottom trawl trips occur in New Jersey and Rhode Island. While some vessels land in more than one port (this is why the total vessel count in Table 9 is 63 versus the overall vessel count of 60), the vessel counts of 19 for New Jersey and 10 for Rhode Island are unique to these ports.

Of the 3,429 metric tons of herring landed by the bottom trawl vessels described in Table 9, 2,763 mt (81%) were landed by seven vessels with Category A limited access permits and two vessels with Category B limited access permits. Three Category C limited access vessels landed a total of 357 metric tons, but two of these vessels landed less than 5 mt each. Of the Category D (open access) permit holders, 38 accounted for the remaining 124 mt of Area 2 bottom trawl landings of herring during the 2007 fishing year. Nearly all of the Category D landings from this group appear to be incidental catch, since the amount landed per vessel was less than 10 metric tons. Landings by 11 vessels with no herring permit totaled 185 metric tons. Two of these vessels landed greater than 50 metric tons during 2007, while the remaining vessels landed less than 10 mt each.

With the exception of one vessel, all of the seven Category A bottom trawl vessels with Area 2 landings landed greater than 50 mt during the 2007 fishing year and appear to have been directing on Atlantic herring. Landings by four of these vessels range from 250 mt to 1,000 mt, with one vessel landing greater than 3,500 mt (as mentioned above). Two of these vessels also had significant Area 2 landings using midwater trawl gear, so it is unclear whether or not they were actually fishing for herring with bottom trawls. One of these two vessels also had significant landings from Area 1A using purse seine gear.

The majority of trips on which Atlantic herring is landed by Category A and B bottom trawl gear fishing in Area 2 are considered directed herring trips. Atlantic mackerel are landed on some of these trips, and loligo squid was landed on some of the other trips.

**Table 8 2007 Area 2 Landings by Gear Type**

<b>Gear Type</b>	<b>Herring Landed (mt)</b>
Midwater Trawl	2,589
Paired Midwater Trawl	9,934
Bottom Trawl	7,009
Other	3
<b>Total</b>	<b>19,535</b>



**Table 9 2007 Area 2 Bottom Trawl Herring Landings by State Landed (one vessel with > 3,500 mt landings excluded)**

State Landed	Herring Landed (mt)	Number of Vessels Landing Herring	Number of Vessels Landing < 10 Metric Tons	Number of Vessels Landing > 50 Metric Tons
CT	13	3	3	0
MA	79	4	3	1
MD	cannot report	1	cannot report	cannot report
NC	cannot report	1	cannot report	cannot report
NJ	1,369	19	15	4
State UNK	5	6	6	0
NY	89	19	18	1
RI	1,861	10	5	5
VA	cannot report	1	cannot report	cannot report
<b>Total</b>	<b>3,429</b>	<b>63</b>		

Source: Vessel Trip Reports.

#### 4.2.3 2008 Fishery Data

The industry has suggested that the 2007 mackerel fishery was different than previous years in that the mackerel were located offshore, and opportunities were consequently reduced for smaller and mid-sized boats, which are the boats of particular concern with respect to potential herring bycatch. Preliminary 2007 landings data do suggest that activity in the mackerel fishery was substantially lower than previous years. The industry maintains that the shift in the distribution of mackerel to offshore areas precluded smaller vessels from participating in the mackerel fishery. Some of these smaller boats did not qualify for a limited access herring permit; without a permit that allows them to retain any herring they may catch and with reduced opportunities inshore, many of these vessels did not fish for mackerel during the 2007 fishing year. It was noted during several Herring Committee/Advisory Panel discussions of this issue that many vessels are so concerned about being found in violation of the possession limit that they are not taking the risk and fishing for mackerel. Some industry members suggested that the fishery has shifted again during 2008 and that available information for the 2008 fishing year should be investigated to better characterize mixing and overlap between the two fisheries.

##### 4.2.3.1 Permit and Monthly/Annual-Level Data for 2008

To begin to evaluate the extent to which there may be a problem with herring bycatch on mackerel vessels, permit data were queried for all vessels that reported landings of Atlantic mackerel in logbooks during the 2008 fishing year. Since Amendment 1 was implemented on June 1, 2007 and the Atlantic mackerel fishery occurs primarily from December through April, 2008 is the first year in which a full mackerel season occurred while under Amendment 1 regulations. This year is used to provide some perspective on recent activity in the Atlantic

mackerel fishery, including activity by vessels that may not have qualified for herring limited access permits.

