

7.2 Regulatory Impact Review

7.2.1 Introduction

The Regulatory Impact Review (RIR) provides an assessment of the costs and benefits of the proposed action and other alternatives in accordance with the guidelines established by Executive Order 12866. The regulatory philosophy of Executive Order 12866 stresses that, in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives and choose those approaches that maximize net benefits to the society.

The RIR also serves as a basis for determining whether any proposed regulations are a “significant regulatory action” under the criteria provided in Executive Order 12866 and whether the proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Act of 1980 (RFA).

This RIR summarizes the effects of the proposed management plan and other alternatives considered in this amendment developed to rebuild the herring resource. The Atlantic Herring Fishery Management Plan (FMP) document contains some elements of RIR/RFA and the relevant sections are identified by reference to the document. The Initial Regulatory Flexibility Analysis, which evaluates the impacts of management alternatives on small businesses, is provided in section 8.3.

7.2.2 Problem Statement

The problem statement is described under the purpose and need for management (statement of the problem) in section 2.2.

7.2.3 Management Objectives

The management objectives are explained in section 2.3.

7.2.4 Management Alternatives

The proposed action is described in section 3.0. Alternatives to the proposed action are also summarized in section E.5.2.

7.2.5 Analysis of Management Alternatives

The economic impacts are described in section E.7.3 and summarized below under the discussion of how the proposed action is characterized under Executive Order 12866 and the Regulatory Flexibility Act (RFA) (section 7.3).

7.2.6 Enforcement Costs

Vessels, dealers, and processors will incur additional costs in order to comply with the requirements of the management plan. Vessels that intend to harvest more than 500 mt of herring, or that harvested 500 mt of herring in the previous year, will be required to operate a VMS

(section 3.3.6.18). Further discussion on the compliance costs to the industry is provided in section 7.3.6 of the IRFA below and section E.7.3.10.

The government will also incur some costs to monitor these programs, estimated to be \$6,929 from the reporting requirements. Additional costs to the government to adapt the existing VMS system to the herring fishery is estimated as \$20,000 per year (section E.7.3.7.2).

7.2.7 Summary of Regulatory Impacts

- The proposed regulations are not intended to reduce the herring landings, but to reduce the landings from the Management Area 1A and to protect spawning herring. For these reasons, although the overall TAC exceeds current domestic landing levels, the proposed action reduces the Area 1A TAC by 36.5%, from 70,900 metric tons in 1997 to 45,000 metric tons for 1999. Since this area constituted more than half of the herring landings (70%) and revenues (67%) in 1997, this reduction may have some negative revenue impacts depending on the ability of the vessels to catch herring in other areas. Under the worst case scenario, if vessels cannot recover any of their losses by fishing in other areas, the herring revenues of the fleet may decline by \$1.8 million from its level in 1997 (See Table E.58 in section E.7.3.4.3 of the Herring FMP document).
- The actual impact of the Area 1A TAC will probably be less since
 - The vessels may recover part, or all of their revenue loss by fishing for herring in other areas.
 - Under a no effort displacement scenario, the variable costs would decrease as well with reduced effort so that the decline in net benefits would be less than the decline in revenues.
 - If herring landings decline, the ex-vessel prices may increase offsetting some of the revenue loss. Herring ex-vessel prices, however, have remained almost constant in nominal terms for the last twenty years (and declined in real terms), in spite of a wide range of catch levels (section E.6.4.2.2.1). For this reason, it is uncertain if ex-vessel prices would increase if the supply of herring is restricted by the management measures.
 - While the proposed Management Area 1A TAC represents a decline from 1997 catches in this area, it may not reflect a decline from 1998. Preliminary landing statistics for this area in 1998 indicate landings may have been about 30,000 mt, or only two-thirds of the proposed TAC. This indicates the catch of herring fluctuates for reasons that are unrelated to the proposed management measures. Landings in 1997 and 1996 in this area were the highest in the last eighteen years.
- The proposed spawning closures may also have an impact on herring landings and revenues, again depending on the vessels' ability to land herring in other areas/time-periods. A complete discussion of these impacts are provided in section E.7.3.3. Although the total impacts of the spawning closures are estimated to be a reduction of 10,322 metric tons in herring landings,

the actual decline in landings due to the spawning closures is likely to be less due to;

- the displacement of effort to other areas,
 - the opening of a large area south of 42° 30'N to fishing by the proposed action,
 - the interaction of the spawning closures with the Management Area 1A TAC.
- Since the closures are almost entirely within Management Area 1A, any reduction in landings due to the spawning closures will also count for part of the reduction under the TAC. In other words, the reduction of 10,322 metric tons in landings because of the spawning closures will also take care of about 40 percent of the proposed 25,900 metric tons reduction in Management Area 1A landings.
 - A small part of the spawning closures lie within the boundaries of Management Area 1B. The estimated reduction in herring landings from this area due to the spawning closures is 842 metric tons, and estimated reduction in fleet revenues is about \$93,000.
 - The impacts of Area 1A TAC and the spawning area closures may potentially be negative on herring landings and revenues in the short-term. On the other hand, other measures of the proposed action may offset or more than offset these impacts. Therefore the herring revenues may stay constant, or even increase compared to the no-action alternative for the following reasons:
 - The proposed action manages the herring fishery as an open access (section 3.6) to provide opportunities to U.S. fishermen displaced from other fisheries in the northeast and mid-Atlantic area. The directed foreign fishing for herring is prohibited, although the plan allows for some foreign participation in the fishery through joint venture (JV) or internal waters processing (IWP). If the plan is successful in promoting U.S. development of this underutilized fishery by diverting effort away from overfished fisheries, its impact on net national benefits will be positive. The increase in domestic landings and revenues would increase both the consumer and the producer benefits from the herring fishery.
 - For the foreseeable future, the total of the assigned TACs will be an increase over recent landings of herring – in 1999, the OY of 224,000 metric tons more than doubles the recent highest landings (104,000 metric tons in 1996), resulting in a potential increase in gross revenues of \$13.6 million at an average price of \$0.05/pound (1997). Under the management plan, revenues may be able to increase. Whether this occurs will be a result of market conditions rather than due to the management measures adopted.
 - Because of the lack of an assessment model for individual spawning components, and because of a lack of information on the cost structure of the industry, a quantitative estimate of the revenue differences between the no-action alternative and the proposed action could not be determined. Under the status quo (no-action), however, there is a risk that the fishery in some areas (in particular area 1A and the spawning areas) will be overfished. This would have a negative impact on both operating costs and total revenues.

Further analysis on the overall impacts of the proposed measures is provided in section E.7.3.4.3.

Other options considered by the Council would also reduce the expected landings from Management Area 1A compared to the current levels. Table E.58 estimates the loss in revenues from the inshore Gulf of Maine (area 1A) that may be experienced under the various TAC distribution options (including the preferred option). Again, these estimates do not include revenues that may be taken outside Management Area 1A; thus, declines should be viewed as a maximum lost revenue. While in the short term the non-preferred options reduce the revenue impacts, they increase the risk of overfishing the inshore Gulf of Maine herring resource and do not encourage the spreading of effort into other areas. This, however, could make it necessary to impose more restrictive measures to reduce overfishing in the future, and thus may result in more negative impacts on the herring industry in the future periods.

