

## **EAST COAST PELAGIC ASSOCIATION**

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October 14, 2004

Paul J. Howard, Executive Director  
Lewis Flagg, Chairman, Atlantic Herring Committee  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01960

Re: ECPA Proposal Amended/Amendment 1

Dear Paul and Lew:

Please see the enclosed amended East Coast Pelagic Association (ECPA) proposal for Amendment 1 to the Atlantic Herring Fishery Management Plan (FMP). The ECPA formulated this proposal in August of 2003 in response to the Council's initial timeline for Amendment 1.

The ECPA is submitting this amended proposal to update measures based on new information, provide clarification for some measures and restructuring for the Council's preferred method of packaging of primary measures.

### **Development of Amendment 1 Measures**

On October 14, 2004, the Herring Committee and the Advisory Panel will review an Issues Paper developed by the Plan Development Team (PDT) that is designed to assist in simplifying and further focusing measures in Amendment 1. The PDT has presented several questions for the Committee's consideration. The ECPA would like to provide the following input on the questions posed by the PDT. The Committee should:

- Consider eliminating alternatives that utilize the Control Date for Areas 2 & 3 in the fishery. When the Control Date was enacted its primary purpose was to address concerns of the fully utilized Area 1 fishery.
- Consider eliminating alternatives to change the start of the fishing year. The seasonal allocation of the Area 1A TAC already provides a mechanism to address concerns about the timing of the fishery. Changing the fishing year has many associated costs that are unnecessary at this time.

*F/V Ocean State - F/V Endeavor - F/V Challenger - F/V Araho - F/V Sunlight - F/V Starlight - F/V Persistence - F/V Relentless - F/V White Dove Too - F/V Osprey - F/V Western Venture - F/V Western Wave - F/V Heather Lynn - F/V Jennifer & Emily - F/V Providian - F/V Retriever - F/V Amy Marie*

- Consider eliminating some, if not all, effort control alternatives. There has been very little support from any stakeholders for layover days and seasonal quotas during the development of this amendment. Our members prefer the status quo “days out of the fishery” approach managed by the Atlantic Marine Fisheries Commission (ASMFC). These measures allow for the flexibility to annually address impacts to the fishery and the resource.
- Consider not developing a management alternative based upon the Bumblebee proposal. The goal of the past several months has been to simplify and pare down measures in this amendment and all but one of the measures proposed by Bumblebee are already incorporated into current measures. The proposal to further subdivide the Area 1A TAC can be addressed in future measures if a need is identified.
- Consider requesting the APA to identify which of their two proposals is preferred.
- Consider not incorporating the CHOIR proposal for a purse seine/fixed gear only area into any of the management alternatives. Current measures in the document include an area that encompasses Area 1. The CHOIR addition of an area east of Chatham is without foundation. Herring are not resident in the Chatham block, but rather pass through the area during seasonal migration periods.
- Consider eliminating the area management boundary changes that eliminate the Area 1A/1B line. This measure has received very limited support during the development of this Amendment. Some who had initially proposed this measure have now reconsidered this position.

On behalf of the ECPA, I would like to thank the Council and Committee for their consideration of our proposal in the development of Amendment 1 to the herring FMP, our members have worked hard to reach consensus around some very difficult issues. I also would like to encourage the Committee to be diligent on Thursday in their efforts to strive for a clear and meaningful public hearing document for Amendment 1.

Yours truly,

*Mary Beth Tooley*

Mary Beth Tooley  
Executive Director

# AMENDMENT 1 TO THE ATLANTIC HERRING FISHERY MANAGEMENT PLAN

## An Option submitted by the East Coast Pelagic Association

OVERVIEW: The East Coast Pelagic Association presents the Proposal for Amendment 1 to the Atlantic Herring Fishery Management Plan outlined below as a stand-alone option for consideration by the New England Fishery Management Council in its Amendment Process. The proposal was developed by its membership. The membership was explicit in trying to fairly consider the interests of those in the herring fishery who are not members of the Association. Measures contained in this proposal were decided by consensus of the participants. Unanimous consensus was reached for many of the measures and consensus by significant majority is noted for several measures.

### 1.0 OVERFISHING DEFINITION

*If stock biomass is equal or greater than  $B(msy)$ , overfishing occurs when fishing mortality exceeds  $F(msy)$ . If stock biomass is below  $B(msy)$  overfishing occurs when fishing mortality exceeds the level that has a 50% probability to rebuild stock biomass to  $B(msy)$ , in 5 years ( $F$  threshold). The stock is in an overfished condition when stock biomass is below  $\frac{1}{2}$  BMSY and overfishing occurs when fishing mortality exceeds  $F(threshold)$*

*The control rule also specifies risk adverse fishing mortality targets, accounting for the uncertainty in the estimate of  $F(msy)$ . If stock biomass is equal to or greater than  $\frac{1}{2}$  BMSY, the target fishing mortality will be the lower level of the 80 % confidence interval about  $F(msy)$ . When biomass is below  $B(msy)$ , the target fishing mortality will be reduced consistent with the five-year rebuilding schedule used to determine  $F$  (threshold).*

#### **RECOMMENDATION: Status Quo**

#### RATIONALE:

- Because the overfishing definition does not incorporate specific values for reference points, no major changes appear needed at this time.

### 1.1 MAXIMUM SUSTAINABLE YIELD

#### BACKGROUND

There is some scientific uncertainty in the current assessment of the Atlantic herring stock complex following the 2003 US/Canadian TRAC. Two assessments were presented at the TRAC, which did not result in committee consensus on the biomass of Atlantic herring in the Georges Bank/ Gulf of Maine stock complex. Given the debate, the Council requested

management advice of its Science and Statistical Committee. While the SSC was not able to evaluate the risk associated with the individual projections from the two stock assessments, the Committee did provide some advice:

- Current MSY (317,000 mt) is too high.
- A conservative (lower bound) estimate of MSY may be the average catch over the most recent 15–year period.
- Current yields may not jeopardize the stock complex as a whole but special consideration for individual stock components should be identified through a risk analysis.
- Current catch levels appear to be producing a biomass that is at least stable if not increasing over time.
- The retrospective pattern in the Canadian ADAPT estimates indicates that something is amiss in this model.
- Estimates of  $F(\text{msy})$  from 0.2 – 0.25 are reasonable and do not appear to be sensitive to the differences between the US and Canadian models.
- Scientists are already pursuing appropriate methods for identifying, if not resolving, the discrepancies between the models.

In light of the SSC advise, the PDT undertook a retrospective view of stock status 1960-1970 (period of relative abundance in which both US/Canadian models agree) that provided an average stock size of 1.13 million metric tons. Applying a precautionary lower  $F(\text{msy})$  of 0.2 to 1.13 mil. mt results in a MSY value of 226,000 mt. The US FPA assessment provides a reference point of MSY 222,000 mt. In development of an MSY proxy the PDT rounded the historical biomass of 1.13 million metric tons down to 1 million metric ton and applied a precautionary lower  $F(\text{msy})$  of 0.2 that results in an MSY of 200,000 mt.

In review of the three MSY values above:

- (1) MSY 226,000 – results based upon stock status 1960-1970.
- (2) MSY 222,000 – reference point resulting from the most recent US stock assessment.
- (3) MSY 200,000 – MSY proxy developed by the PDT to achieve a number less than US FPA reference point for the fishery.

\* Note: All three estimates apply a lower bound precautionary  $F(\text{msy})$  of 0.2.

**RECOMMENDATION: MSY for the resource should be based upon the US Forward Projection Analysis assessment MSY value of 222,000 mt.**

RATIONALE:

All science is based upon measures of confidence and levels of uncertainties. The recent US FPA is an innovative forward projecting model that utilizes the best available tools to assess the status of the resource. The Canadian VPA assessment is not a useful measurement tool and

should not be used to constrain confidence in the US Assessment of the biomass for the Georges Bank/Gulf of Maine herring stock. Many herring industry participants feel that this controversy in science is politically driven process that has not been based upon best available science.

### **US/Canadian Assessments:**

The Canadian assessment has several severe problems, the primary ones: (1) a model highly dependent upon catch-at-age with all US/Canadian labs reporting a significant aging problem, (2) surplus production is out of sync with recent landings and not sensible, and (3) does not provide reference points for the management of the resource. Additionally, while Canadian scientist utilize acoustics in the assessment of their stocks; they did not incorporate US acoustic data in this assessment.

Because of the major retrospective pattern of the VPA and problems with aging, and in recognition of major problems in the previous assessment, US stock assessment scientists pursued an age aggregate assessment utilizing a new forward projection model that has been successfully applied for other marine species, particularly in the western US and Canada. The FPA assessment is based upon eleven survey indices; including US and Canadian bottom trawl and larval surveys, and an internationally reviewed US acoustic survey. The US FPA assessment provides useful reference points for the fishery.

Note: All Canadian and US bottom trawl surveys show recent increases in abundance.

### **MSY Proxy:**

The PDT developed an MSY proxy of 200,000 mt as a placeholder until the next assessment because the SSC did not fully support the reference points from the US FPA. However, the SSC did not make a recommendation for an appropriate MSY value for the fishery. The primary advice of the SSC is “the effects of the catch distribution and risks to individual stock components may overwhelm any potential risks to the resource as a whole.” The appropriate application of this precautionary approach is found in the determination of OY and area TAC distributions, not in an MSY value containing multiple layers of caution that are cumulatively unnecessary and not scientifically based.

The best available science for determining MSY for the fishery is derived from the US FPA value of 222,000.

## **1.2 REFERENCE POINTS**

**RECOMMENDATION: The estimated reference point for F(msy) from 0.2-0.25, implied by both stock assessments presented at the US/Canadian 2003 Transboundary Resource Assessment Committee Meeting and recommended by the New England Fishery**

**Management Council's Science and Statistical Committee, is useful and appears reasonable.**

**RATIONALE:**

Both the US and Canadian assessments presented at the 2003 TRAC imply an  $F(msy)$  of 0.2-0.25. This target range recognizes the need for a pre-cautionary approach to establish removal rates until such time as there is greater scientific certainty to indicate a more precise fishing mortality rate.

**RECOMMENDATION: Reference points for the Atlantic herring fishery contained in the over fishing definition should be re-specified or updated through a peer-reviewed process and/or as stock assessments are completed.**

**RATIONALE:**

- Because the Atlantic herring resource has dynamic recruitment trends, it is necessary to incorporate greater flexibility into methods and processes to adjust reference points based upon "best available science" for the Atlantic herring fishery. An important assumption is that there will be more accurate scientific data as stock assessments and resource surveys are completed, that the reference points should be revisited in that context and, if necessary changed through a peer-reviewed process.

**NOTE: We request to reserve the right to provide further recommendations regarding appropriate MSY and OY reference points for the fishery as additional scientific information and analysis becomes available.**

**2.0 SPECIFICATIONS FOR THE ATLANTIC HERRING FISHERY**

**2.1 SPECIFICATION FORMULA**

This proposal does not recommend any change to the values contained in the formula for specifications found in the Plan. However, the application of the formula needs to be amended as DAH/DAP/USAP/JVPt cannot be properly determined or applied prior to adequate knowledge of proposed area TAC distribution.