The 2008 data are preliminary, so all trips may not have been entered into the database, and fishing activity during December has obviously not occurred. Table 10 reports the total landings of herring and mackerel by month through July 2008.

**Table 10 2008 Monthly Landings of Atlantic Herring and Mackerel Through July 2008**

<b>January 2008</b>	Herring landed (mt)	7,105
	Mackerel landed (mt)	11,539
<b>February 2008</b>	Herring landed (mt)	7,897
	Mackerel landed (mt)	2,442
<b>March 2008</b>	Herring landed (mt)	3,441
	Mackerel landed (mt)	2,513
<b>April 2008</b>	Herring landed (mt)	2,922
	Mackerel landed (mt)	5,511
<b>May 2008</b>	Herring landed (mt)	4,179
	Mackerel landed (mt)	27
<b>June 2008</b>	Herring landed (mt)	5,473
	Mackerel landed (mt)	13
<b>July 2008</b>	Herring landed (mt)	6,143
	Mackerel landed (mt)	1
<b>Total</b>	<b>Herring landed (mt)</b>	<b>37,160</b>
	<b>Mackerel landed (mt)</b>	<b>22,047</b>

Table 11 summarizes the 2008 herring permit category and the average herring landings for vessels that participated in the mackerel fishery during 2008, based on vessel trip reports (VTRs). According to Table 11, every vessel that landed more than 1,000 mt of Atlantic mackerel during 2008 qualified for and obtained a limited access directed fishery permit to fish in all management areas for herring (Category A). These vessels are therefore allowed to fish for and land herring in unrestricted amounts until a TAC is reached in a management area and the area closes. All other vessels with mackerel landings (183) reported less than 1,000 mt total for the fishing year. Nine of these vessels qualified for an unrestricted herring limited access permit for all areas (Category A), three qualified for unrestricted limited access permits in Areas 2/3 only (Category B), and 10 vessels qualified for limited access incidental catch permits with a 25 mt possession limit restriction.

There were 128 Category D vessels that reported mackerel landings during the 2008 fishing year to date; these vessels did not qualify for a limited access permit but obtained the open access incidental catch permit with an associated herring possession limit of 3 mt. While it is possible that some individual trips may have encountered larger amounts of herring, the Category D vessels landed one (1) metric ton of herring, on average, in 2008. It is important to keep in mind

that this analysis considers activity during the 2008 fishing year through July 2008 only, and there is likely to be additional fishing activity in the mackerel fishery towards the end of the year (December).

**Table 11 Amendment 1 Permit Category for Vessels with Reported Mackerel Landings in 2008**

2008 Mackerel Landings		2008 Herring Permit Category					
		A	B	C	D	None	Total
< 1,000 mt	Number of Vessels	9	3	10	128	33	183
	Avg 2007 Herring Landings (mt)	2,166	266	0	1	0	398
1,000 - 2,000 mt	Number of Vessels	7					7
	Avg 2007 Herring Landings (mt)	989					989
2,000 - 4,000 mt	Number of Vessels	3					3
	Avg 2007 Herring Landings (mt)	1,163					1,163
<b>Total number of vessels</b>		19	3	10	128	33	193
<b>Overall Avg 2007 Herring Landings (mt)</b>		1,541	266	0	1	0	515

NMFS permit data were queried to characterize the location and average length of all vessels with herring permits (Table 12). The average length of category C vessels (62 feet) and Category D vessels (47 feet) is quite a bit smaller than the vessels with limited access directed fishery permits. This is consistent with the industry's claims that the open access permit holders are dominated by smaller and mid-sized vessels; if the mackerel did in fact move offshore during 2007, these vessels may have experienced reductions in their fishing opportunities. The 2008 data summarized in Sections 4.2.3.1 and 4.2.3.2 of this document (below) do not suggest that mackerel fishing activity by this group of vessels has increased substantially during the 2008 fishing year.

Table 13 reports the average length and principal port state of the vessels which landed mackerel in 2008. The majority of Category A mackerel vessels (limited access herring permits for all management areas) have principal ports in Massachusetts, and New Jersey. The majority of Category D mackerel vessels (open access herring permit for 3 mt) have principal ports in New Jersey, New York, and Rhode Island, which is consistent with trends in participation and activity in the Atlantic mackerel fishery. It is likely that the Category D vessels from NY, NJ, and RI are some of the vessels for which there may be concern about potential herring bycatch, especially if their activity in the mackerel fishery increases in the future.