7.2.8 Determination of Significant Regulatory Action

Executive Order 12866 defines a “significant regulatory action” as one that is likely to result in:

- a) an annual effect on the economy of \$100 million or more or one which adversely affects in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- b) a serious inconsistency or interference with an action taken or planned by another agency;
- c) a budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof;
- d) novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this executive order.

The preceding analysis shows that the Atlantic herring FMP is not a “significant regulatory action” since it will not adversely affect in a material way a sector of the economy, i.e., the herring fishing industry and the jobs in this industry. The proposed regulations will not have, an annual impact on the economy of \$100 million or more, and will not adversely affect the productivity, environment, public health or safety, or state, local, or tribal governments or communities in the long run. The proposed action also does not interfere with an action planned by another agency, since no other agency regulates the level of Atlantic herring harvest. It does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients. It also does not raise any novel legal and policy issues because it extends the type of fishing restrictions already in place.

7.3 Initial Regulatory Flexibility Analysis

7.3.1 Introduction

The purpose of the RFA is to reduce the impacts of burdensome regulations and recordkeeping requirements on small businesses. To achieve this goal, the RFA requires government agencies to describe and analyze the effects of regulations and possible alternatives on small business entities. On the basis of this information, the Regulatory Flexibility Analysis determines whether the proposed action would have a “significant economic impact on a substantial number of small entities.”

The main elements of the RFA are discussed in several sections of the FMP and the relevant sections are identified by reference to this document. The following discussion summarizes the consequences for small businesses of the proposed action and non-preferred management options in the scallop fishery.

7.3.2 Problem Statement

The purpose and need for management (statement of the problem) is described in Section 2.2.

7.3.3 Objectives

The management objectives are enumerated in section 2.3 of this document.

8.3.4 Management Alternatives

The proposed action is described in Section 3.0 of the amendment document. Alternatives to the proposed action are summarized in section E.5.2.

7.3.4 Determination of Significant Economic Impact on a Substantial Number of Small Entities

The RFA recognizes three kinds of small entities: small businesses, small organizations and small government jurisdictions. It defines a small business in any fish-harvesting or hatchery business as a firm which is independently owned and operated and not dominant in its field of operation with receipts of up to \$3 million annually.

The herring industry directly affected by the proposed action is composed primarily of small business entities. Section E.6.4 describes the industry (Human Environment) in terms of state, port, vessel and gear characteristics, average size, and landings of the vessels in each subgroup (See Table E.9 to Table E.24 in section E.6.4, Human Environment). Section E.6.4.2.4 describes detailed information by port and the section E.1.1.1 provides information on the herring processing sector. Section E.6.4.3.2 provides information on internal waters processing, and the recreational herring fishery is discussed in section E.6.4.2.1.

Analysis of the impacts of the herring FMP on small businesses is complicated by the lack of an existing reporting system that covers the entire herring industry. As discussed in section E.6.1.6, there are three basic sources for herring data: the NMFS vessel logbook database, the NMFS dealer weighout database, and a Maine DMR database that is constructed from the NMFS vessel logbook database and information obtained from vessels that do not use the logbook system. The

differences between these three databases are summarized in Table 66 below.

In order to perform the IRFA, all three databases were examined. The Maine database was used to identify the 61 vessels in 1997 that landed at least one trip of more than one metric ton (2,205 pounds) of herring. It was combined with the vessel trip report database in order to capture those vessels that may have multiple trips of less than one metric ton. The dealer database was used as an additional source to determine total revenues and herring revenues. Information on the value of catch is in both the logbook and dealer databases, but there are often differences between the amounts in each for a particular vessel. In all cases, the largest value for total revenues and herring revenues was used in the analysis. For those vessels that did not have herring landings reported in the logbook database, the amount of herring landed according to the Maine database was multiplied by the 1997 average price of \$0.05 per pound to establish an estimate of herring revenues. This process identified 201 vessels as landing herring, even if by one pound, in the Northeast region in 1997. Total herring revenues identified in these databases is less than that reported for 1997 (section E.6.4.2.2, Table E.10). This may be due, in part, to using the average price for pound rather than the actual (unknown) price per pound for many of the landings.

None of these individual data sources include all of the vessels that landed herring in 1997. If all three databases are examined individually, 257 vessels appear to have landed herring in 1997. An examination of the dealer database identified numerous apparent errors in the data, such as landings recorded under the wrong permit number. As a result, the dealer database was not used to identify vessels that landed herring. In addition, the recorded revenues and landings of each boat differ (usually by only a small amount) in each database. All of the vessels identified are small business entities with annual revenues of less than \$3 million.

Most of the vessels that landed herring and are included in Table 67 did not have directed fishing on herring, but landed herring as a bycatch. Because some vessels may target herring for a small number of trips in each year, vessels were determined to participate in a "directed" fishery for herring if they landed at least one trip of one metric ton (2,205 pounds) or more. This criteria coincides with the FMP's general treatment of 2,000 pounds or less of herring as an incidental catch during any of the closures. There were only 61 vessels in 1997 that landed at least one trip of more than one metric ton of herring. The herring landings by these vessels were 214.5 million pounds (97,300 metric tons), amounting to 99% of all herring landings in the Northeast, while the remaining 185 vessels landed less than 0.15 million pounds (71 metric tons) in 1997. Expressing these in terms of revenues, the 61 boats derived about \$10.7 million in revenues from herring fishery, while the other vessels' total herring revenues did not exceed \$8,000. Therefore, for RFA purposes, the set of affected vessels are limited to these 61 boats in the directed herring fishery. The 61 vessels still included, however, some boats with only marginal activity in the herring fishery. As Table 68 shows, 17 vessels out of 61 derived less than \$1,000 from herring. The average total revenues for these vessels were \$245,959. The average number of herring trips (landing more than one metric tons) for these vessels was only three trips.

The remaining two groups of boats constitute the majority of the vessels that are likely to be

affected by the proposed regulations. The 25 vessels in Group II (herring revenues of more than \$1,000 to less than \$30,000) derived, on the average, \$5,534 from herring revenues. 19 vessels in Group III (\$30,000 or more in herring revenues), earned, on average, \$524,000 from herring in 1997. The average revenue per vessel from all species was \$361,187 for Group II vessels, and \$821,557 for the Group III vessels. Group II and Group III vessels reflect a greater degree of dependency on herring. Group II vessels, on average, obtain 11.5% of their total income from herring, and Group III vessels earn 58% of their total revenues from herring. One vessel in Group II and 6 vessels in Group III earn more than 90% of their total revenues from herring. All of these boats are small business entities with annual total revenues of less than \$3 million (Table 2).