**RECOMMENDATION: A THREE-STEP PROCESS**

**Current Values**

1. ABC  
OY  
BT
2. Area –Specific TAC Calculations Determined

3.	<u>AREA 1A/1B:</u>	<u>AREA 2:</u>	<u>AREA 3:</u>
	DAH	DAH	DAH
	DAP	DAP	DAP
	USAP	USAP	USAP
	JVPt	JVPt	JVPt
	TALFF	TALFF	TALFF

RATIONALE:

- The current method in the FMP determines DAH/DAP/USAP/JVPt prior to calculating area specific total allowable catch levels available to the fishery. Stakeholders and managers cannot make informed decisions regarding appropriate specifications for these values without full understanding of the implications by area to the fishery.
- The area specific allocation approach for specification values, DAH/DAP/USAP/JVPt/TALFF identifies existing capacity of fisherman and processors taking into account the seasonal nature of exploitation rates, utilization and available TAC. The three-step process outlined above rationalizes the specification process.

**2.2 AREA SPECIFIC TAC CALCULATION** (consensus by significant majority)

This proposal accepts the risk assessment approach for determining area-specific TACs.

**ECPA TAC DISTRIBUTION OPTION:**

Option 1

Area 1A	55,000
Area 1B	5,000
Area 2	30,000
Area 3	<u>60,000</u>
Reserve	10,000
OY	160,000

**RISK ANALYSIS ASSOCIATED WITH ECPA TAC OPTION:**

Summer	0.6	0.5	0.5	0.3	0.3	mean
Winter	0.2	0.5	0.2	0.3	0.15	
ECPA Option	0.25	0.27	0.24	0.23	0.22	0.24

**Reserve of 10,000 mt:** This reserve is derived from the buffer between total Area TACs (150,000) and MSY (220,000) and would not be area specific. This tonnage is intended to be

available for incidental bycatch of herring in the mackerel fishery. Vessels targeting mackerel and catching herring incidentally in ant management area would utilize this set-aside so that they would not be required to discard their incidental catch of herring if a TAC in a management area is already reached.

**RATIONALE:**

- Sustainable fishery standards often require a buffer between OY and MSY in order to manage the fishery in a conservative and precautionary manner.
- There is significant scientific uncertainty about mixing ratios and seasonal distributions of spawning components in the resource.
- Provides a sufficient layer caution within a reasonable level of risk as we continue to gather greater knowledge of mixing ratios for the fishery.
- Provides a more precautionary approach to catch levels for the GOM component by decreasing current catch levels available in Area 1 by 10,000 mt.
- Allows for continued access to the resource in Area 2 (above recent landings levels) but reduces risk to the GOM component by reducing current TAC available by 60%.
- Current catch levels do not appear to have negatively impacted spawning components in the resource.
- We must improve monitoring to track year classes that will ensure sustainable catches over the long term.
- Predator/prey relationships are accounted for in the natural mortality values assumed for the species.

**NOTE: We request to reserve the right to provide further recommendations regarding appropriate MSY and OY reference points, as well as specifications for the fishery as additional scientific information and analysis becomes available.**

**2.3 SPECIFICATION PROCESS**

The current process for setting specifications for the herring fishery is an annual review process of the status of the stock and the fishery. The results of this review are reported to the Council, which can then adjust specifications as needed. A notice action in the *Federal Register* can accomplish a “roll over” of current specifications if no change is required.

**RECOMMENDATION: STATUS QUO**

**RATIONALE:**

- Management of the Atlantic herring resource should adopt, at minimum, an annual strategy to utilize accumulating scientific and fishery data to trigger adaptive responses that address the migratory nature of the resource, the dynamic recruitment aspects of the species and environmental influences that effect availability to the fishery.

- Currently, there is a high degree of scientific uncertainty regarding the status of the resource. New methods for routine incorporation of acoustic data that will increase the accuracy of stock estimates are not yet fully utilized.
- While annual data is not “real time,” such data are a more reliable basis for decision making than data obtained on a two or three-year cycle. Not utilizing the best available current information can jeopardize the ability to make appropriate decisions to sustainably manage this fishery.
- The use of hard TACs in a limited access fishery (see below) requires effective stock monitoring strategies. An annual approach is more precautionary.

## **2.4 TAC SET-ASIDE FOR RESEARCH**

### **RECOMMENDATION: STATUS QUO**

#### **RATIONALE:**

- The costs of administration and implementation of a research set-aside for a low value species, such as Atlantic herring, are not warranted in development of Amendment 1 for this management plan.
- Since 1999, the Gulf of Maine Research Institute has collected data to record the presence and quantity of herring aggregations in two ways: fishery dependent and fishery independent surveys. Fishery dependent data is collected by recording information while herring vessels go about their normal fishing activities. Commercial vessels collect fishery independent data during dedicated survey activity. Currently there are six commercial herring vessels, four of which are members of ECPA, with acousounders capable of data collection, one mobile unit and plans for expansion of the project.
- In 2003 the ECPA dedicated approximately 30% of its annual budget to acoustic and tagging research efforts in collaboration with industry, the Gulf of Maine Research Institute and the Maine Department of Marine Resources. In addition to this support, individual vessels (ECPA members and others) have made significant (cash and in-kind) donations to maintain and further these efforts.
- This proposal supports increased efforts to further collaborative efforts outside of a costly public regulatory and administrative process for best utilization of resources to address research needs for the resource. In consultation with GMRI, industry participants are currently planning ways to facilitate increased in-kind donation of vessel time, as well as mitigation of difficult scheduling issues that were cited by the PDT.
- Perhaps most important, the herring industry's role as an essential partner in the Gulf of Maine herring spawning stock survey results in the industry having confidence in the

resulting stock abundance estimates and the industry's leadership in exploring how Gulf of Maine herring should be managed on a precautionary basis.

- This unusual collaborative research effort has produced a survey that benefits from the herring industry's knowledge of herring behavior, their expertise operating vessel platforms in a cost-effective manner, and their substantial financial support.

### **3.0 ADJUSTMENT OF MANAGEMENT AREA BOUNDARY**

#### **RECOMMENDATION:**

Area Option 2 (See Draft Herring PDT Report June 26-27 p 13 and Table with coordinates and Figure referenced on Page 14) No other boundary adjustments are needed for management of the resource.

***ADJUST MANAGEMENT AREA BOUNDARIES BETWEEN Area 1B/3 line and between Areas 2/3.*** We support the proposal by the PDT, under Area Option 2, to modify the boundaries based on two of the recommendations from the 2003 TRAC Meeting: (1) moving the boundary between of Area 1B and 3 line to better reflect spawning distributions and minimize reporting errors, and (2) moving the Area 2/3 from its current position (69 degrees) west to 70 degrees to better reflect the distribution and movement of spawning concentrations.

#### **RATIONALE:**

- We agree with the reasoning and recommendations of the PDT on this issue. It makes ecological, economic and regulatory sense to adjust these boundaries to more accurately reflect fish behavior, and to help make fishery management strategies more effective and efficient.
- The current Area 1B/3 and Area 2/3 boundaries do not adequately address distribution and migration of individual spawning components in the resource. This boundary modification will include all of Georges Bank/Nantucket Shoals spawning component in Area 3; and would better reflect where, in Area 2, the winter fishery occurs while impacts on the Area 2 fishery would not significantly affect historical fishing patterns.

### **4.0 REPORTING REQUIREMENTS:**

#### **RECOMMENDATION: STATUS QUO**

#### **RATIONALE:**

- Reporting requirements in the FMP are sufficient for management of the fishery.
- Mandatory reporting of estimated processing capacity is often inaccurate and will not

necessarily result in a better estimate of DAP.

## 5.0 LIMITED ACCESS (consensus by significant majority)

### **RECOMMENDATION: LIMITED ACCESS IN ALL MANAGEMENT AREAS**

The status quo of managing the herring fishery as an open access fishery is rejected. We cannot meet the requirements of the law to achieve a sustainable fishery under this option.

#### RATIONALE:

- In recent years, increased harvesting and processing capacity has been realized in the herring fishery. The capacity of vessels that qualify under this plan and new shore-side processing is more than sufficient to utilize fish available in the resource for the fishery.
- Carrying capacity of vessels in our association, which represent 80% (or greater) of current landings in the fishery, is 4,135 mt per day. We estimate a remaining 1,000 mt daily capacity of additional historic vessels active in the fishery. An estimate of utilization from four processing sources and bait is equal to 2,900 mt per day. Current TACs available to the fishery equal 180,000 mt.

$$180,000 \text{ mt} \div 5,135 = 35.05 \text{ fishing capacity days}$$

$$180,000 \text{ mt} \div 2,900 = 62.06 \text{ processing days}$$

Note: These calculations are maximum production days and do not take into account weather, availability of fish or market constraints. It is intended to illustrate fishing power in relationship to processing and fish available to the fishery. If OY is reduced TO 160,000 mt, fishing days are reduced.

- There is a need to avoid overcapitalization, decreasing economic efficiency and a race to fish in all areas.
- The current scientific uncertainty in the status of the resource, particularly for the Gulf of Maine spawning component, may result in decreased TAC allocations for Area 1 and Area 2 in the short term.
- While Area 1A may be most vulnerable to early triggering of the TAC, other areas will be increasingly subject to this outcome.
- Since the implementation of hard TACs limits removals from the Gulf of Maine, vessels active in the fishery are increasingly reliant upon Area 3 to maintain historical landing levels to remain economically viable.
- The need to eliminate the race to fish or derby fishing, with its attendant risks of overfishing, fostering waste due to discards at sea and other wasteful and uneconomic activities, especially in Area 1(A/B); the diversion of excess capacity to Areas 2 & 3, overcapitalization, and various social and economic considerations accumulate to support the initiation of the a limited access approach for managing the herring fishery. National

Standard 5, Sec 301(a)(5) states, "Conservation and management measures, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose."

- Since the existing fleet already has adequate capacity, it makes both economic and conservation sense to discourage this type of fishing behavior through implementation of a limited access permit system for all areas of the fishery.

**5.1 CONTROL DATE:** (consensus by significant majority)

**RECOMMENDATION: Qualification criteria for a limited access program should utilize the published** September 16, 1999, *Federal Register Notice* that established a Control Date for the Atlantic herring fishery.

RATIONALE:

- The publication of a control date for the fishery was intended to promote awareness of potential eligibility criteria for future access to the herring fishery so as to discourage speculative entry into fishery. Participants were notified that entering the fishery after the control date would not assure them of future access to the Atlantic herring resource on the grounds of previous participation. This proposal supports the use of the September 16, 1999, Control Date, as the baseline for establishing qualifying criteria for a limited access program for the fishery.

**5.2 QUALIFICATION CRITERIA:** (consensus by significant majority)

**RECOMMENDATION:** Permits be issued by Area as specified, using two categories of permits, **Category 1 Permits and Category 2 Permits** as follows:

**Category A Permits** provide access to fish for herring in **all Areas** (1A/B, 2 and 3) IF the applicant meets one of the two following criteria:

(1) Demonstrated landings in ANY AREA of 500 mt IN ANY CONSECUTIVE TWELVE MONTHS during a period commencing on September 16, 1993 through September 15, 1999.