Table 12 2008 Herring Permit Category and Principal Port State

Principal Port State		2008 Herring Permit Category				
		A	B	C	D	Total
AK	Number of vessels				2	2
	Average length				139	139
CT	Number of vessels			2	41	43
	Average length			83	53	54
DE	Number of vessels				20	20
	Average length				41	41
FL	Number of vessels				13	13
	Average length				50	50
GA	Number of vessels				2	2
	Average length				68	68
LA	Number of vessels				1	1
	Average length				75	75
MA	Number of vessels	17		6	816	839
	Average length	111		67	46	47
MD	Number of vessels				34	34
	Average length				55	55
ME	Number of vessels	10		9	307	326
	Average length	78		48	37	38
NC	Number of vessels			3	82	85
	Average length			75	64	65
NH	Number of vessels	2		6	111	119
	Average length	122		46	36	38
NJ	Number of vessels	6		7	341	354
	Average length	91		75	54	55
NY	Number of vessels			2	213	215
	Average length			72	44	44
PA	Number of vessels				2	2
	Average length				55	55
RI	Number of vessels	5	4	7	145	161
	Average length	96	70	61	51	53
SC	Number of vessels				1	1
	Average length				33	33
TX	Number of vessels				2	2
	Average length				64	64
VA	Number of vessels	1			86	87
	Average length	80			64	65
Total	Number of vessels	41	4	42	2,219	2,306
	Average length	98	70	62	47	48

**Table 13 2008 Herring Permit Category and Principal Port State (Vessels with Mackerel Landings)**

Principal Port State		2008 Herring Permit Category					Total
		None	A	B	C	D	
CT	Number of vessels					4	4
	Average length					87	87
MA	Number of vessels	4	8		1	20	33
	Average length	43	126		57	44	64
MD	Number of vessels	1					1
	Average length	44					44
ME	Number of vessels	6	2			3	11
	Average length	35	105			30	46
NC	Number of vessels					2	2
	Average length					66	66
NH	Number of vessels	5	2			2	9
	Average length	53	122			49	67
NJ	Number of vessels	4	4		1	29	38
	Average length	52	102		75	56	61
NY	Number of vessels	2			3	37	42
	Average length	33			73	59	59
RI	Number of vessels	3	3	3	5	30	44
	Average length	40	114	68	62	64	66
VA	Number of vessels	1				1	2
	Average length	40				74	57
No Federal Permit	Number of vessels	7					7
	Average length						
Total	Number of vessels	33	19	3	10	128	193
	Average length	43	116	68	66	58	62

#### 4.2.3.2 Trip-Level Data for 2008

Since vessels with any type of herring permit (including Category C and D) are required to submit vessel trip reports (which should include the reporting of discards), logbook data were queried to find all trips where either herring or mackerel was reported as landed or discarded in 2008. Table 14 summarizes the 2008 logbook data by categorizing trips according to mackerel landings and permit type. The reason for creating the mackerel landings categories in Table 14 is to characterize the proportion of current trips that may be approaching the trip limits specified by the Category C and D herring permits. Information for Categories A and B is shown for purposes of comparison.

As shown in Table 14, all of the trips greater than 100 metric tons of mackerel were landed by vessels with Category A herring permits. Vessels with Category B, C, or D permits landed less than 100 metric tons – many with no mackerel landings. Of the 35 Category C trips in the less than 100 metric ton mackerel landing category, the average amount of herring landed is very

small, and the average herring discards are zero. A similar scenario holds for the 530 Category D trips and the 154 trips by vessels with no herring permit. This indicates that the Category C and D vessels did not encounter large amounts of herring while fishing for mackerel (or encountering both herring and mackerel while fishing for something else) during the 2008 fishing year (to date). Had the average herring landings on the Category C trips been at the 25 metric ton level, or the herring landings on the Category D trips been at the 3 metric ton level, and/or high levels of herring discards, this would have provided clear evidence that these vessels were reaching their respective trip limits.