The 44 boats included in Groups II and III constitute 22% of the 201 boats that landed some herring in 1997 and 72% percent of the 61 boats in the directed herring fishery (Table 3). The regulations would mostly affect the 19 boats in Group III that landed about 99% of the herring in 1997. These boats alone constitute 31 % of all business entities in the directed herring fishery. Therefore, whether the affected set of vessels is defined to include only 61 boats or all of the 201 boats that landed herring in 1997, the regulations will affect more than 20% of the businesses in the fishery. According to the RFA, if more than 20% of the small businesses in a particular industry are affected by the regulations, the regulations are considered to have an impact on a “substantial number” of these entities. Since the proposed regulations will affect at least 22% percent of all vessels in the herring fishery, the “substantial number” criteria will be met.

Economic impacts on small business entities are considered to be “significant” if the proposed regulations are likely to cause any of the following:

- a) a reduction in annual gross revenues by more than 5 percent;
- b) an increase in total costs of production by more than 5 percent as a result of an increase in compliance costs;
- c) an increase in compliance costs as a percent of sales for small entities at least 10 percent higher than compliance costs as a percent of sales for large entities;
- d) costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or
- e) a number (two percent as a “rule of thumb”) of small businesses being forced to cease business operations.

The proposed regulations will affect both the revenues and compliance costs of the vessels in the herring fishery. The determination of “significant impacts” is based on criteria ‘a’. The impacts of compliance costs in terms of criteria ‘c’ and ‘d’ are discussed in section E.7.3.10. Because of a lack of current cost data for mid-water trawl and purse seine vessels (see section E.7.3), this analysis does not estimate increases in costs of production.

7.3.4.1 Impacts on Vessel Gross Revenues:

Area 1A TAC

The proposed regulations include area TACs and closed spawning areas as the major conservation provisions for the herring resource. While the proposed overall TAC exceeds current domestic landing levels, the proposed action reduces the Management Area 1A TAC from 70,900 metric tons in 1997 to 45,000 metric tons for 1999, that is, by 36.5%. Since this area constituted more than half of the herring landings (70%) and revenues (67%) in 1997, this reduction will have some negative impacts on the herring vessels that fish in this area. The extent of the revenue reduction will depend on the ability of the vessels to recover some of their losses in other areas. The FMP will allow the landing of up to 2,000 pounds of herring after the TAC is reached in a particular area. For this reason, the analysis assumes that there will not be any impact on vessels that did not land at least one trip of more than a metric ton in 1997.

The impact of the TAC is evaluated on the 61 vessels that constituted the universe of affected vessels in 1997 and caught most of the herring (Table 69). Total revenues could not be determined for ten of these vessels. The analysis assumes that the revenues each vessel obtains from Management Area 1A will decrease by 36.5% due to the TAC established under the FMP. This represents the maximum revenue loss assuming that the vessels will not be able to move their fishing effort into other areas and recover some of their losses, and that the reduction in the TAC will be distributed equally among all vessels. Under these circumstances, 15 of the 61 boats (24.5%) will experience more than a 5% reduction in their total revenues. The total revenues of 13 boats that landed about 90% of all herring in 1997 may decline more than 5% because of this action. These 13 boats that may have more than a 5% decline in total revenues are in the group that depends heavily on herring (70% percent of their revenues, on average). 34 vessels will experience a more than 20% reduction in herring revenues. Based on the first criteria, the proposed TAC will have a significant impact on a substantial number of small business entities in the herring fishery.

The percentage impacts on profits may be less than the impacts on revenues. Without a shift in effort to other areas, the number of days fishing will decline and the operational costs such as ice, fuel, oil, food will decrease. The shares paid to the crew will decrease as well. Fixed costs, however, will remain constant and may become a larger fraction of the reduced total revenues. Due to the lack of cost data for herring vessels, the impacts on net revenues and profits could not be estimated.

Since the estimations shown in Table 69 are based on the assumption of zero effort displacement, they represent the maximum possible losses. It is more likely, however, that vessels will shift their efforts to other areas and recover part of their losses from these areas. The proportion of landings and revenues that can be recovered as a result of an effort shift cannot be estimated with any certainty. One of the fundamental principles of the management program is that effort should be shifted away from Management Area 1A in order to insure a sustainable fishery, and that herring is available in other areas. But given the fact that most of the herring vessels historically derive a major portion of their revenues from Management Area 1A, it will require nearly a 70% percent revenue recovery from the other areas to prevent a more than 5% reduction in the total revenues

of these boats⁴. For these reasons, even with an effort shift, the proposed action may have a significant impact on a substantial number of herring boats, unless the revenue recovered from the other areas completely offsets the revenue losses from area 1A. The opportunities available to the vessels, however, to increase their herring catch in other areas/period are discussed below in section 8.3.8, under the “Mitigating Factors”.

Under the non-preferred options, the Management Area 1A TAC would be reduced between 15% to 16%, therefore, the revenue reduction will be less compared to the proposed option. Given that the 19 vessels in Group III derive, on the average, 43% of their total revenues from Management Area 1A, a 15 percent reduction would result in approximately a 6.5% reduction in total revenues. This would also meet the criteria for significance. While in the short term the non-preferred option reduces the impacts on small businesses, it increases the risk of overfishing the inshore Gulf of Maine herring resource and does not encourage the spreading of effort into other areas. This could result in more severe impacts on small businesses in the future, as it may become necessary to cease all fishing in this area for an extended period until the Gulf of Maine component recovers from a future overfished condition. As an example from recent history, it took over 10 years for the Georges Bank spawning component to recover from overfishing in the 1970's.

Spawning Closures

In addition to the expected reduction in herring landings with the proposed Management Area 1A TAC, the proposed spawning closures will also have an impact on herring landings and revenues. A complete discussion of these impacts are provided in section E.7.3.3. The total impacts of these closures are estimated to be a reduction of 10,322 metric tons in herring landings. The actual decline in landings due to the spawning closures is likely to be less, however. The displacement of effort to other areas, opening of a large area south of 42° 30'N to fishing by the proposed action, and the interaction of the spawning closures with the Management Area 1A TAC will reduce the negative impacts on landings and revenues. Since the closures are almost entirely within Management Area 1A, any reduction in landings due to the spawning closures will also count for part of the reduction under the TAC. In other words, the reduction of 10,322 metric tons in landings because of the spawning closures will also take care of about 40 percent reduction of the proposed 25,900 metric tons reduction in Management Area 1A landings. The net impact of the TAC and spawning closures on Area 1A landings will probably not exceed the 25,900 metric tons reduction. The RFA analysis provided for Management Area 1A TAC impacts includes most of the total impacts of the proposed spawning closures as well. A small part of the spawning closures lie within the boundaries of Management Area 1B. The estimated reduction in herring landings from this area due to the spawning closures is 842 metric tons, and estimated reduction in revenues is about \$93,000. Clearly, this additional impact is in the same range of impacts

⁴ For example, the 19 boats in Group III derive 43 percent (on average) of their total revenues from Management Area 1A. If 43% of their total revenues come from the area (on average), then recovery in other areas of 68% of revenues lost from Area 1A results in a 5% revenue loss ($0.365 \times 0.32 \times 0.43 = 0.05$ of total revenues, a decline of 5% from the original average value).

discussed above for the Management Area 1A TAC, and strengthens the conclusion that the proposed measures may reduce the gross revenues of a substantial number of vessels by more than 5 percent.