**OR**

(2) Demonstrated landings in any area of 500 mt IN ANY CONSECUTIVE TWELVE MONTHS from September 16, 1999 to September 15, 2001.

**Category B Permits** provide access to **Areas 2 and 3** IF the applicant meets **one** of the following two criteria:

(1) Demonstrated landings in **any area of 100 mt** IN ANY CONSECUTIVE TWELVE MONTHS during a period commencing on September 16, 1993 through September 15, 1999

**OR**

(2) Demonstrated landings in **any area of 250 mt** IN ANY CONSECUTIVE TWELVE MONTHS from September 16, 1999 to September 15, 2001.

\*The definition of a qualification year is September 16<sup>th</sup> to September 15<sup>th</sup> in recognition of the published Control Date of September 16, 1999.

#### **RATIONALE FOR TWO QUALIFICATION PERIODS:**

- Qualification 1 period, September 17, 1993 – September 16, 1999, is a reasonable time frame that provides access to the fishery for historically dependent vessels, taking into account published notification that vessels may be treated differently after the September 16, 1999, Control Date.
- The two-year post Control Date qualification period allows investments made prior to the Control Date notice to reach fruition within the two year extended period for entry.

#### **RATIONALE FOR TWO CATEGORY PERMITS:**

- Category A permits allow access to all areas for vessels with historic and present participation in the fishery. The 500 mt landing criteria is a very minimal level of catch to establish dependency on the fishery.
- Category B permits allow access to Area 2 and 3 for vessels with small amounts of historic and present participation in the fishery. Category 2 permits are designed to avoid discards of herring by vessels operating in other fisheries, particularly in the mackerel fishery.

#### **Category A-Area 1A Historic Inshore Priority Permit:**

**Vessels that have historically prosecuted the inshore Area 1A fishery and/or whose size threatens safely fishing in other areas that qualify for Category 1 Permits and which can demonstrate a catch of 4,000 mt or > in Area 1 A IN ANY CONSECUTIVE TWELVE MONTHS between** September 16, 1993 to September 15, 1999 qualify for an Area 1A Historic Inshore Priority Permit. When 50% of the historically fully utilized Area 1A TAC has been caught, access to the Area 1A management area will be limited to only those vessels that qualify for this priority area endorsement permit.

## RATIONALE:

- Historic Inshore Area 1A permits address issues of fairness and equity, as some vessels have greater historic dependency on the inshore Gulf of Maine fishery.
- Some inshore historically dependent vessels do not have the capacity to safely fish off shore.
- Many herring fishermen are concerned about the “race to fish” derby that has occurred in Area 1A. This economic inefficiency encourages harvesting of the TAC in the shortest possible time, creates incentives to increase harvest capacity, which may produce gluts in the marketplace that drive down the prices when derby fishing is occurring.
- History has shown that imposition of a hard TAC and/or other inshore regulations imposed by the states (e.g., 2000), has had significant negative impacts on certain communities and/or historically dependent user groups with the result that their vessels remained tied to the docks while other vessels prosecuted the fishery.
- At the same time fishing community dependency and fairness issues arising from those vessels who have directed their effort primarily in Area 1A suggest that such vessels be given higher priority for access to Area 1 A after 50% of the TAC has been taken than those whose history does not show this dependency. National Standard 5, Sec 301(a)(5) stipulates, “ Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources except that no such measure shall have economic allocation as its sole purpose.”

This combination of permit options also supports National Standard 8, Sec. 301(a)(8).

“Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities, in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts of such communities.”

## **5.3 INCIDENTAL CATCH PERMITS**

### **RECOMMENDATION:**

An open-access incidental catch permit should be established for vessels that do not qualify for a limited access permit. An open-access incidental catch permit under this proposal would allow a vessel to land up to 5 metric tons of Atlantic herring per trip.

### **RATIONALE:**

- This open-access permit category allows for continued access by some vessels that have historically caught small amounts of herring, targeting herring for short sporadic periods or while engaged in other fisheries.

- Examples of these vessels include those fishing in Small Mesh Areas 1 and 2 primarily for a combination of herring and whiting.

#### **5.4 QUOTA ALLOCATION PROGRAMS**

##### **RECOMMENDATION:**

The development of a quota allocation program may be an appropriate management tool for the Atlantic herring fishery. However, because of the complexity in development of these programs and the yet to be resolution of national standards for these programs, we cannot recommend implementation of a quota allocation at this time.

#### **6.0 PURSE SEINE ONLY AREA**

##### **RECOMMENDATION: STATUS QUO**

##### **RATIONALE:**

- Under the proposed limited access provisions of this alternative, an exclusive “purse seine only” area is not needed. Historically dependent purse seine vessels will have greater access to available Area 1A TAC with implementation of Priority Inshore Area 1A permits that will slow the fishery when 50% of the TAC in Area 1 A has been taken.
- Some vessels in the fishery utilize a single gear type, purse seine or mid-water trawl, while some vessels have the ability to rig for either gear. Maintaining flexibility to utilize these investments, and to allow vessels to choose gear is preferred.

#### **7.0 FIXED GEAR**

##### **RECOMMENDATION:**

(1) Landings by fixed gear fisherman east of Cutler, Maine, should be included in the assumed 20,000 mt removal rate for the New Brunswick weir fishery. Though catch levels for the past ten years have remained at low levels for this sector, it will require future monitoring to address further limitations as needed.

(2) All fixed gear permits should be exempt from vessel monitoring system requirements in the FMP.

##### **RATIONALE:**

- Fish caught by fixed gear in eastern Maine and New Brunswick weirs are derived from the same localized spawning component and catch for the two fisheries should be combined.

- The remaining fixed gear fishery in Maine will have greater access to available Area 1A TAC in summer/fall months with implementation of Priority Inshore Area 1A permits that will slow the fishery when 50% of the TAC in Area 1 A has been taken.

## **8.0 OTHER MANAGEMENT MEASURES**

### **8.1 DAYS BASED MANAGEMENT APPROACHES**

#### **RECOMMENDATION: STATUS QUO FOR THE FEDERAL NEFMC'S FMP – (ADJUSTMENT AS NEEDED TO THE ASMFC'S ATLANTIC HERRING FMP)**

##### **RATIONALE:**

- We recommend no additional measures to the federal FMP for Atlantic herring that utilizes a days based management approach. Rejected are federally managed days at sea, days out of the fishery and layover days.
- Routine monitoring of stock response and catch rates should provide data to indicate if additional effort control strategies are necessary.
- Days-Out of The Fishery Measure: This proposal supports the use of days out of the fishery as currently managed under the ASMFC. (See Section 9.2)

### **8.2 FISHING YEAR**

#### **RECOMMENDATION: STATUS QUO**

##### **RATIONALE:**

- In recent years it had been suggested to change the fishing year (currently 1/1 – 12/31) to prevent high winter/spring catch rates in Area 1A that would result in decreased quota available during peak market demand in the summer/fall fishery. However, the NEFMC's Framework Adjustment 1 to the herring FMP implemented a split season quota for Management Area 1 in 2002 to address this issue. There currently is no compelling reason to enter into a complex process to change the fishing year for this fishery.

### **8.3 VESSEL UPGRADE RESTRICTIONS: (consensus by significant majority)**

#### **RECOMMENDATION:**

Limited access permit holders would be subject to upgrade restrictions. A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, only if the upgrade complies with the following:

(1) The vessels horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed 50 % of the horsepower of the vessel's baseline specifications, as applicable.

(2) The vessel's length, GRT, and NT may be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size may not exceed 25 % of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

### RATIONALE

- To address issues of overcapacity, vessel upgrade restrictions are needed for management of the fishery.
- The objective here, given the existing capacity in this fishery, is to take a precautionary approach: we want to avoid the potential for any vessel in the fleet being upgraded in size such that the race-to-fish or fishing derby tactics would be substantially increased in any given area of the fishery.
- A pelagic species, herring are fast swimming and densely schooling. A vessels ability to capture herring is dependent upon sufficient horsepower, or towing speed. Many vessels currently pair trawling may wish to convert to independent single trawl operations that would require upgrades of horsepower. These upgrades do not directly impact capacity of operations.
- With the implementation of the FMP and hard TACs in 2000, many vessels dependent upon the inshore resource must now seek fish in offshore areas. For continued access and safe operation some adjustment of vessel specifications is necessary.
- The Atlantic herring and mackerel fisheries have characteristics that are unique and safety issues specific to an offshore herring fishery need to be fully analyzed prior to implementation of restrictions.
- It is understood that vessels with multiple permits must adhere to the most restrictive measures associated with those fisheries.

Note: Vessel upgrade restrictions found in the Multispecies FMP are not appropriate for the herring fishery and many vessels in the herring fishery do not hold multispecies permits. NMFS has advised that consistency of these restrictions among various plans is not required.

## **8.4 DEFINITION OF MIDWATER TRAWL**

### **RECOMMENDATION:**

*Midwater trawl gear* means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The gear may not include bobbins, rollers or rockhoppers on its footrope or as part of the net.

### **RATIONALE:**

- While the current definition of a midwater trawl is sufficient, it has been suggested that further defining the gear will improve perceptions about how the gear is fished. The definition above provides additional language that clarifies gear not utilized in the fishery.

## **8.5 MEASURES TO IMPROVE BYCATCH DATA COLLECTION AND BYCATCH MONITORING:**

The Atlantic Herring FMP contains measures to address bycatch data collection and monitoring. The Regional Administrator may request any vessel holding a permit for herring carry a NMFS-approved sea sampler/observer. (FMP, Section 3.3.2) Additionally, FMP analysis of compliance with National Standard 9 states that information available indicates that traditional purse seine and mid-water trawl fisheries are relatively “clean” fisheries, with limited bycatch of other species. (FMP, Section 5.9)

The Herring PDT has advised that a comprehensive program (to address bycatch) across all gear types and all fisheries would be beneficial. In a May 2003 presentation to the NEFMC, NMFS identified several sources to assess and improve fisheries bycatch information: (1) Port sampling & Interviews, (2) Vessel Trip Reports, (3) Observer Data, and (3) Research Vessel Surveys.

### **RECOMMENDATION: STATUS QUO**

### **RATIONALE:**

- Current measures in the plan require observer coverage in the fishery as determined by the Regional Administrator.
- NMFS, North East Observer Program, advises that required percentage coverage is inappropriate and that preferably, a statistical determination of a sample size is much better to fit the population, conserves resources and can address the problem.
- A program to obtain increased data on bycatch in the fishery should utilize all available resources, including priority of the most cost effective ways to obtain the information.

- It is not feasible to mandate a level of observer coverage in this amendment that may be cost prohibitive and unavailable in the foreseeable future.
- A need for an increased level of observer coverage has been identified for fisheries in the northeast region and all fisheries should be treated equally in the allocation of these resources.

## **9.0 ATLANTIC STATES MARINE FISHERIES COMMISSION MEASURES**

### **9.1 SPAWNING REGULATIONS:**

#### **RECOMMENDATION: STATUS QUO**

##### **RATIONALE:**

- The spawning regulations implemented through the ASMFC plan have been discussed, amended and analyzed for scientific, economic and social impacts numerous times in recent years. The current states regulations for the GOM are monitored and implemented in “real” time and are effective in the protection of the GOM spawning component. There is no need to revisit spawning regulations in either the federal or interstate FMPs.