However, as indicated by industry representatives, some vessels may have chosen not to make a mackerel trip at all because they thought it would be difficult to remain under the trip limit. This type of information would not be revealed by an examination of the logbook data. An indication that this may be occurring is shown through the decrease in Atlantic mackerel landings by Category C and D vessels relative to the overall recent decline in mackerel landings. Category C and D mackerel landings dropped by 85% between 2006 and 2008, whereas overall mackerel landings dropped by 63.5%.

Table 15 reflects the same data that is embedded in Table 14 but it is displayed by categories of herring landings rather than categories of mackerel landings. The relevant landings range to consider for Category C permit holders is 30,000 to 55,000 pounds. The data in Table 15 show that there have been no trips reported in that range during the 2008 fishing year. If there had been many trips with average landings approaching 55,000 pounds and high herring discards reported, this would have indicated that Category C vessels were reaching the possession limit and being forced to discard.

For open access permit holders (Category D, 3 mt), there has only been one trip reported in the 3,300-6,600 pound range and one trip in the 6,600 to 30,000 pound range during 2008 (which exceeded the 3 mt trip limit). This suggests that at least for trips taken by Category D vessels, very few have reported landings of herring greater than 50% of the current possession limit. For the 748 trips with herring landings that were less than 50% of the 3 mt trip limit (0 to 3,300 pounds), the average herring landings reported by these vessels are only 50 pounds, and average herring discards reported are only 22 pounds.

**Table 14 2008 Herring Landings and Discards by Permit Category and Mackerel Landings Category (All Logbook Trips with Herring or Mackerel Catch)**

Mackerel Landings Category		2008 Herring Permit					
		A	B	C	D	None	Total
<b>No landings</b>	Number of trips	233	27	34	220	51	565
	Average herring landed (mt)	119	17	0.148	0.055	1	50
	Average herring discarded (mt)	0	17	0.003	0.061	0.008	1
	Maximum herring discarded (mt)	0	446	0.017	6.250	0.179	446
<b>Less than 100 mt</b>	Number of trips	85	4	35	530	154	808
	Average herring landed (mt)	80	13	0.005	0.025	0.005	8
	Average herring discarded (mt)	0	0	0	0	0.0001	0.011
	Maximum herring discarded (mt)	4	0	0	0	0.0112	4.464
<b>100 to 200 mt</b>	Number of trips	30					30
	Average herring landed (mt)	55					55
	Average herring discarded (mt)	0					0
	Maximum herring discarded (mt)	0					0
<b>200 to 300 mt</b>	Number of trips	17					17
	Average herring landed (mt)	5					5
	Average herring discarded (mt)	0					0
	Maximum herring discarded (mt)	0					0
<b>300 to 400 mt</b>	Number of trips	15					15
	Average herring landed (mt)	20					20
	Average herring discarded (mt)	2					2
	Maximum herring discarded (mt)	18					18
<b>400 to 500 mt</b>	Number of trips	11					11
	Average herring landed (mt)	3					3
	Average herring discarded (mt)	0					0
	Maximum herring discarded (mt)	0					0
<b>Total</b>	Number of trips	391	31	69	750	205	1,446
	Average herring landed (mt)	93	17	0.076	0.033	0.314	26
	Average herring discarded (mt)	0.108	14	0.001	0.018	0.002	0.348
	Maximum herring discarded (mt)	18	446	0.017	6	0.179	446