	The number of vessels	Herring landings Per Vessel (lbs)* (Mean)	Annual herring Landings (lbs)* (Group totals)	Herring revenues Per Vessel (\$) (Mean)	Total Annual Revenue Per Vessel (\$) (Mean)
Dealer's Data Only	56	353,913	19,819,143	20,411	21,226
Logbook only	77	962	74,088	48	879
Maine Data only	14	684,936	9,589,104	34,247	Missing
Maine and Dealer's Data	4	2,858,779	11,435,115	142,904	143,285
Dealer's and Logbook	63	1,837	115,724	227	1,275
All Data Sources	37	6,130,031	226,811,134	**317,215	**306,333
Total	257	1,056,564	271,536,848	54,024	55,137

Table 66 - The number of vessels and their activity by database (1997)

Note: The reason the mean herring revenue per vessel seem to exceed total revenue per vessel for this group of 37 vessels is due to the way the revenues per vessel are calculated. Herring revenue per vessel shows the maximum of the vessel's revenues from three databases, i.e., Maine, logbook and dealer's. Since Maine data doesn't have total revenues, the total revenue per vessel is the maximum of revenues from dealer's and logbook data. The herring revenues in the Maine data exceeded the revenues reported in other data (logbook and dealer's) for some vessels, increasing the mean value for all. Since there was not a corresponding total revenue number in the Maine data, the maximum total revenue corresponded to the value in either logbook or dealer's data, falling short of mean herring revenue per vessel.

	Number Of Vessels	Gross Tonnage (Mean)	Herring Revenue as a % of Total Revenue	Herring Landings Per Trip (lbs)	Herring Revenue per Vessel (Mean)	Total Revenue per Vessel (Mean)	Herring Revenue Group Totals	Herring Revenue as a % of Fleet Revenue
1) Directed Fishing⁽¹⁾								
Dependency Class: 0-25%	36	114	72.5%	39,378	\$19,046	\$446,092	\$685,676	6.4%
Dependency class:>25-50%	3	76	37%	33,053	\$61,982	\$195,012	\$185,946	1.7%
Dependency Class: >50-75%	5	86	74%	93,912	\$441,919	\$572,675	\$2,209,597	20.6%
Dependency Class: >75-100%	7	157	99%	144,148	\$1,024,816	\$1,037,357	\$7,173,714	66.8%
Subtotal	51						\$10,254,933	
1) Non-directed Fishing								
Dependency class: 0 – 25%	134	39	<1%	185	\$50	\$134,978	\$6,674	<0.1%
Dependency Class:>25-50%	2	17.5	32.5%	364	\$72	\$239	\$144	<0.1%
>50 –75%	3	9	71%	146	\$185	\$281	\$555	<0.1%
Dependency Class:>75-100% ⁽²⁾	1	9	83%	10	\$2	\$2.60	\$2	<0.1%
Subtotal	115						\$7,375	<0.1%
Fleet Total	159						\$10,262,308	95.5%

Table 67 - 1997 herring vessel revenues (Source: 1997 Combined Maine DMR/NMFS VTR/NMFS Dealer weighout database) (see text for definition of "directed" fishing)

Notes:

(1) Total revenues could not be determined for 10 "directed" herring vessels that caught 9,447,323 pounds of herring worth \$472,366. These vessels are not included in the analysis of total revenues.

(2) Total revenues appear in error for this dependency class.

	1997 Herring Revenue Per Boat			
	Group I : Less than \$1,000	Group II : \$1,000- \$29,000*	Group III. Greater than \$30,000	All
Total number of vessels	17	25	19	61
Average gross tons	76	106	146	112
Average length	59	70	81	71
Average number of trips per vessel	3	11	78	30
Average total revenue per vessel (\$)	\$245,959	\$361,187	\$821,557	\$524,886
Annual herring landings (Group totals, in lbs)	157,870	2,767,329	211,620,800	214,545,999
Annual herring revenue (Group Totals, in \$)	\$7,894	\$138,366	\$10,581,040	\$10,727,300
Average annual herring revenue (\$) per vessel	\$464	\$5,534	\$556,896	\$175,857
Average herring revenue as a percent of total revenue, per vessel	<1%	11.5%	58%	25.8%
Number of vessels which derived 90 percent or more of their revenues from herring	0	1	6	7

Table 68 - The numbers and the activity of vessels with directed herring fishing by annual herring revenue

Notes:

- (1) A vessel is considered to participate in a 'directed' herring fishery if it lands at least one trip of one metric ton or more.
- (2) Total revenues could not be determined for 10 vessels (5 in Group I, 4 in Group II, and 1 in Group III). These vessels were not considered when determining average total revenues.
- (3) Length/GRT could not be determined for 8 vessels (3 in Group I, 4 in Group II, and 1 in Group III). These vessels were not considered when determining average length/GRT.
- (4) Herring revenues for a single vessel never exceeded \$20,000 in Group II.

	Annual Herring Revenue Per Boat			
	Group I : Less than \$1,000	Group II : \$1,000- \$29,000*	Group III. Greater than \$30,000	All
Total number of vessels	17	25	19	61
Average Area 1A Herring Revenues as a % of Total Revenues	0.9%	3.9%	42.8%	16.9%
Area 1A Herring Revenues as a % of All Herring Revenues				
Mean	53%	45%	70%	55%
Median	100%	0%	84%	79%
Reduction in Total Revenues (number of vessels)				
0 - < 5%	12	19	5	36
5 - < 20%	0	2	5	7
>= 20%	0	0	8	8
Reduction in Herring Revenues (number of vessels) ⁽¹⁾				
0 - < 5%	8	13	2	23
5 - < 20%	0	1	3	4
>= 20%	9	11	14	34
Total Herring Landings	157,870	2,767,329	211,620,800	214,545,999

Table 69 - Impacts of the Management Area 1A TAC on the revenues of herring vessels
Note:

(1) Total revenues could not be determined for 10 vessels (5 in Group I, 4 in Group II, and 1 in Group III). These vessels were not considered when determining impacts on total revenues.

7.3.5 Indirectly Affected Industries

As described above, the Management Area 1A TAC and the spawning closures may have a direct impact on vessel revenues if boat operators are unable to catch herring in other areas that will replace the revenues lost due to reduced catches in the closed areas. These management measures could also have an impact on the dealers and processors that purchase herring. Any significant reduction in herring landings may increase the ex-vessel price, increasing dealer and processor costs (while at the same time reducing the impact of reduced catches on vessel operators). How much of this increase can be passed on to consumers is uncertain. With limited alternatives to herring for lobster bait, for example, dealers may be able to increase prices enough to cover their increased costs. This may not be an option for the sardine canneries, however, as consumers can choose from a wide variety of fish products. Hu et al. (1983) developed a simple demand function that estimated a 10% increase in the price for canned sardines would result in a 6% drop in

consumption, but this model has not been updated. Herring ex-vessel prices, however, have remained almost constant in nominal terms for the last twenty years (and declined in real terms), in spite of a wide range of catch levels (section E.6.4.2.2). For this reason, it is uncertain if ex-vessel prices would increase if the supply of herring is restricted by the management measures.