### **9.2 DAYS-OUT OF THE FISHERY**

#### **RECOMMENDATION:**

The ASMFC Atlantic herring FMP measure for “a days out of the fishery” approach to slow the catch rate in a given area of the fishery should be redefined to allow for adaptive management of the fishery.

##### **RATIONALE:**

- The Atlantic Marine Fisheries Commission’s Atlantic Herring FMP contains provisions for a “days out of the fishery” management approach not found in the federal FMP. The Commission’s plan has allowed for flexible implementation of measures intended to slow catch rates in the fishery and should be revisited only through revisions to the states plan. Catch rates in the GOM are influenced by environmental factors, catching capacity and availability of markets. The Commission’s plan allows for a close to “real” time response to these issues and is preferred. Additionally, the states plan allowed for a cooperative industry “Gentleman’s Agreement” initiative to work successfully in 2003. (See attached Agreement)

## **10.0 RESEARCH**

Significant effort to obtain reliable scientific baseline data for this fishery is essential for effective management of this fishery.

### **RESEARCH PRIORITIES:**

- Need for current information related to mixing ratios and migration patterns of individual spawning components.
- Continued efforts to gather acoustic information from both the offshore and inshore spawning components in the resource.
- Support for collaborative efforts among government, NGO's and industry participants.
- Resolution of issues identified at the 2003 TRAC.

**AMERICAN PELAGIC ASSOCIATION  
4 Fish Island  
New Bedford, MA 02740  
(508) 979-1171**

**VIA ELECTRONIC MAIL**

August 12, 2004

Ms Lori Steele  
New England Fisheries Management Council  
50 Water Street, Mill #2  
Newburyport, MA 01950

**RE: Proposed Industry Alternative Package for Amendment 1 to the Atlantic Herring FMP**

Dear Lori,

The American Pelagic Association is an industry-based trade association representing the integrated interests of processing and harvesting sectors of the herring and mackerel fishery in the Northwest Atlantic.

Please consider including the following Summary of our proposal (and narrative justification) in the Herring Industry Advisors' August 20, 2004, meeting materials.

Thank you for your consideration.

Sincerely,

/s/

Peter Moore  
American Pelagic Association

# **THE AMERICA PELAGIC ASSOCIATION PROPOSAL**

## **DISCUSSION**

The APA's key proposals, designed to ensure that active participants in the fishery qualify for an Area 1 limited access program, are based on two important principles. The first is to ensure that the criteria selected will provide for a predictable level of effort that correlates with present and expected resource conditions. The second is to ensure that the interests of entities that have made significant investments in today's sea herring fishery and its infrastructure are taken into consideration, consistent with reasonable conservation objectives and governing legal standards.

APA would submit, therefore, that the best way to meet the standards for limiting entry into Area 1, in which 1A is fully, but not over-utilized, is to devise a set of qualification criteria that can predictably cap effort at or near current levels. Current capacity fishing in Area 1A is quite well calibrated with optimal yield for the fishery, the result of effort controls (split quota season) implemented in Framework 1 and other controls, such as days out of the fishery implemented by the ASMFC. This action has allowed the fishery to match effort with market demand throughout the time when sea herring are available in Area 1A. The FMP can be further refined in this amendment or, more likely, through subsequent framework action to impose any additional effort controls that may be necessary.<sup>1</sup>

As for predictability, landings data are only available with any precision dating back to 1993 or 1994 when vessels were first required to file trip reports, and such data is only available with significant precision for the entire fishery since 1999 when the Herring FMP was adopted. If a qualification period starts before reliable data is available, or if the effort criterion is set very low, it will be difficult to know how many limited access permits would be created. As happened in the multispecies fishery, minor participants in the fishery, or participants that left the fishery long ago, could be vested with a full share. These dormant permits may be transformed into limited access permits of some value that could either be fished or reactivated on other, perhaps larger, vessels. Instead of limiting access, a plan like this could lead to a large number of available permits which may over-capitalize the fishery, particularly if permits are shifted from vessels that seldom if ever fished in Area 1 to new vessels built to fish the area full-time.<sup>2</sup>

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<sup>1</sup> A unique situation exists this year due to the historically unprecedented May-August influx of juvenile haddock on Georges Bank, which have mixed with adult herring. While this is likely a temporary phenomenon that will largely resolve itself as this record year class matures, the fleet is committed to bycatch levels as close to zero as possible. Thus, many have shifted off of Georges Bank for the time being; some to Area 1A. However, APA vessels have not participated significantly in Area 1A this year as the juvenile herring is too small to pack as food-grade. Rather, its boats are generally idle as the APA investigates gear and other solutions to resolve bycatch issues for the future, particularly should such huge recruitment become the norm for the healthy and rebuilt haddock fishery.

<sup>2</sup> APA would note that such a scenario would provide its members' vessels that otherwise did not qualify with opportunities to purchase permits.

As for recency, active participants with significant current investments should be accommodated. Recency represents an important criterion in designing any limited access plan under the Magnuson-Stevens Act National Standards and their implementing regulations. *See* 16 U.S.C. § 1853(b)(6).<sup>3</sup> A limited entry plan which cuts off entrants on the basis of either the now five-year-old control date of 1999 (or even 2001) would disenfranchise and harm participants with demonstrated and significant current participation and investment in the fishery. By contrast, a qualification scheme that vests long-inactive, or minimally active, vessels with limited access permits results in windfalls (and windfalls of an uncertain magnitude, at that), at the expense of current participants.

Another form of allocation could occur if the qualification period chosen resulted in too little capacity for the herring quota in Area 1. In such an event, then some active participants would be foreclosed from the Area 1 fishery without a reasonable biological justification. Too little capacity could also create an oligopoly in Area 1. Such a result could be seen as violating National Standards 1 (OY), 2 (best available data), 4 (governing allocations), 5 (efficiency in utilization; no measure should solely be economic allocation), and possibly 8 (fishing dependent communities). 16 U.S.C. § 1851(a)(1), (2), (4),(5), (8).

To enfranchise those vessels currently active in Area 1A, and who have a significant stake, APA proposes using the 2003 landings cut-off date (December 31, 2003), while requiring that vessels demonstrate substantial recent annual landings in any year from any sea herring management area. That level should be at least 500 mt of herring landings in any one qualifying year. Indeed, a landings requirement of 1000 mt or more in any one year might better reflect the values of present participation, financial interest, and predictability. (Such an approach was anticipated when the Council voted to allow herring landings from any area to qualify a vessel in Area 1 at the July, 2004, meeting.) The exact criteria should be determined on the basis of what best reflects a level of fishing effort that is in line with current and future herring resource conditions (i.e., near current levels).<sup>4</sup>

Perhaps the most accurate characterization of these participants and landings levels is in the Council's own recent analysis of the socio-economic impacts of the proposed 2005 Herring Fishery Specifications (July 1, 2004).<sup>5</sup> Section 4.0 and Table 10 (page 33) define the current

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<sup>3</sup> All factors that must be considered before limiting access are: (a) present participation in the fishery; (b) historical fishing practices in, and dependence on, the fishery; (c) the fishery's economics; (d) capability of fishing vessels used in the fishery to engage in other fisheries; (e) the cultural and social framework relevant to the fishery and any affected fishing communities; and (f) any other relevant considerations. *Id.*

<sup>4</sup> APA also notes that even if the adoption of higher landing levels for qualification purposes excludes some smaller boats supplying specialized sectors or remote areas, these vessels could participate under an incidental catch permit with associated landing limits designed to meet their needs without creating undue pressure on the resource.

<sup>5</sup> *See* NEFMC Atlantic Herring FMP: Options for 2005 Fishery specifications (Jan. 1, 2005-Dec. 31, 2005) and Additional Analysis, § 4.0 and Table 10, at 33.

(2003) herring fleet and its landings levels, aggregated by gear type and region in which the vessel's principal port of landing is located (28 vessels reporting landings based on vessel trip reports).

However, APA is aware that such options have not yet been analyzed, and may not be unless the Herring Committee expresses a desire to see the breakdown of vessels that would qualify under more stringent landings criteria. With that in mind, the recommendations that follow are based on existing qualification criteria for Area 1, even though, as suggested below, APA believes that more options on the absolutely key issue of limited access could and should be examined, particularly in light of the Council decisions in July to count landings from all areas toward qualification for the Area 1 fishery.

## **RECOMMENDATIONS**

### **A. Overall Observations**

The APA does not favor the approach of simply having various competing industry proposals used to form the basis of the five or six alternatives that are ultimately analyzed and put out for public comment. This strategy limits the choices available to the Council on the most important issues, such as the Area 1 limited access qualification criteria, and puts the industry in the awkward position of appearing to be overly tied to certain measures of secondary importance, such as the effort controls, area boundaries, and start of the fishing year, on which they may be willing to be flexible. The problem is that staff understandably wants to reduce analytical complexity, and has identified six "primary" measures<sup>6</sup> that are believed to so affect analyses that they cannot be "mixed and matched."

It appears that should the Herring Committee and Council wish to have more flexibility in considering a broader range of options that use the different qualification periods, it might want to consider as settled some of the less contentious issues. For example, the current effort controls and fishing year have worked well in keeping the herring fishery in Area 1A going until late in the year. By declining to further consider options to change these factors, two primary measures could be considered fixed, albeit subject to change in subsequent framework actions if changing conditions so warrant. Similarly, the new area boundaries have been recommended based on the best scientific information available. Another primary measure could be eliminated if it were decided to adopt the recommended new boundaries.

However, APA is going to proceed, reluctantly, to suggest two alternatives that we would hope the Committee and Council would consider including among the five or six that ultimately get analyzed and put forward for comment. It should be noted that although APA has recommendations for various "Independent measures" (those that **can** be mixed and matched), it is completely flexible on those matters. Indeed, the critical concern of the APA is that its vessels

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<sup>6</sup> Which include the four just mention mentioned plus limited access incidental catch permit qualifications and landings and purse seine/fixed gear only areas.

qualify for permits in all Management Areas 1, 2, and 3; every other issue is open to discussion and compromise.

## **B. Option 1: Modified ECPA**

Simply put, APA proposes inclusion of an alternative which is identical to that proposed by the ECPA except that the qualification criteria for an Area 1 limited access permit be as follows:

1. A vessel must currently have a herring permit; and
2. Must have landed a minimum of 500 mt or more of herring in any one calendar year between January 1, 1993 and December 31, 2003.

In line with current Committee preferences, these qualifying landings could come from any management area. This proposal specifically does not incorporate the ECPA proposal for an “inshore priority” permit nor any discrimination between limited access permit holders who otherwise qualify.

**Rationale:** In June, ECPA modified its proposed qualification criteria from the Control Date of September 1999, to September 2001. This arbitrarily included two additional vessels which entered the fishery post-Control Date, but not ALL recent participating vessels. This has the effect of excluding two APA member vessels only. The ECPA proposal will likely be analyzed in any event, and redoing the analysis with this one additional adjustment that makes a small adjustment in the number of qualifying vessels (ECPA proposal out through 2003) should not pose insurmountable barriers. Furthermore, it would guarantee there would be at least two alternatives that include recent participants (a factor that is significant under the law) for the public to consider.