Table 15 2008 Herring Landings and Discards by Herring Landing Category

Herring Landings Category		2008 Herring Permit					
		A	B	C	D	None	Total
<b>0 to 3,300 lbs</b>	Number of trips	96	3	69	748	204	1,120
	Average herring landed (lbs)	52	0	169	50	21	52
	Average herring discarded (lbs)	531	333,333	3	22	5	954
	Maximum herring discarded (lbs)	35,000	1,000,000	38	10,000	400	1,000,000
	Average mackerel landed (lbs)	342,565	84	174	922	136	30,014
<b>3,300 to 6,600 lbs</b>	Number of trips	1	1		1		3
	Average herring landed (lbs)	6,000	5,000		5,000		5,333
	Average herring discarded (lbs)	0	0		0		0
	Maximum herring discarded (lbs)	0	0		0		0
	Average mackerel landed (lbs)	420,000	0		400		140,133
<b>6,600 to 30,000 lbs</b>	Number of trips	11	8		1		20
	Average herring landed (lbs)	18,884	14,500		14,000		16,886
	Average herring discarded (lbs)	0	0		14,000		700
	Maximum herring discarded (lbs)	0	0		14,000		14,000
	Average mackerel landed (lbs)	199,327	0		0		109,630
<b>30,000 to 55,000 lbs</b>	Number of trips	25	11				36
	Average herring landed (lbs)	45,859	42,636				44,874
	Average herring discarded (lbs)	0	0				0
	Maximum herring discarded (lbs)	0	0				0
	Average mackerel landed (lbs)	148,536	182				103,205
<b>55,000 to 75,000 lbs</b>	Number of trips	10	5				15
	Average herring landed (lbs)	64,300	66,400				65,000
	Average herring discarded (lbs)	0	0				0
	Maximum herring discarded (lbs)	0	0				0
	Average mackerel landed (lbs)	0	0				0
<b>75,000+</b>	Number of trips	248	3			1	252
	Average herring landed (lbs)	321,964	83,333			140,000	318,402
	Average herring discarded (lbs)	177	0			0	175
	Maximum herring discarded (lbs)	40,000	0			0	40,000
	Average mackerel landed (lbs)	38,064	400			0	37,464
<b>Total</b>	Number of trips	391	31	69	750	205	1,446
	Average herring landed (lbs)	209,349	37,806	169	75	704	57,565
	Average herring discarded (lbs)	243	32,258	3	40	5	779
	Maximum herring discarded (lbs)	40,000	1,000,000	38	14,000	400	1,000,000
	Average mackerel landed (lbs)	124,430	111	174	920	135	34,153



#### 4.2.4 Fishery Information Considered in Amendment 1 to the Herring FMP

During the development of the limited access alternatives in Amendment 1, the Herring PDT examined vessel logbook data from 2000 to 2002 to show how many trips may be affected by trip limits of 15 and 25 metric tons, which were considered as part of the incidental catch permit options. The following information is useful to illustrate the overlap between the herring fishery and other small mesh (whiting) and pelagic fisheries (squid, mackerel) occurring throughout the region. This information provides a somewhat more historical perspective on the nature and degree of overlap between the herring fishery and other small mesh fisheries.

In Table 16 – Table 18, incidental herring landings are summarized for directed mackerel, squid (loligo and illex combined), and whiting trips. In the following analysis, a *directed* trip is defined as one in which 50% or more of the landings consisted of the species in question. For the Atlantic mackerel trips, only trips with more than 1 metric ton were included in the analysis.

Table 16 shows that in 2002, nine (9) of the 254 directed mackerel trips greater than 1 mt had greater than 25 mt of herring landed on the same trip. No directed mackerel trips landed between 15 and 25 metric tons of herring, and six (6) trips landed between 0 and 15 mt of incidental herring landings during 2002. In 2001, nearly all directed mackerel trips landed no herring with the exception of three (3) trips that landed between 0 and 1 mt of herring. In 2000, three (3) of the 95 directed mackerel trips greater than 1 mt landed greater than 25 mt of herring on the same trip. No directed mackerel trips landed between 15 and 25 mt of herring, and two (2) trips had between 0 and 15 mt of incidental herring landings during 2000. Therefore, at the time this analysis was conducted, the incidental catch of herring on directed mackerel trips appeared to be low. It was noted that this issue may become more of a concern if/when the Atlantic mackerel fishery expands beyond levels observed in the early 2000s.

Table 17 shows that for the directed squid trips, there were only three (3) trips in 2000 in which more than 25 mt of herring was landed. The rest of the directed squid trips during that year as well as all directed squid trips in 2001 and 2002 landed less than 15 mt of herring. Most directed squid trips landed no amount of herring. The trips that did land herring landed less than 600 pounds of herring.

Table 18 shows that all for all the directed whiting trips in 2000 to 2002, none had greater than 15 metric tons of incidental herring landings. Most directed whiting trips had no herring landings. The trips that did land herring landed less than 1.4 mt of herring.