7.3.6 Compliance Costs

Vessels, dealers, and processors will incur additional costs in order to comply with the requirements of the management plan. These economic impacts of the management program are described in detail in sections E.7.3.8 and E.7.3.8. The following discussion summarizes the compliance costs to the industry.

Vessels, dealers and processors will be required to obtain permits and comply with mandatory reporting requirements. Since some participants in the fishery already have a federal permit and comply with reporting requirements established by another fishery, the costs are estimated for new participants only. In the case of these management measures, the compliance costs are primarily due to the time required to complete and submit the necessary forms. Total vessel costs for these requirements are estimated as \$7.80 for vessel permits, \$25.32 for operator permits, \$27.00 for vessel trip reports, and \$52.00 (maximum) for interactive voice reports. Total compliance costs per vessel are thus \$112 per vessel for these measures. The total cost for dealers is estimated to be \$1.58 for permits and \$78.70 for weekly landing reports, for a total of about \$80 per dealer. The compliance costs for processors is also estimated to be \$1.58 for permits and \$7.83 for an annual report, or a total of \$9.41 per processor. These costs are considered insignificant.

Vessels that intend to harvest more than 500 metric tons of herring, or that harvested 500 metric tons of herring in the previous year, will be required to operate a VMS (section 3.10). The annualized cost per vessel to purchase, install, and operate a VMS is estimated to be \$2,700. Additional costs are incurred due to burden-hour estimates of the requirements associated with VMS, estimated as an additional \$111 per vessel. At the 500 metric tons threshold, this is about 4% of annual revenues. When compared to the average herring revenues of the 19 vessels that landed most of the herring in 1997 and who would be required to have a VMS if based on 1997 landings, this cost is equal to about 0.5% of the average revenues for this group.

The compliance costs for the FMP will not result in an increase in the total costs of production by more than 5%. All participants in the industry are small entities; therefore, compliance costs for small entities do not differ from those for large entities. Costs of compliance do not represent a significant portion of capital available to small entities. The action is not considered significant according to these criteria.

7.3.7 Mitigating Factors

The management measures are designed to minimize the impacts on the small businesses in the herring fishery. In addition, whenever possible the measures are designed to minimize the impacts on those vessels that land a small amount of herring. Specific examples of actions taken to

mitigate the impacts of the management measures are listed below.

TACs

The TACs are determined for each of four management areas. As the TAC is approached in a management area, the days that fishing are allowed in that area are reduced. Fishing will still be allowed in other management areas, providing an opportunity for vessels to continue to catch herring. While traveling to another area may increase operating costs, it provides an opportunity for vessels to continue fishing as long as the TAC is not reached in all areas. In addition, larger vessels may decide to completely shift their fishing operations to another area rather than be restricted to certain fishing days. This may reduce fishing pressure in one area, extending the season for those vessels that do not choose or are unable to transit into another area. Significantly, industry participants supported the TACs that are being recommended by the management plan, an indication that they believe the benefits of the TAC system outweigh the possible short-term impact on revenues.

When fishing is restricted in an area because the TAC is being approached or has been reached, vessels are still allowed to land up to 2,000 pounds of herring. While this incidental catch allowance on is not sufficient to justify a directed fishery for herring (as the value is only about \$100), it does allow vessels that catch small amounts of herring to land their catch rather than have to discard it. This reduces the burden on those vessels that have a small herring catch in the process of prosecuting other fisheries, while helping to minimize discards.

Spawning Closures

The spawning closures target specific areas at specific times. This leaves large areas open to herring fishing so that vessels can continue to fish outside the closures. The proposal actually opens a large area that had been closed to spawning under state regulations, further reducing the impact of the closures on small businesses. The closure boundaries were also designed to extend only to state waters, rather than to the shore. This provides an opportunity for vessels to fish for herring in state waters, subject to restrictions adopted by the states. The measure adopted by the Commission will allow fishing for herring in state waters as long as vessels avoid catching a significant amount of herring with spawn. As with the TACs, vessels that catch only a small amount of herring while prosecuting other fisheries can land up to 2,000 pounds of herring from a closed area.

Reporting Requirements

The reporting requirements are designed to impose the least burden on those vessels that land a small amount of herring. Only those vessels that intend to catch more than 500 metric tons of herring are required to install and operate a VMS. This avoids the cost burden of a VMS on those vessels whose landings of herring would not support the cost of the system, while providing VMS coverage on the boats that landed over 90% of the herring in 1997. Interactive voice response (IVR) reports are required on a weekly basis for those vessels that have a VMS, and on an "as necessary" basis for a boat that catches more than 2,000 pounds of herring on a trip in any given week. Any vessel that does not land 2,000 pounds of herring on a trip does not need to submit an

IVR report.

7.3.8 Identification of Overlapping Regulations

The proposed action does not create overlapping regulations with any state regulations or other federal laws. The FMP was closely coordinated with the Atlantic States Marine Fisheries Commission in order to insure a complementary management scheme in state and federal waters. The Commission has adopted an amendment to its Atlantic herring management plan that will be implemented through state regulations. As noted in section 3.12, the Commission amendment is nearly identical to the FMP. This insures that management of herring will be consistent in both state and federal waters.

7.3.9 Conclusion

The preceding Regulatory Flexibility Analysis and the relevant sections of RIR indicate that the regulations proposed in Atlantic herring FMP will have “significant impacts” on a substantial number of small businesses.

7.4 Endangered Species Act (ESA)

Section 7 of the Endangered Species Act requires federal agencies conducting, authorizing or funding activities that may affect threatened or endangered marine species to ensure that those effects do not jeopardize the continued existence of listed species. The Council has concluded that the Atlantic Herring FMP and the prosecution of the herring fishery may affect several listed species but is not likely to jeopardize their continued existence. See section E.7.2.11 of this document for a discussion of impacts on ESA-listed species.

7.5 Marine Mammal Protection Act (MMPA)

The New England Fishery Management Council has reviewed the impacts of the Atlantic Herring FMP on marine mammals and concludes that this management action is consistent with the provisions of the MMPA and will not alter existing measures to protect the species likely to inhabit the management unit. See section E.7.2.11 for a discussion of these impacts.

7.6 Coastal Zone Management Act (CZMA)

7.6.1 States Contacted and Council Determination of Consistency with State Programs

The coastal zone management plans of the following states were reviewed to determine the consistency of the fishery management plan with the state programs: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. The FMP documents and the following letters giving the determination were mailed to all affected states.