## **C. Option 2: The APA Plan**

### **Primary Measures**

#### **Limited Access Approach and Qualification Criteria:**

To qualify for a Limited Access permit to Management Area 1, a vessel must meet the following criteria:

Landings:	≥ 500 mt in any one qualifying year
Area:	landings from any management area, or combination of management areas
Qualifying Dates:	any one year from 1/1/93 - 12/31/03

For Management Areas 2/3, a permit moratorium.

**Rationale:** As explained above, the proposed limited access approach for Area 1 uses the most recent and best data and best reflects current capacity and stakeholders. For those reasons, it meets the legal standards without providing economic windfalls. As to Areas 2 and 3, a moratorium is a risk averse approach in that it caps current effort which has consistently fallen short of available quota. APA would note, however, that from an analytical perspective a moratorium is effective the same as status quo or even a limited

access program that did not eliminate any current permit holder. This is because no current participant would be excluded – the only difference is whether potential future participants could enter the fishery.

**Limited / Open Access Incidental Catch Permit:**

Vessels that do not qualify for a full-time Limited Access permit may obtain an incidental catch permit for possession of up to 25 mt (55,100 lbs.) herring per trip under a limited access incidental catch permit if they can demonstrate annual landings of 100 mt during the qualification period (Section 2.4.3.1, Option 3). Otherwise, APA would support an open access incidental catch permit of 5 mt (11,020 lbs) herring per trip, which is in line with 2.4.3.2, Option 4.

When 95% (or other percentage as specified in this Amendment) of the TAC in a management area is reached and the directed fishery closes, incidental catch in the area closed to directed fishing will be limited to 2,000 lbs per trip, as it is currently.

**Effort Controls:**

Status quo (maintain existing 2-days out of fishery); additional effort controls can be added through Framework Adjustment.

**Adjustments to Management Area Boundaries:**

APA could support Area alternative 2 described in Section 2.3.2 on page 19 of draft Public Hearing document (redefine Area 3 based on TRAC recommendations).

**Rationale:** This change is said to be based on the best available science which indicates that it better reflects the distribution of herring stocks.

**Purse seine / Fixed Gear Only Areas:**

APA prefers Alternative 1 (No Action), 2.7.1.1, but is willing to consider the option specified in Section 2.7.1.3.2, Option 3B – Seasonal.

**Rationale:** APA needs late season access to the western portion of 1A. However, it recognizes the special needs of the Downeast Maine herring fishery and markets as deserving of consideration.

**Start of the Herring Fishing Year:**

Alternative 1 (No Action).

**Independent Measures**

As noted, APA is open to compromise or adjustment as to any of these measures.

**MSY:**

MSY Alternative 2, MSY Proxy of 220,000 mt.

**Determining the Distribution of Area TACs During the Specification Process:**

APA supports Council proposal to authorize the PDT to evaluate all available information and select the most appropriate analytical approach during the specification process (Distribution Alternative 2, Section 2.2.1.2, page 9).

**Research Set-aside During the Specification Process:**

APA could support a research TAC set-aside program pending hearing more detail on how such a program would be administered and prioritized.

**Set-aside for incidental catch in the mackerel fishery:**

APA supports the Council proposal to authorize establishment of set-asides for incidental catch in the mackerel fishery as part of the specification process (MSA Alternative 2, Section 2.2.2.2.2, page 14).

**Timing of the Specification Process:**

No Action/Status Quo alternative.

**Measures to Address Fixed Gear Fisheries:**

Alternative 2 (Section 2.6.2, page 52). Under this alternative, catch from Downeast Maine fixed gear fishery would be included as part of the assumed catch from the New Brunswick (NB) weir fishery when determining area-specific TACs and herring fishery specifications (currently 20,000 mt).

**Vessel Upgrade Restrictions:**

No Action/Status Quo alternative.

**Regulatory Definition of a Mid-Water Trawl:**

Definition Alternative 4, Section 2.7.3.4, page 63.

**By-catch Caps (Oceana proposal):**

Eliminate from further consideration, can be implemented via Framework adjustment once sufficient data is developed by observer program, and if data supports any such proposal.

**Sector Allocation Process:**

APA reserves opinion until details of a sector allocation process are provided and available for public comment

**Bycatch Information/Bycatch Monitoring:**

No Action/Status Quo **or** Alternative 4, Sec. 2.7.2. As the APA understands, the current program is one in which NMFS has been designing an observer program for the herring fishery in order to best be able to meet legal requirements and the need of the agency and industry for precise and accurate bycatch estimation data. APA supports continuation of such a program.

**WESTERN SEA FISHING CO.  
3 STATE PIER  
GLOUCESTER, MA 01930, USA**

August 28, 2003

New England Fishery Management Council,  
50 Water Street,  
The Tannery – Mill 2  
Newburyport Ma.01950

Attn Lori Steele,

**Options for Amendment 1 to the Herring FMP**

Western Sea Fishing Company is the Owner / Operator of the mid water trawlers Endeavour and Challenger. These vessels are members of the East Coast Pelagic Association.

**However we do not support all of the recommendations in the East Coast Pelagic Association's Amendment 1 Option document.**

**We have asked the East Coast Pelagic Association to be very clear in their document which recommendations we do not support.**

**This document contains Western Sea Fishing Company's recommendations.**

**Background information:**

The Endeavour and Challenger are dedicated herring and mackerel boats with close ties to Cape Seafoods Inc., a processing plant in Gloucester Massachusetts. The vessels have commitments to supply food grade fresh herring and mackerel to the Cape Seafoods plant. The vessels also supply fresh and frozen bait to the lobster and tuna fleets and fresh fish to the sardine canneries on a regular basis. The vessels have developed a reputation for supplying top quality food grade fish to the shore.

In 1998 the Company developed a business plan to enter the pelagic fishery, and were encouraged by the regular reports from State and Federal Agencies indicating the continuing high abundance of the herring resource off the East Coast of the USA. The vessels were purchased in June of 1998. A conversion contract was entered into with a shipyard in 1999 and the initial conversion from scallop boats to mid water trawlers took place in 1999 / 2000. The final modifications to the vessels took place during the period from June 2002 to February 2003. Construction work started on the Cape Seafoods facility in April 2001 and the plant started production in July 2001.

Even though a Control Date was published in September 1999, the Federal Management Plan was implemented in January of 2000 without limited or controlled access provisions. The Goals of that Plan include “ To achieve, on a continuing basis, optimum yield for the United States fishing industry...”. The OY in this fishery was not being caught then, and is still not being caught today.

The Objectives of the Plan include “To maximize domestic use and encourage value added product utilization”. The extensive modifications, including refrigerated sea water systems on the Endeavour and the Challenger have been necessary capital costs required to enable those vessels to land food grade fresh fish. Vessels improvements for quality and safety, together with substantial shore side investments have been made with the knowledge that that is what the FMP encourages. The Atlantic Herring Specifications document for the fishing year 2003, prepared by the NEFMC in consultation with ASMFC, MAFMC, and NMFS which included the Environmental Assessment, and the Regulatory Impact Review stated:

**“The current specification is designed to allow for incremental growth in the industry, while taking into account biological uncertainty. In 2001, the Council increased the OY specification from 224,000mt to 250,000mt largely to send a message to the industry that the biomass of herring is large and increasing, and that it can support an expansion of production. This level of OY has been continued for the 2002 fishery, and is recommended for the 2003 fishery. However, increased utilization of the resource is unlikely without expansion into foreign markets. Such expansion will occur incrementally, as US businesses open and establish overseas market relationships.”**

The 1999 control date will be over 5 years old before Amendment 1 is implemented. It is noteworthy that in July of 2002 the NMFS announced a new control date in the mackerel fishery, concluding that the existing, 1997, 5-year-old control date was stale.

The existing vessels in the fishery are attempting to supply the domestic markets, and the “at sea processing” market requirements. Fishery managers are continuing to allow Foreign vessels to participate in Joint Ventures and Internal Waters Processing operations. At any given time not all of the market requirements are being met. The industry, together with fishery managers are ensuring that the TAC from Area 1A is being landed in such a way that fish from that area is landed late in to the year to meet market requirements. Since the year 2000, when fixed quotas were put into place, herring has been landed from Area 1A as late as week 43 in 2000, week 45 in 2001 and week 48 in 2002. Predictions for 2003 are indicating that the quota will be available to week 48. This has been achieved by implementing days out of the fishery, and split season quotas. These controls have been implemented following meetings between industry and the fishery managers. Area 1A has rolling spawning closures starting in mid August / September each year. The 20% tolerance provisions in these closed areas virtually ensure that the only vessels allowed access are the purse seine fleet. Mid water trawlers fish outside of those closed areas which last until late October. The purse seine fleet is also the only mobile gear type allowed to fish for herring inside of State waters in all of the New England States.

### **Recommendations:**

This fishery is showing absolutely no sign of the so-called “Derby Fishing”. The term “Race to fish” does not apply in this fishery. The various markets are dictating the required level of landings, and in our opinion, market protection is the driving force behind many of the calls for additional management controls.

The TACs in place for Areas 2 and 3 have never been met since they were introduced in 2000. These are the areas where we have been advised that the largest resource growth potential has, and is taking place. This is good news for all concerned, because some of this off shore fish will certainly mix with the Gulf of Maine fish at certain times, particularly in the summer months when market demands peak.

**Recommendation: Establish a new control date thereby recognizing current participants. Implement Limited Access in Area 1A using landing history of 500mt for any one year from 1993 to 2003.**

The results of the February 2003 TRAC have caused a huge amount of confusion in the herring industry. The SSC were not able to give strong management advice regarding their first Term of Reference, namely, reference points. (MSY, Bmsy, Fmsy). They commented that the MSY of 317,000mt is too high and not sustainable based on historical landings. The PDT had to develop a proxy MSY because, in their words, there is no scientifically accepted estimate of MSY available at this time. The PDT suggests 200,000mt even though the US FPA assessment is 222,000mt.

**Recommendation: Use 222,000mt as the MSY**

The PDT, in their Discussion document state that “without consensus from the TRAC or support from the SSC it is not appropriate to base the reference points on the results of these assessments.

The SSC was not able to evaluate the risk associated with projected levels of catch from the TRAC. They did state that for the stock complex as a whole, current catch levels appear to be producing a biomass that is at least stable, if not increasing.” The PDT comment is that biomass estimates were lower in 2002, because sampling occurred too late in the spawning season, and that estimates will increase if the timing of the acoustic surveys is correct.

**Recommendation: Wait until the specification setting meetings in 2004 to set 2005 TACs**

**Recommendation: Initiate a Moratorium for areas 1B, 2 and 3 until such time as a new assessment has been completed.**

It is essential to many vessels in the herring fleet, that some coordination be implemented with the mackerel fishery. We support the Advisory Panel and American Pelagic Association recommendations with regard to herring by-catch in the mackerel fishery.