**Table 16 Incidental Catch of Herring on Directed Mackerel Trips**

	<b>2000</b>	<b>2001</b>	<b>2002</b>
Number of directed trips with greater than 1 mt of mackerel	95	122	254
Number of trips with herring catch > 0 and < 15 mt	2	3 (maximum of 1 mt of herring)	6
Number of trips with herring catch between 15 and 25 mt	0	0	0
Number of trips with herring catch > 25	3 (maximum of 120 mt of herring)	0	9 (maximum of 109 mt of herring)

**Table 17 Incidental Catch of Herring on Directed Squid (Loligo and Illex Combined) Trips**

	<b>2000</b>	<b>2001</b>	<b>2002</b>
Number of directed trips	5,624	3,394	3,377
Number of trips with herring catch > 0 and < 15 mt	32 (maximum of 400 LBS)	26 (maximum of 500 LBS)	8 (maximum of 600 LBS)
Number of trips with herring catch between 15 and 25 mt	0	0	0
Number of trips with herring catch > = 25	3 (maximum of 36 mt)	0	0

**Table 18 Incidental Catch of Herring on Directed Whiting Trips**

	<b>2000</b>	<b>2001</b>	<b>2002</b>
Number of directed trips	1,777	1,933	1,131
Number of trips with herring catch > 0 and < 15 mt	52 (maximum of 1 mt)	76 (maximum of 625 LBS)	68 (maximum of 1.4 mt)
Number of trips with herring catch between 15 and 25 mt	0	0	0
Number of trips with herring catch > = 25	0	0	0

## **5.0 ALTERNATIVES TO ESTABLISH A QUOTA ALLOCATION PROCESS FOR THE HERRING FISHERY**

### **5.1 INTRODUCTION/BACKGROUND INFORMATION**

In the herring fishery, there is a core fleet consisting of a small number of vessels that catch a very large proportion of the herring resource. These vessels were incorporated into the limited access program implemented in Amendment 1 to the Herring FMP. Developing Amendment 4 may provide the opportunity to evaluate different management approaches for the limited access fishery while considering important biological and economic factors.

When the Council initiated the development of Amendment 4 to the Herring FMP, it indicated that it may consider management measures to establish a group/sector allocation program for the Atlantic herring fishery, or some form of limited access privilege program (LAPP) like an Individual Fishing Quota (IFQ). The Amendment 4 Scoping Document provided background information and solicited comments and feedback from the public as to whether quota allocation approaches should be considered for the herring fishery in Amendment 4, and if so, which specific approaches should be considered and why.

The purpose of establishing a group or individual allocation program for the herring fishery would be to allow greater opportunities for fishery participants to proactively engage in resource governance, to provide greater flexibility for participants, to guide the appropriate development of capacity, and, last, to create outcomes that are more socially and economically-relevant for fishery participants within the biological limitations of the fishery (TACs). In addition, vessels may want to join a sector or participate in a LAPP to manage the incidental catch of herring in their fishery.

Amendment 13 to the Multispecies (Groundfish) FMP recently implemented a sector allocation program, which apportions part of the ground fish fishery resource to a “self-selecting sector.” Sectors may be formed around common fishing practices, gear type, common homeport or landing port, common fishing area, common marketing arrangements, etc. How the sector chooses to harvest its allocation could include a wide range of arrangements, including, but not limited to, a plan that simply sub-divides the TAC or a measure of effort among the vessels.

The Council developed and considered an alternative for sector allocation in Amendment 1 to the Herring FMP, but ultimately rejected it while stating an interest in revisiting the issue in subsequent FMP actions. Amendment 4 could therefore provide an opportunity to revisit the sector allocation alternative developed in Amendment 1 and continue to refine that alternative for further consideration by the Council. The amendment also could explore alternatives for individual or other quota allocation programs. The Council sought public comment during the scoping period on individual and other forms of LAPPs that may be appropriate to consider in the Atlantic herring fishery.

It is important to remember that if the Council develops an IFQ program in this amendment, the MSRA includes a specific requirement for a referendum to implement such a program in New England. According to the MSRA, the New England Fishery Management Council may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless that system has been approved by more than 2/3 of those voting in a referendum among eligible permit holders or other eligible persons. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum. These provisions must be considered if the Council develops an IFQ program for the herring fishery in Amendment 4.