7.6.1.1 State contacts

Ms. Fran Rudoff
Coastal Program Manager
State Planning Office
State House Station #38
Augusta, ME 04333

Mr. David E. Hartman, Coastal Program
Manager
New Hampshire Coastal Program
Office of State Planning
2-1/2 Beacon Street
Concord, NH 03301

Ms. Peg Brady, Director
Coastal Management Program
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, MA 02202

Mr. Charles H. Evans, Director
Office of Long Island Sound Programs
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

Mr. Grover Fugate, Executive Director
Rhode Island Coastal Resources Council
Oliver H. Stedman Office Building
4808 Tower Hill Road
Wakefield, RI 02879

Mr. George Stafford, Director
NY Division of Coastal Resources
41 State Street
Albany, NY 12231-0001

Mr. Richard Kropp, Director
Attention: Mark Fedorowycz
Land Use Regulation Program
NJ Department of Environmental Protection
PO Box 439, 501 East State Street
Trenton, NJ 08625-0409

Ms. Gwynne Schultz, Director
Coastal Zone Management Division
Maryland Department of Natural Resources
580 Taylor Ave., Tawes State Office Bldg,
E-3
Annapolis, MD 21401

Ms. Sarah W. Cooksey, Administrator
Delaware Coastal Management Program
Dept of Natural Resources and Env Control
89 Kings Highway
Dover, DE 19901

Mr. E. James Tabor
Pennsylvania Coastal Zone
Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street, 10th Floor
Harrisburg, PA 17105

Ms. Laura McKay, Environmental Program
Manager
Virginia Coastal Resources Management
Program
629 East Main Street, 6th Floor
Richmond, VA 23219

Ms. Donna D. Moffitt
North Carolina Division of Coastal
Management
2728 Capital Boulevard
Raleigh, NC 27604

7.6.2 CZMA Letters

Undated copies of the CZMA transmittal letters follow this section.

7.6.3 State Concurrences

No state concurrences with the Council's determinations have been received at the time of the submittal of this FMP.

New England Fishery Management Council

5 Broadway, Saugus, MA 01906-1036
Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancaleone

Executive Director
Paul J. Howard

Mr. Charles H. Evans, Director
Office of Long Island Sound Programs
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

RE: Atlantic Herring FMP Consistency Determination

Dear Mr. Evans:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal waters. As a result of this cooperation, the Commission recently adopted Amendment One to its

Atlantic Herring FMP. This amendment will extend many of the management measures into state waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Department of Environmental Protection, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. The Connecticut Coastal Zone Management Program objective is to coordinate planning and regulatory activities of public agencies at all levels of government to insure maximum protection of coastal resources while minimizing conflicts and disruption of economic development (Section 22(a)(9)). In Section 22(a)(9)(15)(G) that intention includes the prevention of degradation or destruction of finfish. This objective is consistent with the Atlantic herring FMP, because the FMP will conserve the resource and optimize yield while preventing overfishing.

To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

5 Broadway, Saugus, MA 01906-1036
Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancalone

Executive Director
Paul J. Howard

Ms. Sarah W. Cooksey, Administrator
Delaware Coastal Management Program
Dept of Natural Resources and Env
Control
89 Kings Highway
Dover, DE 19901

RE: Atlantic Herring FMP Consistency Determination

Dear Ms. Cooksey:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal

waters. As a result of this cooperation, the Commission recently adopted Amendment One to its Atlantic Herring FMP. This amendment will extend many of the management measures into state waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Division of Fish and Wildlife, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. The Coastal Waters Policy is Section 5.A.3 of the Delaware Coastal Program Implementation Plan (CPIP). Among the "Specific CMP Policies for Coastal Waters Management," the state maintains and protects beneficial uses of the coastal waters *including boating and fishing*. Included within this policy is the objective to maintain water quality at a level to *support the propagation of fish species*. Section 5.C.3 of the Program Implementation Plan states that a *sustainable yield of fish* should be assured by establishing harvesting quotas, equipment and seasonal limitations, and licenses and other requirements. The Section also states that the wise use and enjoyment of fish is encouraged.

The Atlantic herring FMP establishes total allowable catch limits in order to prevent overfishing and insure the development of a sustainable fishery. Since a primary objective of the Atlantic Herring FMP is to achieve optimum yield, to the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

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Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancalone

Executive Director
Paul J. Howard

Ms. Peg Brady, Director
Coastal Management Program
Executive Office of Environmental
Affairs
100 Cambridge Street
Boston, MA 02202

Dear Ms. Brady:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal waters. As a result of this cooperation, the Commission recently adopted Amendment One to its Atlantic Herring FMP. This amendment will extend many of the management measures into state

waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Fish and Game Department, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. The Atlantic herring FMP appears to agree with the objectives in Massachusetts's 1997 Ocean Resources Policy #1 to support the development of environmentally sustainable aquaculture, for commercial and enhancement purposes, and to minimize adverse impacts upon the coastal and marine environment.

To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

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Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancalone

Executive Director
Paul J. Howard

Ms. Gwynne Schultz, Director
Coastal Zone Management Division
Maryland Department of Natural
Resources
580 Taylor Ave., Tawes State Office
Bldg, E-3
Annapolis, MD 21401

RE: Atlantic Herring FMP Consistency Determination

Dear Ms. Schultze:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal

waters. As a result of this cooperation, the Commission recently adopted Amendment One to its Atlantic Herring FMP. This amendment will extend many of the management measures into state waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Department of Natural Resources, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. Maryland does not have a general fish conservation policy in its Coastal Zone Management Program, however the state has aggressive coastal zone regulations to manage fish stocks. Maryland law section 4-710 specifically restricts methods that can be used for finfishing (types and sizes of nets, when and where trawls can be used, etc.) It may be more restrictive than the proposed FMP regulations, but this does not present a conflict because federal law can be less restrictive than state law. The law also prohibits fish less than specific minimum sizes, however Atlantic herring is not one of the stocks regulated by a minimum size limit. Maryland is also subject to an interstate compact to manage fish stocks. Atlantic herring in state waters will continue to be managed under the Commission's Atlantic herring FMP, developed in close coordination with the Council. The Atlantic herring FMP is not expected to conflict with the Commission's amended FMP.

The Atlantic Herring FMP uses a variety of management measures to achieve optimum yield. To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

5 Broadway, Saugus, MA 01906-1036
Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancaleone

Executive Director
Paul J. Howard

Ms. Fran Rudoff
Coastal Program Manager
State Planning Office
State House Station #38
Augusta, ME 04333

Dear Ms. Rudoff:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal waters. As a result of this cooperation, the Commission recently adopted Amendment One to its Atlantic Herring FMP. This amendment will extend many of the management measures into state

waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Department of Marine Resources, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. Section 6.72(54) of Maine's Final EIS addresses *fisheries resources*. Maine's policy is to assure that activity in the coastal wetlands *conserve marine fisheries* through a permit procedure. Section 6.72(57) requires Maine to conserve marine resources in coastal waters. Maine's coastal zone management laws and policies mostly address on-shore activity and development that are not expected to experience major impacts from the Atlantic herring FMP. Since the Atlantic herring FMP aims to conserve the stock as does Maine's policy, no inconsistencies arise.