**Recommendation: Set aside 20,000 mt of herring as incidental catch in the mackerel fishery. This set aside would be derived from the buffer between MSY and OY and would not be area specific.**

Again, taking into account vessels' participation in the mackerel fishery we would maintain the same upgrade provisions in both plans. We support the Advisory Panel and the American Pelagic Association proposals.

**Recommendation: Maintain the existing vessel horsepower, length and weight restrictions.**

The Western Sea vessels employ Captains, Crew and shore based personnel who have been involved in the herring fishery for over 30 years. We ask that the Committee and the Council accept our proposals for analysis and inclusion in the public hearing document.

Yours Sincerely

Gerry O'Neill  
Owner / Managing Director

*Suppliers of food grade herring and mackerel*

*Fishing vessel Endeavour*

*Fishing vessel Challenger*

# East Coast Tuna Association

P.O. Box 447, Salem, N.H. 03079

(603) 898-8862 Fax 898-2026

email: [rruais@aol.com](mailto:rruais@aol.com)

August 25, 2003

Mr. Paul Howard, Executive Director  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950

Dear Paul:

This letter and the attached revised herring alternative submitted by the *Coalition* for the Atlantic *Herring* Fishery's *Orderly, Informed and Responsible* Long Term Development (CHOIR) transmits the changes made to our proposed alternative as the result of comments made by Council and Herring O/S Committee members since July 31. The changes substantially reduce the size of the area for purse seine only fishing (and Category 2 Permit vessels) and modifies our proposal for 100% observer coverage. The new purse seine only area is limited to herring management area 1A (i.e. less than 50 miles from shore rather than 75 miles) and the square area bounded by 41°00 & 42°00 latitude and 70°00 & 69°00 longitude (i.e. the Chatham cod and tuna fishing grounds). Again, this alternative is intended to address CHOIR's concern about the deleterious impacts of localized resource depletion caused by the efficiency and fishing pattern employed by mid-water vessels. I will bring a chart with the new areas defined to the September 3 O/S Committee meeting.

CHOIR prefers this closed area to mid-water trawling alternative to be year-round. If this is not acceptable to the Council then we request consideration of a seasonal closure from May 15 though September 30.

The alternative also modifies the proposed 2 year 100% mandatory observer coverage for mid-water vessels in groundfish closed areas and 20% coverage for trips outside the closed areas to the level of coverage established by NMFS that eliminates the possibility of "observer effect" or the possibility that mid-water vessels may alter their normal fishing pattern to prevent a true and accurate picture of their bycatch and discards. Again, this alternative is intended to allow development of a comprehensive database on the level and nature of bycatch and possible wasteful fishing practices consistent with the mandate stemming from the Magnuson-Stevens Act National Standard 9.

I will attend the Herring O/S Committee meeting on September 3 to again discuss our alternative. Thank you for sharing this alternative with the Council.

Sincerely,

Richard P. Ruais  
Executive Director

CC: CHOIR

## **A Management Alternative to Create a Purse Seine & Category 2 Permit Coastal Fishing Area Only and Mandatory Observer Coverage for Mid-water Trawl Vessels to Achieve Objectives 1, 2, 3, 4, 6 & 7**

### **Background**

Since at least 1999 the New England Fishery Council and the Herring O/S Committee have repeatedly received expert fishery-based testimony regarding the serious deleterious effects of mid-water trawl and pair mid-water trawl fishing in the coastal waters of the Gulf of Maine, Cape Cod and Southern New England. As the Council is aware, the number of mid-water pair trawl vessels/permits and harvesting capacity have increased dramatically from 2 in 1999 to 12 vessels in 2000. Still more vessels have entered the mid-water trawl fishery since 2000 including two formerly Pacific-based boats that were added this year and operate from New Bedford. Although mid-water gear has only recently (since about 1995) been in substantial use in the U.S. herring fishery it is now responsible for the bulk of the U.S landings displacing the traditional passive and more resource friendly purse seine fishing method.

### **Localized Resource Depletion from Mid-Water Fishing**

The negative effects of mid-water trawl fishing stems from the tremendous size and efficiency of the nets as well as the way the gear is used. These can cause localized resource depletion on important and discrete coastal fishing grounds that have historically supported numerous other important fisheries. In the wake of intensive, unrestricted, mid-water trawl herring fishing by at least 21 large capacity vessels (2001 data) important tuna and groundfish fishing grounds have been left, at least in the short term, with an inadequate density of herring to serve as forage. Adequate densities of herring will attract and hold the target species of many other fisheries such as giant bluefin tuna and the recreational and commercial groundfish fisheries. These traditional fisheries are already the subjects of aggressive rebuilding plans employing substantially reduced fishing mortality rates designed to achieve high biomass targets. Further, the whale watching industry heavily depends on adequate densities of herring to hold whales within reasonable proximity to the coast. Localized, near-shore depletion of herring forage severely exacerbates the economic burdens these industries already experience.

Furthermore, an inadequate abundance of herring as forage may actually undermine the Council's efforts to rebuild groundfish and dogfish stocks in the Gulf of Maine and Georges Bank by denying these species a steady and adequate supply of food. It is well accepted that herring play a critical forage role in the life stages of dogfish and many groundfish species. The Council is targeting very high estimates of Bmsy and very low fishing mortalities for these species. We believe the Council should adopt a precautionary management approach for the herring fisheries that will ensure an adequate forage base to support such predator species management objectives. The same reasoning applies with respect to the western Atlantic stock of bluefin tuna, which is the subject of an international rebuilding plan under ICCAT to which the United States is obligated.

While we acknowledge that there has been inadequate scientific investigation into the short or long term effects of localized resource depletion caused by the efficiency of mid-water trawl gear, we plead with the Committee and Council to take a common sense and precautionary approach to managing this fishery given everything else that is at stake. The fishing pattern of the mid-water trawl vessels since at least 1996 has been to focus intensively on relatively small, near-shore fishing grounds until the catch rate becomes substantially reduced or less than economically optimal. This pattern has been repeated on prime tuna fishing grounds every year since 1996 with dramatic negative impacts on early season tuna production (see attached graphs).

For example, we request the Committee's and Council's attention to the attached chartlet depicting Platts Bank fishing ground; a critically important traditional tuna as well as herring fishing ground. An important portion of Platts Bank for tuna fishermen is an area of only approximately 10 miles by 5 miles. Please consider that today's fleet of pair and single mid-water trawlers, with vessel lengths of 150-foot, with horsepower ranging from 1400 hp to a reported horsepower approaching 3000hp are capable of towing nets with 300 foot mouths at speeds between 3 to 5 knots. Thus, in just 87 two-hour tows (only 4 tows per vessel currently permitted) every square inch of this valuable fishing ground can be efficiently fished for herring by the mid-water trawl fleet. This practice can be repeated day-after-day (except Saturday and Sundays!) as long as market demand and catch rates are sustained.

Although the short and long-term impacts of localized resource depletion on the marine ecosystem can be debated, its reality cannot. To deny localized resource depletion requires an assertion that there is an inexhaustible supply of herring waiting to fill the huge voids created by locally intensive and efficient mid-water trawlers. This degree of efficiency is incompatible with the forage needs of many other fisheries and the Council's rebuilding objectives.

### **Observer Coverage on Mid-water Vessels in Groundfish Closed Areas**

According to the Council's July 31/August 1, 2003 Catch and Bycatch in the Herring Fishery – Summary of Available Data only 22 mid-water trawl herring trips have been observed since 1994 through NMFS Sea Sampling program. Bycatch observed on 18 single mid-water trawl trips include cod, haddock, pollock, flounders and other species. Bycatch on the remaining 4 pair mid-water trawls included a substantial quantity of haddock and dogfish. In 1999, a random sampling of herring lobster bait boxes found haddock, cod, dogfish, whiting and pollock mixed with the herring bait. In catch reports from 2001 TALFF joint venture fishing 7.8 mt of haddock were caught, 2.5 mt of redfish and 59.5 mt of whiting and one pilot whale were caught in the mid-water trawl catch involving 60 codend transfers.

The 2001 SAFE Report indicates that 1062 mid-water herring fishing trips took place in 2001. This suggests that since 1999, in excess of 5,000 mid-water trawl trips are likely to have taken place without any observer coverage. The Council's draft July 31/August 1 report concludes that:

“While these data may provide some perspective on the nature and extent of catch and bycatch on vessels using pelagic gear and catching herring, they are not comprehensive enough to draw any conclusions about the herring fishery as a whole, or about any individual gear type. Additional information is required to draw such conclusions.”

While we are in strong agreement that additional observer information must be forthcoming, we believe that existing data demonstrates and supports a conclusion that mid-water trawl gear has significant bycatch of groundfish, tuna and whales. A modest and conservative beginning to getting adequate bycatch data must include an appropriate level of observer coverage on mid-water vessels when they are fishing in critical closed groundfish areas. This is not only necessary to insure an efficient rebuilding plan for groundfish but equity demands this measure for the groundfish fleet making incredibly painful economic sacrifices under these closed area measures to rebuild the resource. In addition, there should also be observer coverage of mid-water trawl trips occurring outside of the closed areas to establish a comprehensive database on the level and nature of bycatch and on possible wasteful fishing practices consistent with National Standard 9.

**The Management Alternative for Herring Amendment 1**

1. Prohibit mid-water trawling in herring management area 1A and in an area bounded by 41°00 & 42°00 latitude and 70°00 & 69°00 longitude (i.e. Chatham cod and tuna fishing grounds); and
2. Require mandatory observer coverage for mid-water and pair mid-water trawl vessels fishing in any groundfish seasonal and year-round closed area and elsewhere for 2 years to establish a comprehensive database on the level and nature of discards consistent with Magnuson-Stevens Act National Standard 9. Observer coverage should be at a level sufficient to prevent mid-water boats from altering their fishing pattern to prevent an accurate data base on the level of bycatch and possible wasteful fishing practices consistent with the Magnuson-Stevens Act National Standard 9.

**Consistency with Adopted Objectives 1, 2, 3, 4, 6 and 7**

*Objectives 1 & 2*

The alternative to close a coastal area to midwater trawl gear will help prevent herring overfishing by limiting the use of fishing gear which is, by virtue of its high-efficiency, capable of damaging discrete spawning components of Atlantic herring such as the Gulf of Maine spawning stock. The Council's SSC and the PDT have recommended that the herring management program be designed to provide conservative protection to avoid the risk of overfishing individual spawning components. The SSC has also recommended that a 60,000 TAC is too high for the Gulf of Maine. Given the uncertainties resulting from stock mixing, the most desirable and justifiable management measure is to limit the fishing effort and mortality of the most efficient gear in those areas where the most sensitive component of the resource is located.

This measure does not impede the herring industry's ability to catch the TAC set by the Council and, consequently will not have a substantial negative economic impact on the herring industry or a negative impact on product availability for either the lobster bait or herring export markets. This alternative does not discriminate against any individual vessel given that it would not restrict any affected vessel from switching its gear to one allowed in those areas proposed for mid-water trawl closure.

#### *Objective 3*

This purse seine only alternative would limit the areas where excessively efficient mid-water trawls could exert excessive herring fishing mortality that may negatively affect the age structure of the stock.