While it remains unclear at this time whether a group or individual allocation program would apply to all management areas in the herring fishery, the Council recognizes that significant changes in the Area 1A fishery occurred during the 2007 fishing year with the implementation of Amendment 1, including a limited access program and a seasonal purse seine/fixed gear only area. Consequently, fishing patterns for many vessels that historically fished in Area 1A have been affected recently, and some vessels lost access to this fishery during the most important time of the year. Because of the impacts of Amendment 1 on some of the major vessels in the fishery, the Council believes that it may not be appropriate to utilize fishing history from Area 1A from the 2007 fishing year forward to establish baselines for the allocation of TAC under a sector or other LAPP. As a result, the Amendment 4 Scoping Document stated that if the Council establishes a group or individual allocation program that requires area-specific landings history to make allocations, the Council is considering a requirement that any allocation of herring utilizing landings history from Area 1A be based on a time period ending December 31, 2006. The Council solicited public comment on this proposed end date for allocations based on Area 1A history.

## **5.2 HERRING COMMITTEE AND AP RECOMMENDATIONS**

As previously noted, quota allocation approaches for managing the Atlantic herring fishery were discussed in the Amendment 4 Scoping Document as one of the major issues that may be addressed in this action, and related input and comments were solicited by the Council from the public, industry, and interested stakeholders. Scoping comments regarding this issue were relatively extensive and ranged from full support for considering sector allocations and IFQs to full opposition to considering these measures in Amendment 4, both for a variety of reasons. Comments from industry members and other stakeholders were generally mixed, although most non-industry stakeholders expressed support for first developing a catch monitoring program in this amendment, and perhaps addressing quota allocations in a future management action so as not to further delay the development of the catch monitoring program. The Amendment 4 scoping period extended from mid-April through June 30, 2008, and the scoping comments and hearing summaries should be referenced for detailed comments.

The Herring Advisory Panel provided comments on issues raised in the Amendment 4 Scoping Document at its April 30, 2008 meeting, including quota allocation measures, and again at a joint Herring Committee/Advisory Panel Meeting on July 30, 2008. Herring AP support for considering quota allocations in this amendment has not been overwhelming; Advisory Panel

votes regarding this issue have been almost evenly split. At the July 30, 2008 meeting, the Herring Committee passed a motion to eliminate quota allocations from further consideration in this amendment, but the Committee vote also was not unanimous (see below).

***April 30, 2008 Herring Advisory Panel Meeting***

**AP MOTION (4/30/08): Peter Baker/Jennie Bichrest**

To recommend that quota allocations be eliminated from this action and addressed in a separate amendment

**Discussion on the Motion:** Mr. Baker felt that the development of quota allocation programs like IFQs and sector allocations will significantly complicate and delay the development of Amendment 4, which was initiated primarily to address catch monitoring in the herring fishery. He suggested that the Council should focus on catch monitoring in this amendment so that it can be completed as quickly as possible. One advisor expressed opposition to the motion and stated that quota allocation programs must be considered because the industry is struggling to remain operational under the current management system (ex., multiple days out of the fishery). Another advisor agreed with that statement and suggested that the Council move forward with these discussions at this time. Mr. Baker emphasized the need for an adequate catch monitoring program to be established before the Council implements a quota allocation program.

Mr. Turner agreed that it may be premature to develop quota allocations for the fishery since Amendment 1 was just recently implemented, and all limited access permits have not been distributed yet. One advisor noted that there are some equity issues associated with consideration of quota allocation programs because some vessels are currently building history, with the expectation that the history will be valuable for some form of quota allocation in the near future. Another advisor expressed related concerns about the history deadline of December 31, 2006 proposed in the Amendment 4 Scoping Document.

**HERRING AP MOTION (4/30/08) failed 6-7 with the Advisory Panel Chairman voting to break the tie.**

**AP MOTION (4/30/08): Peter Moore/Peter Baker**

That any quota allocation program considered by the Council in this amendment be limited to Area 1A at this time

**MOTION PERFECTED THROUGH A FRIENDLY AMENDMENT:**

That any quota allocation program considered by the Council in this amendment be limited to Area 1 at this time

**The perfected motion failed 3-4-6.**

After the motions above failed, the Herring AP continued to discuss issues and questions related to establishing a quota allocation program in this amendment. There was no agreement about whether quota allocation programs should be considered for all management areas or just the areas where the TAC is currently fully utilized. One advisor suggested that the quota allocation programs that may be developed for the herring fishery not use the groundfish program as an example.