To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

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Chairman
Joseph M. Brancalone

Executive Director
Paul J. Howard

Ms. Donna D. Moffitt
North Carolina Division of Coastal
Management
2728 Capital Boulevard
Raleigh, NC 27604

RE: Atlantic Herring FMP Consistency Determination

Dear Ms. Moffit:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal waters. As a result of this cooperation, the Commission recently adopted Amendment One to its

Atlantic Herring FMP. This amendment will extend many of the management measures into state waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Marine Resources Commission, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. The Coastal Zone Management Program designates fishery management to the North Carolina Marine Fisheries Commission (Fisheries Commission). Statue 143B-389.51 provides that the Fisheries Commission has the authority to implement law relating to *coastal fishing and coastal fisheries*. Among its duties, the Fishery Commission must manage, restore, develop, *conserve and regulate the marine resources; and implement management measures regarding marine fisheries consistent with authority conferred on North Carolina by the federal government*. Statue 113-134.1 further directs the Fishery Commission to exercise regulatory authority over the conservation of marine fisheries. Statue 113-228 permits the Fishery Commission to adopt federal laws that comply with state law and *exempts* the Fishery Commission from conflicting federal law.

The Atlantic Herring FMP uses a variety of management measures to achieve optimum yield. To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

5 Broadway, Saugus, MA 01906-1036
Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancaleone

Executive Director
Paul J. Howard

Ms. Donna D. Moffitt
North Carolina Division of Coastal
Management
2728 Capital Boulevard
Raleigh, NC 27604

RE: Atlantic Herring FMP Consistency Determination

Dear Ms. Moffit:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal waters. As a result of this cooperation, the Commission recently adopted Amendment One to its

Atlantic Herring FMP. This amendment will extend many of the management measures into state waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Marine Resources Commission, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. The Coastal Zone Management Program designates fishery management to the North Carolina Marine Fisheries Commission (Fisheries Commission). Statue 143B-389.51 provides that the Fisheries Commission has the authority to implement law relating to *coastal fishing and coastal fisheries*. Among its duties, the Fishery Commission must manage, restore, develop, *conserve and regulate the marine resources; and implement management measures regarding marine fisheries consistent with authority conferred on North Carolina by the federal government*. Statue 113-134.1 further directs the Fishery Commission to exercise regulatory authority over the conservation of marine fisheries. Statue 113-228 permits the Fishery Commission to adopt federal laws that comply with state law and *exempts* the Fishery Commission from conflicting federal law.

The Atlantic Herring FMP uses a variety of management measures to achieve optimum yield. To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

5 Broadway, Saugus, MA 01906-1036
Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancaleone

Executive Director
Paul J. Howard

Mr. David E. Hartman, Coastal Program
Manager
New Hampshire Coastal Program
Office of State Planning
2-1/2 Beacon Street
Concord, NH 03301

Dear Mr. Hartman:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal waters. As a result of this cooperation, the Commission recently adopted Amendment One to its Atlantic Herring FMP. This amendment will extend many of the management measures into state

waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Fish and Game Department, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. The Atlantic herring FMP appears to agree with the objectives in Massachusetts's 1997 Ocean Resources Policy #1 to support the development of environmentally sustainable aquaculture, for commercial and enhancement purposes, and to minimize adverse impacts upon the coastal and marine environment. New Hampshire's coastal program policy #7(2) aims to : *conserve, manage, maintain, restore and enhance the fish of the state's waters*. Also included in New Hampshire's coastal laws is Section 483-B:2(VII) which mandates the protection of commercial fishing. Because the Atlantic herring FMP aims to protect the stock's sustainability and future fishing rights, it is consistent with the policy and laws of Massachusetts.

To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

5 Broadway, Saugus, MA 01906-1036
Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancalone

Executive Director
Paul J. Howard

Mr. Richard Kropp, Director
Attention: Mark Fedorowycz
Land Use Regulation Program
NJ Department of Environmental
Protection
PO Box 439, 501 East State Street
Trenton, NJ 08625-0409

RE: Atlantic Herring FMP Consistency Determination

Dear Mr. Kropp:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries

Commission in order to insure consistent management of the resource in both state and federal waters. As a result of this cooperation, the Commission recently adopted Amendment One to its Atlantic Herring FMP. This amendment will extend many of the management measures into state waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Department of Environmental Protection, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. New Jersey's state law N.J.S.A. 23:2B-6 regarding fish and wildlife authorizes the commissioner of fish and game to : prohibit, limit, condition, require or establish the use of specified types of fishing gear; regulate the size, number and quantity of specific [fish] species that may be taken; regulate the areas to be opened or closed to their taking, regulate the time and manner of their taking. The commissioner may also prescribe other limitations, conditions, or restrictions as is necessary and appropriate to the policy and purposes of state law; or establish and develop fisheries management areas and prescribe rules governing the use of such areas.

The Atlantic Herring FMP uses a variety of management measures to achieve optimum yield. These measures are consistent with those that can be implemented under New Jersey state law. To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

5 Broadway, Saugus, MA 01906-1036
Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancalone

Executive Director
Paul J. Howard

Mr. George Stafford, Director
NY Division of Coastal
Resources
41 State Street
Albany, NY 12231-0001

Dear Mr. Stafford:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons (GRT), and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal waters. As a result of this cooperation, the Commission recently adopted Amendment One to its Atlantic Herring FMP. This amendment will extend many of the management measures into state waters and will be implemented by individual state regulations. The Council's FMP and the

Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your State Department of Environmental Conservation, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. Policy 9 of the New York Coastal Zone Management Program calls for efforts to *increase use of fish* in freshwater and marine areas. Among the considerations it provides are consideration as to whether an action will impede future utilization of the State's recreational fish resource; and consideration that efforts to increase access *should not lead to over-utilization of the fish resource*. Policy 10 provides for further development of commercial fish occurring within the context of *sound fishery management principles, including consideration of OSY* (optimum sustainable yield) *levels and harvest restrictions*. It also provides the following guidelines: whether an action will impede existing utilization of future development of the state' commercial fishing resource and ensuring that the fishery resources are renewable.

All of the above measures have consistent goals and intended results as the Atlantic Herring FMP. To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

5 Broadway, Saugus, MA 01906-1036
Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancalone

Executive Director
Paul J. Howard

Mr. E. James Tabor
Pennsylvania Coastal Zone
Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street, 10th Floor
Harrisburg, PA 17105

Dear Mr. Tabor:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal waters. As a result of this cooperation, the Commission recently adopted Amendment One to its Atlantic Herring FMP. This amendment will extend many of the management measures into state

waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Department of Marine Resources, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. Chapter 57 of Pennsylvania Fishing and Boating Regulations addresses fisheries policy. The general policy of the state is to *protect, conserve, and enhance the quality and diversity of the fishery resources*. To achieve that objective, the State Fishing and Boating Commissioner is assigned to manage self-sustaining fish populations as a *renewable natural resource*. Since a primary objective of the Atlantic herring FMP is to achieve optimum yield, no inconsistency is anticipated. Although Pennsylvania specifically regulates some fish stocks and fishing gear in associated fisheries, Atlantic herring is not among them and there is therefore no conflict. The state also requires fishermen to have a license with the state and a permit to fish some species, but the Atlantic herring FMP will not interfere with this licensing provision.