#### *Objective 4*

The purse seine only alternative directly advances the objective of the orderly development of the offshore area herring fisheries by creating an effective incentive for large vessels designed to efficiently catch and maintain large quantities of herring in a hurry on the offshore fishing grounds.

#### *Objective 5*

The purse seine only alternative will provide greater protection of the marine ecosystem in the Gulf of Maine Cape Cod and Southern New England, than a "no action" alternative. This alternative will provide adequate opportunities for predator consumption of herring and recreational fishing by mandating the use of less efficient herring fishing gear in the coastal areas where numerous important recreational and commercial fisheries (and rebuilding plans) currently depend on sufficient densities of herring distributed consistently across all major fishing grounds. This alternative will reduce or eliminate areas barren of herring resulting from the efficient, locally intensive fishing pattern employed by mid-water trawl vessels.

The alternative requires an adequate level of observer coverage of mid-water trawl vessels in groundfish closed areas and will identify the existence or non-existence of any wasteful fishing practices for future management attention. This alternative will help achieve recommendations coming from the PDT particularly recommendation:

“#9 Determining the extent of bycatch in the fishery and its impact on the use of TACs in managing the fishery. Increase levels of observer coverage on vessels catching herring.”

This alternative will also bring the Council’s Herring FMP into better compliance with “National Standard 9 which states “Conservation and management measures shall, to the extent practicable: (1) Minimize bycatch; and (2) To the extent bycatch cannot be avoided, minimize the mortality of such bycatch.”

Further, the NMFS guidelines for implementing this standard requires the Council to:

- (1) “Promote development of a database on bycatch and bycatch mortality in the fishery to the extent practicable. **A review and, where necessary, improvement of data collection methods, data sources, and applications of data must be initiated for each fishery to determine the amount, type, disposition, and other characteristics of bycatch and bycatch mortality in each fishery for purposes of this standard and of Section 303 (a)(11) and (12) of the Magnuson-Stevens Act.**” (emphasis added)

#### *Objective 7*

The purse seine only alternative contributes directly to reducing the “race for the fish” in the coastal area by redirecting a substantial portion of existing harvesting capacity into the offshore fishing grounds where the quota has never been achieved. This alternative may also have the positive effect of eliminating the necessity for management regulations in Area 1A negatively affecting production and shore-side processing of herring during the spring and summer seasons.

Respectfully submitted on behalf of the *Coalition for the Atlantic Herring Fishery’s Orderly, Informed and Responsible Long Term Development (CHOIR)*.

August 25, 2003  
Salem, N.H.



2501 M Street, NW  
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Washington, D.C. 20037

June 11, 2004

Lewis Flagg  
Chair, Herring Committee, NE Fishery Management Council  
Deputy Commissioner, Maine Department of Marine Resources  
21 State House Station  
Augusta, ME 04333-0021

Dear Mr. Flagg:

Please accept for consideration by the New England Fishery Management Council's Herring Committee at its June 2004 meeting the enclosed proposal to institute hard bycatch caps in the New England herring fishery as a part of the 2005 fishing year specifications.

As you know, bycatch contributes to the overfishing of many species and results in waste and destruction of marine resources. Establishing a system of caps whereby each fishery is held accountable for the bycatch it creates would be an important next step to follow the work in FW40a to count, cap and control bycatch in New England. We hope that the enclosed proposal will begin the discussion of how we can reach our bycatch reduction goals.

Thank you for the opportunity to submit this proposal for the Council's consideration, and we look forward to participating in the upcoming meeting.

Very truly yours,

Phil Kline  
Senior Fisheries Policy Advisor  
Oceana

Gib Brogan  
Campaign Projects Manager  
Oceana

cc: Capt. Paul Howard, Executive Director, NEFMC  
Members of NEFMC Herring Committee



**Hard Bycatch Caps:  
Proposal for the New England Fishery Management Council  
Inclusion in the 2005 annual Specifications for the Atlantic Herring Fishery  
June 11, 2004**

Summary

Beginning in the 2005 fishing season, the New England Fishery Management Council (Council) should establish and include in annual Atlantic Herring specifications a system of meaningful limits on bycatch known as "hard bycatch caps" for groundfish species and marine mammals.

This proposal expands upon the current use of established bycatch caps on stocks of concern in the category B DAS portion of the groundfish fishery and includes limits on bycatch of marine mammal species documented to be caught in the herring fishery. Fishing would stop in the herring fishery when these hard caps are met, even if the target optimum yield had not been reached. Federal observers would monitor bycatch mortality through the season.

In this proposal, limits on bycatch are carried over from the groundfish fishery until at-sea observer data provides sufficient information to adjust the limits. Similarly, bycatch caps should be established for three species of marine mammals using the total Potential Biological Removal (PBR) as a limit on the fishery until more accurate and precise data concerning takes in the fishery itself is collected. The bycatch caps should be adjusted annually based on new scientific information.

These measures will serve as a backstop and limit herring fishery induced mortality. The measures assure managers that authorizing the herring fishery to operate in areas known to hold recovering stocks will not jeopardize the sacrifices made by the groundfish fishery to protect overfished stocks. At the same time, the limits should be high enough to permit the herring fishery to remain open unless it is egregious in its catch and discard of non-target species. Ideally, the limits will serve as a backstop only and never be reached.

Purpose/Benefits

- Adds real accountability into the management of New England's fisheries
- Helps ensure fairness between fisheries by preventing the herring fishery from catching excessive amounts of recovering stocks.
- Ensures compliance with National Standard 9 of the SFA
- Provides incentives for clean-fishing, since bycatch is counted against the fishery and can result in reduced fishing opportunities.
- Builds upon existing management practices by extending the current application of the b-day bycatch limits.
- Insures that the total mortality inflicted by the herring fishery does not exceed the bycatch limits in the directed fishery.

**Authority to Establish Bycatch Caps-** National Standard 9 requires that *all* conservation and management measures, including annual specifications, minimize bycatch to the extent practicable and minimize the mortality of incidentally caught species to the extent that bycatch cannot be avoided. Establishing and enforcing total allowable catch (TAC) levels for bycatch species in addition to target species is a practicable measure to minimize bycatch in the herring fishery, and is therefore required by National Standard 9.

**Setting Initial Levels of Allowable Bycatch-** The 2005 specifications should establish bycatch TACs for the eight “stocks of concern” identified in FW40A at 2-5% of the overall TAC set for those stocks. The specifications should also establish bycatch TACs for identified marine mammal species using the PBR limit as a proxy for an acceptable number of mammal takes in the herring fishery.

**Establishment of Bycatch TACs for Finfish-** As a pilot program in the herring fishery, running in parallel with the pilot Groundfish Framework 40A measures, the 2005 bycatch TAC specifications should adopt the bycatch TAC levels set in the Framework 40A document:

Stock	Suggested 2005 Incidental Catch TAC (mt)	Percentage of Overall TAC for FY 2005	Applicable Herring Management Areas
GOM Cod	127	Two	1A, 1B
GB Cod	97	Two	3
CC/GOM Yellowtail	25	Two	1A, 1B
Plaice	181	Five	All
White Hake	76	Two	All
SNE/MA Yellowtail	99	Five	2, small portion of Area 3
SNE/ME Winter Flounder	178	Five	2, coastal waters of MA
Witch Flounder	350	Five	All

*Source: New England Fishery Management Council FW 40a Draft, May 4, 2004, p.8*

Establishing these pilot bycatch TACs proactively anticipates the data provided by the expanded 2004 observer program. In a worst case scenario in which both the Multispecies and Herring fisheries meet an incidental catch TAC, the TACs established in Framework 40A represent only between two and five percent of the overall TAC for these stocks, thus minimizing the environmental harm to some degree.

**Establishment of Bycatch TAC’s for Marine Mammals-** The Council and the National Marine Fisheries Service should investigate whether it is possible to allocate to the herring fishery an equitable share of PBR for the marine mammal populations with which it interacts. In the absence of sufficient observer data to allocate a portion of the overall PBR to the herring fishery, an absolute bycatch cap should be established for the three species of marine mammals that have been documented as bycatch in the fishery (harbor seals, white-sided dolphins, and longfinned pilot whales<sup>1,2</sup>) using the PBR level as a proxy for this limit. Establishing such generous limits on mortality will begin a process of

<sup>1</sup> New England Fishery Management Council Document: *Catch and Bycatch in the Herring Fishery-Summary of Available Data*, p.8.

<sup>2</sup> The species boundary (for shortfinned pilot whales) is considered to be in the New Jersey to Cape Hatteras area. Sightings north of this area are likely *G. melas* (longfinned pilot whale).

identifying and minimizing take levels in the herring fishery and moving towards accounting for alarming levels<sup>3</sup> of mammal mortality in future fishing years.

Species	Potential Biological Removal (PBR)	Affected Management Areas	Source
Atlantic White-Sided Dolphin	125	All	NMFS Office of Protected Resources <sup>4</sup>
Longfinned Pilot Whale	113	All	NMFS Office of Protected Resources <sup>5</sup>
Harbor Seal	1,859	1A, 1B, 2	NMFS Office of Protected Resources <sup>6</sup>

**Monitoring of Bycatch TAC-** At sea observers will be necessary to monitor the catch and bycatch in the herring fishery. Recent science suggests an observer coverage level of fifty percent is necessary to capture and statistically estimate the true nature of rare bycatch events such as the marine mammal interactions that have been documented in the herring fishery in the past.<sup>7</sup>

**Management of Bycatch TACs-** Management of bycatch TACs in the herring fishery should operate in a manner similar to that of the category B DAS in the Multispecies fishery. Management areas where stocks of concern or marine mammal species exist should be closed to herring vessels if a bycatch TAC is met. If a finfish TAC is met, fishing should continue in areas that do not contain the finfish stock if applicable areas are available.

**Annual Review of Bycatch TACs-** Although not being developed in Herring Amendment 1 as a management alternative, the use of bycatch TACs could be extended after the implementation of Amendment 1 through a framework action similar to that of FW40a.

Using the enhanced data set provided by the 326 observer days allocated for 2004 will allow managers to refine the TAC levels to improve the efficiency of the herring fishery and reduce bycatch in years to come if bycatch problems are identified outside the stocks of concern list.

<sup>3</sup> New England Fishery Management Council Document: *Catch and Bycatch in the Herring Fishery-Summary of Available Data, p.8*. 11 pilot whales were observed in 23 observer trips in the Joint Venture fishery.