The AP also addressed the Area 1A history deadline of December 31, 2006, as proposed in the Scoping Document. One advisor noted that there are some vessels that invested significant money into converting to purse seining in order to be able to continue to fish and generate fishing history in Area 1A. She felt that limiting history for allocations to a time period prior to the 2007 fishing year puts these vessels at a significant disadvantage and does not acknowledge the investments made to convert over and comply with the Amendment 1 management measures. Another advisor expressed opposition to the proposed history date at this time because he feels that it is too early in the amendment process to be determining the outcome of a quota allocation program. Two advisors expressed support for considering a time period that is more consistent with the time period used to qualify vessels for limited access permits in Amendment 1.

On advisor asked about timing as it relates to the implementation of this amendment and the requirement for a referendum vote if an IFQ program is proposed. He suggested that it would be helpful to get some feedback from the industry early in the process about the level and degree of support for an IFQ program at this time. There was also some general discussion regarding bycatch accounting and agreement that bycatch must be accounted for, but no agreement was reached by the Herring AP members about how to address bycatch in a quota allocation program at this time. Many advisors also felt that reporting and monitoring requirements for a quota allocation program should be addressed in the context of a larger catch reporting program for the entire fishery, which is a primary focus of this amendment.

### ***July 30, 2008 Joint Herring Committee/Advisory Panel Meeting – Committee Recommendations***

Because this meeting was focused primarily on developing measures related to a catch monitoring program, the Herring Committee and Advisory Panel addressed quota allocation measures as part of the agenda item for issues/measures relative to Amendment 4 that were not specifically on the July 30, 2008 meeting agenda.

### **COMMITTEE MOTION: DANA RICE/MIKE LEARY**

That the Council eliminate quota allocations (group, sector, individual, LAPPs, etc.) from consideration in this amendment

**Additional Discussion on the Motion:** Even though this issue was addressed at the April 30 AP Meeting, the Herring Advisory Panel agreed to consider the same motion as the Committee at this meeting.

### **AP MOTION (7/30/08): PETER BAKER/RICH RUAIS**

**THE AP MOTION CARRIED 5-4-0 WITH THE VICE CHAIR VOTING (AP CHAIRMAN ABSENT).**

The Herring Committee continued to discuss the proposed motion to eliminate quota allocations from further consideration in Amendment 4:

- Mr. Ruhle expressed reluctance in eliminating all forms of limited access privilege programs from consideration at this time.

- Mr. Rice stated that he has not supported consideration of quota allocation measures in this amendment since the beginning of its development. He believes that ultimately, there is not enough support within the industry to justify delaying action on the catch monitoring portion of this amendment in order to develop quota allocation programs, which will be complex and time-consuming. He referenced recent struggles the Groundfish Committee has been dealing with in trying to develop a sector allocation program.
- Two advisors expressed support for continuing to consider quota allocation programs in this amendment and felt that there may be more industry support for quota allocation than some Committee and Advisory Panel members may believe.
- A representative for some industry stakeholders expressed opposition to this motion and felt that quota allocation programs should be considered to address problems with the fishery and the utilization of the quota in Area 1A (inshore Gulf of Maine). He noted that the biggest complication with developing a quota allocation program in the groundfish fishery has been how to convert days-at-sea to pounds of fish, and that problem does not exist with respect to the herring fishery.
- Another interested stakeholder expressed support for the motion and emphasized the need to improve catch monitoring and have more complete and accurate catch and landings data prior to allocating the quota to individuals or groups of vessels.

**COMMITTEE MOTION (7/30/08) CARRIED 3-2-1 WITH THE CHAIRMAN VOTING TO BREAK THE TIE.**

**COMMITTEE MOTION: JIM RUHLE/RODNEY AVILA**

In the event that the Council not consider an amendment for any form of LAPP, that the December 31, 2006 date be established for qualification for allocation history in Area 1A

**Additional Discussion on the Motion:** The Committee further clarified that the intent of the measures is that if a LAPP is established in the future, the Council would consider basing allocation of history in Area 1A on a time period that ends no later than December 31, 2006, prior to the implementation of the Amendment 1 management measures.

**COMMITTEE MOTION CARRIED 3-2-1 WITH THE CHAIRMAN VOTING TO BREAK THE TIE.**

The Herring Committee's recommendations will be provided to the Council for consideration at the October 2008 Council meeting. Until the Council takes action on these recommendations and provides additional guidance, the Committee and PDT's work on Amendment 4 will be focused primarily on developing alternatives for a catch monitoring program for the Atlantic herring fishery (see Section 2.0 of this document).