To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

5 Broadway, Saugus, MA 01906-1036
Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancalone

Executive Director
Paul J. Howard

Mr. Grover Fugate, Executive Director
Rhode Island Coastal Resources Council
Oliver H. Stedman Office Building
4808 Tower Hill Road
Wakefield, RI 02879

RE: Atlantic Herring FMP Consistency Determination

Dear Mr. Fugate:
:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal

waters. As a result of this cooperation, the Commission recently adopted Amendment One to its Atlantic Herring FMP. This amendment will extend many of the management measures into state waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Department of Environmental Management, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. Section 300.11 of Rhode Island's Coastal Resources Management Program is the only part of its policy that directly addresses fisheries. As a section that permits and regulates aquaculture, it does not overlap with the Atlantic herring FMP; thus, there is no inconsistency.

To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

New England Fishery Management Council

5 Broadway, Saugus, MA 01906-1036
Tel (781) 231-0422 • Fax (617) 565-8937

Chairman
Joseph M. Brancalone

Executive Director
Paul J. Howard

Ms. Laura McKay, Environmental
Program Manager
Virginia Coastal Resources Management
Program
629 East Main Street, 6th Floor
Richmond, VA 23219

RE: Atlantic Herring FMP Consistency Determination

Dear Ms. McKay:

The New England Fishery Management Council is submitting the Atlantic Herring Fishery Management Plan (FMP) to the Secretary of Commerce for approval under Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act. Enclosed is a copy of the plan that establishes measures to prevent overfishing and allows the development of a sustainable herring fishery. The FMP controls fishing mortality by establishing a Total Allowable Catch (TAC) that is distributed to four management areas. As the TAC in an area is approached, vessels are required to take mandatory days out of the fishery in order to slow catch rates and encourage fishermen to move into other areas. Spawning closures are adopted to protect spawning aggregations of Atlantic herring. Vessels catching, taking, or harvesting herring must be less than 165 feet in length, cannot exceed 750 Gross Registered Tons, and cannot exceed 3,000 shaft horsepower. Vessels over 165 feet in length, or more than 750 GRT, can process herring subject to an annual specification. The plan also establishes permit and reporting requirements for Atlantic herring vessels, dealers, and processors. The FMP manages Atlantic herring as an open access fishery.

This FMP was developed in close cooperation with the Atlantic States Marine Fisheries Commission in order to insure consistent management of the resource in both state and federal waters. As a result of this cooperation, the Commission recently adopted Amendment One to its

Atlantic Herring FMP. This amendment will extend many of the management measures into state waters and will be implemented by individual state regulations. The Council's FMP and the Commission's amendment adopt complementary management measures for Atlantic herring throughout the range of the resource in U.S. waters.

Our approach in assessing the adverse impacts on offshore resources is described in section 7.1 (Environmental Consequences of the Proposed Action). The FMP was developed in concert with your Marine Resources Commission, which is responsible for your appropriate core law. Based on information provided by your office in the past, it appears that the state reserves the responsibility to have its agencies review consistency determination vis-à-vis the appropriate core laws. By way of this letter and the enclosed documents, we believe that we have fulfilled our obligation under your procedure.

We have reviewed the FMP in light of your Coastal Zone Management Plan and applicable regulations. As stated in Part I of the Coastal Resources Management Program Final EIS, Virginia has implemented *its own fisheries management program* that is implemented by the Marine Resources Commission and the Commission of Game and Inland Fisheries. The fishery management policy stresses the *conservation and enhancement of fish resources and the promotion of commercial and recreational fisheries to maximize food production and recreational opportunities, particularly for future generations*. Also included in Part II of the EIS are the goals to *minimize damage to productivity and diversity of the marine environment resulting from the disruption of fish population balances and to improve or maintain fisheries*. Virginia regulates the fishing of many species however Atlantic herring is not among them. Virginia Code 1950, sec 28.2-300 also requires fishermen to obtain a license from the state to fish and/or use a net, and requires fishermen to report their catch to the state as well. There appear to be no inconsistencies between Virginia regulations and the FMP..

The Atlantic Herring FMP uses a variety of management measures to achieve optimum yield. To the best of our understanding, we believe the FMP will be consistent with your program. We would appreciate hearing from you as soon as possible regarding our determination.

Sincerely,

Paul J. Howard
Executive Director

7.7 Paperwork Reduction Act (PRA)

The proposed management measures include twelve collection of information requirements subject to review by the Office of Management and Budget for compliance with the Paperwork Reduction Act. The proposed measures reference one collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0075. The estimated response time for foreign fishing vessel activity reports is 6 minutes per response. A summary of the new burden hours and costs to the public, as well as the costs to the government, for all twelve requirements is shown in Table 70. The supporting statements detailing each requirement are contained in Appendix VI, Volume II. These costs are included in the analysis of costs and benefits contained in section E.7.3. These requirements will not be implemented until OMB approval is received. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Requirement	Number of Entities	Items per Entity	Total Number of Items	Response Time	Total Burden	Cost to Public (1)	Cost to Government (2)
Open Access Atlantic Herring Permit	40	1	40	0.5	20	\$313.20	\$1,320
Operator Permits	40	1	40	1.0	40	\$1,013.20	\$1,320
Dealer Permits	50	1	50	0.083	4.15	\$79.00	\$1,650
Processor Permits	50	1	50	0.083	4.15	\$79.00	\$1,650
Permit Sub-Total					68.3	\$1,484.40	\$5,940
Processor Product Reports	50	1	50	0.5	25	\$391.50	N/A
Dealer Landing Reports	50	52	2,600	0.033	87	\$3,905	N/A
Vessel Trip Reports	40	12	480	0.083	40	\$1,080	N/A
IVR Reports:							
Weekly							
Occasional	25	52	1,300	.067	87.1	\$1,306.50	
	97	9	873	.067	58.5	\$877.50	\$989
Vessel Reports Sub-Total			2,653		175.6	\$3,264	\$989
Vessel Monitoring System							\$20,000
Installation	25	1	25	1.0	25	\$375	N/A
Verification requirement	25	1	25	.033	0.833	\$12.50	N/A
Reporting burden	25	4,560	114,000	.0014	159	\$2,394	N/A
Purchase and operation	25					\$67,500	
Exemption letter	10	1	10	.033	.33	\$5	\$8.33
VMS Sub-Total					185.4	\$70,286.50	\$20,008
Total						\$79,331.40	\$26,937

Table 70 – Summary of response burden and costs for requirements subject to the PRA.