<sup>4</sup> ([http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/Cetaceans/White-Sided\\_Dolphin\\_\(Western\\_N.\\_Atlantic\)/AO95whitesideddolphin\\_westernN.atlantic.pdf](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/Cetaceans/White-Sided_Dolphin_(Western_N._Atlantic)/AO95whitesideddolphin_westernN.atlantic.pdf))

<sup>5</sup> ([http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/Cetaceans/Long-Finned\\_Pilot\\_Whale\\_\(Western\\_N.\\_Atlantic\)/AO00longfinnedpilotwhale\\_westernN.atlantic.pdf](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/Cetaceans/Long-Finned_Pilot_Whale_(Western_N._Atlantic)/AO00longfinnedpilotwhale_westernN.atlantic.pdf))

<sup>6</sup> ([http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/Pinnipeds/Harbor\\_Seal\\_\(Western\\_N.\\_Atlantic\)/AO00harborseal\\_westernN.atlantic.pdf](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/Pinnipeds/Harbor_Seal_(Western_N._Atlantic)/AO00harborseal_westernN.atlantic.pdf))

<sup>7</sup> Babcock, Elizabeth, Ellen Pikitch, and Charlotte Hudson, “How much observer coverage is enough to adequately estimate bycatch?” (2003). <http://northamerica.oceana.org/uploads/BabcockPikitchGray2003FinalReport.pdf>



August 27, 2003

Paul Howard  
Executive Director  
New England Fishery Management Council  
50 Water Street  
Newbury Port, MA 01950

**Re: Amendment 1 to the Atlantic Herring Fishery Management Plan, Supplemental Scoping Comments in Response to Council Staff Request**

Dear Mr. Howard:

As you know, on July 31, 2003, Oceana submitted comments (attached) concerning the scope of issues to be addressed in the Environmental Impact Statement (EIS) for Amendment 1 to the Atlantic Herring FMP (Herring Amendment 1). Oceana submits the present letter in response to feedback and requests for clarification from the Council staff, Herring PDT, Herring Oversight Committee and the Herring Advisors. I have discussed each request for clarification in a separate section below. Please consider this letter as a supplement to the attached July 31, 2003, letter and the alternatives that Oceana proposes to be complete.

**1) Explain Oceana's Request that Amendment 1 Analyze an Alternative to Require 100% Observer Coverage in the Directed Herring Fishery for a Period of Five Years**

The PDT and Committee expressed concern over this level of coverage and whether it is appropriate. At this stage, the EIS must consider a wide range of alternatives, and one of those alternatives should be 100% observer coverage in the directed herring fishery. The analysis provided in the EIS should shed light on some of the issues of concern to regulators and industry participants alike.

A critical initial step in the responsible management of the herring fishery is to adequately assess bycatch and other dynamics of the herring fishery through adequate observer coverage. During the early development of Amendment 1, the shortcomings of existing data on the

herring fishery have become readily apparent.<sup>1</sup> More comprehensive data will facilitate managing gear conflicts and the use of modern management tools such as zoning of gears and bycatch and in-season TACs. Oceana therefore requests that an alternative be included and analyzed in the EIS under which, for a five-year period, observers are placed on each vessel that targets herring. Such coverage will provide an adequate baseline of information about the herring fishery. From this data, more informed and responsible decisions can be made about the future of this important fishery.

At the May 2003 NEFMC meeting, Dave Potter, with the National Observer Program, testified that high levels of observer coverage are necessary in “new and developing fisheries” in order to create a sound baseline of information for effective future management and bycatch mitigation. The recent introduction and expansion of mid-water and bottom trawl gear in the herring fishery certainly warrants treatment as creating a new and expanding fishery. To illustrate this expansion, consider the trends in midwater and bottom trawl gear use from 1997-2002. In those six years, midwater trawl use across the fishery increased more than 800% and bottom trawl gear use increased by more than 600% (Attached Figures 1 & 2).

Mr. Potter also explained to the Herring PDT that fisheries with rare bycatch encounters, such as those that may encounter marine mammals and sea turtles, require increased levels of observer coverage. While a lower coverage level may be sufficient to monitor normal events in a fishery, such as herring discards, elevated coverage is necessary to capture and report “catastrophic events” of massive bycatch of groundfish, highly migratory species like bluefin tuna, marine mammals, protected species, and other marine life occurring in the fishery. Observers placed on mid-water and purse seine vessels have reported such events as discards of 10,000 pounds of mackerel, 2,400 pounds of bluefin tuna, and 650 pounds of striped bass.<sup>2</sup>

Instituting a five-year observer program to obtain a complete baseline of data is also a fiscally reasonable alternative which would allow observation of 80%-90% of the total herring catch while requiring at-sea observers on only a small number of fishing vessels. The Herring FMP defines a direct herring vessel (a vessel targeting herring) as having average landings of more than 2,000 pounds of herring. Under this definition, there were just 32 directed herring vessels in 2001, and these 32 vessels in 2001 landed 117,940 mt of the 118,028 mt total landings of herring, or 99.9% of all landings.<sup>3</sup> While 100% observer coverage on all directed vessels is a new idea to New England, similar and higher levels of observer coverage (two observers per vessel) are required in small-mesh fisheries on the West Coast and in the North Pacific to manage Total Allowable Catch in season in the pollock fishery, as well as monitor the fishery for bycatch of the target and other species.

## **2) Explain Oceana’s Request for an Alternative to Implement Measures to Reduce Bycatch in the Herring Fishery**

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<sup>1</sup>With the exception of a very small domestic program and the data from the JVP observer program, for which the data has not been analyzed, adequate discard information is simply not available.

<sup>2</sup> The observations took place in 1997 and 1998 as part of a Maine DMR research project. Bycatch and Discards in the Atlantic Herring Fishery, Maine DMR, February, 1999.

<sup>3</sup> Atlantic Herring SAFE Report for the 2001 Fishing Year, Table 4, Page 9.

The data on the bycatch of both fish and protected species show that catastrophic events of massive amounts of bycatch are occurring in the herring fishery.<sup>4</sup> Furthermore, anecdotal evidence provided by those familiar with the fishery during the scoping process suggest that bycatch events involving fish and mammals are common in the herring fishery. Therefore, Oceana urges the council to develop and analyze alternatives that consider the following management options to reduce known and potential bycatch:

**A) Seasonal and temporal closed areas in high bycatch areas-** The data provided by the Maine DMR observer study indicate that bycatch rates have seasonal patterns and that bycatch could therefore be minimized through seasonal closures in identifiable areas. This study spanned an entire year and included trips to both inshore and offshore fishing grounds. The following tables summarize the bycatch events observed by the Maine DMR observers and the areas where the events took place.

Bycatch events in the Midwater Trawl Fishery, August 1997-July 1998

Month	Statistical Area	Principal Bycatch Items (Amount)
January 1998	539 inshore	<b>Mackerel (17,790)</b> , Blueback herring (5,916), dogfish (132)
February 1998	613 inshore	Blueback Herring (500)
May 1998	513 inshore	<b>Mackerel (1,200)</b> , Dogfish (3,300), Blueback herring (300)
June 1998	522 GB	<b>Mackerel (44,114)</b> , Whiting (1,053), <b>Mako shark (125)</b> , <b>Porbeagle shark (70)</b>
July 1998	522 GB	<b>Mackerel (25,033)</b> , Blueback herring (603), <b>Bluefin Tuna (370)</b> , Whiting (667), thresher shark (250)
August 1997	513, 514, 515	Dogfish(365), Hake (500), Blue shark (310)
October 1997	513, 521	<b>Mackerel (10,000)</b> , <b>Bluefin Tuna (2,400)</b> , <b>Striped Bass (850)</b> , <b>Harbor Seal (300)</b>
November 1997	513 Inshore	Mackerel

Bycatch Events in the Purse Seine Fishery August 1997-July 1998

Month	Statistical Area	Principal Bycatch Items (Amount in pounds)
August 1997	512	<b>Dogfish (75,000)</b>
September 1997	512, 513	<b>Mackerel (600)</b> , <b>Bluefin Tuna (700)</b> ,
October 1997		
November 1997	513	Mackerel (450)

Source: Maine DMR Observer Study, 1999, Table 5.

<sup>4</sup> Atlantic Herring SAFE Report for the 2001 Fishing

These data, when combined with the sea sampling data from the JVP observer program and known patterns of migration of fish and marine mammals, could identify areas known to have concentrations of bycatch animals either seasonally or year-round. The EIS should carefully analyze closure alternatives to reduce these interactions with the herring fishery.

**B) Gear restrictions and prohibitions on non-selective gear-** Seine gear may have a less severe effect on habitat and incur less bycatch than midwater trawl gear. Thus, the EIS should carefully analyze alternatives that include the establishment of seine-only areas to reduce bycatch seasonally or year round. The EIS should also examine exempting the seine fishery from bycatch closures, as seine gear may permit large numbers of discards to survive. The EIS should also examine incentives to use gears that have lower rates of bycatch and bycatch mortality.

**C) Reevaluate the Exempted Status of Midwater Trawls-** The EIS should analyze whether midwater gear should continue to have an exemption to gain access to groundfish mortality closed areas. The council must take actions to prohibit inappropriate gears in areas known to contain groundfish, including the groundfish closed areas and inshore rolling closures. This measure is necessary to be consistent with the Groundfish FMP.

**D) At-sea discards-** Economic discarding of large numbers of dead herring at sea due to highgrading or capacity limits of vessels is believed to occur throughout the fishery. Enacting regulations to address this practice would ensure both efficient use of the resource and the future health of the fishery. To address this issue, the EIS should analyze the two alternatives that require:

**i) Full Retention-** All fish caught in a net must be landed. This approach would ensure that catches are accounted for, producing more accurate management of the herring resource while minimizing waste in the fishery.

**ii) Bycatch Caps-** Establishing hard limits on the number and amount of all catch, including discards, in the fishery will fully account for all herring and bycatch mortality and reduce waste.

### **3) Explain Oceana's Alternatives to Assess and Minimize the Impact of Herring Gear on Important Marine Habitats**

To comply with the *AOC et. al. v. Daley* Joint Stipulation, the NEFMC and NOAA Fisheries must prepare a DSEIS for the herring fishery that considers a broad range of alternatives that minimize the adverse effects of fishing on EFH and the environment.

To provide this wide range of alternatives, Herring Amendment 1 must include measures to ensure that mid-water trawls do not contact the bottom, prohibit bottom-tending gears from sensitive habitats and minimize the effects of fishing on known areas of important habitat.

Specific alternatives to address these issues include:

**A) Midwater Gear Usage-** Studies in the North Pacific have noted that mid-water trawls similar to those used in the Atlantic herring fishery make contact with the seafloor up to 85% of the duration of a tow.<sup>5</sup> Therefore, the EIS must analyze the following alternatives.

**i) Alternatives for defining fishing gears-** Amendment 1 must include complete definitions of gears used in the herring fishery that describe permitted and prohibited equipment and configurations for each gear. Midwater trawls should be held to strict definitional standards that provide a basis for treating this gear as one that does not affect seafloor habitat. Option 2 in the discussion document provides the appropriate definition of midwater trawl gear:

**Midwater trawl gear** means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. This gear may not include discs, bobbins, or rollers on its footrope or chafing gear as part of the net.<sup>6</sup>

The EIS should also consider as part of this alternative the requirement by definition that such gear have an exposed “tender” net without the protections offered by chafing gear or other enhancements intended to protect the net from contact with the seafloor. This “tender” net provision would reduce industry participants’ willingness to illegally operate their nets on the bottom and protect the seafloor in the areas where they target herring.

**ii) Alternative to prohibit mid-water trawls in sensitive marine habitats-** Despite their intended use, midwater gears have been shown to have effects on seafloor habitats.<sup>7</sup> As an alternative to defining midwater gear so that it can no longer have such effects, Amendment 1 must recognize the effect of these gears on important habitats for groundfish and other species and take steps to protect these habitats. Although the EFH amendment (previously known as Amendment 1) has been cancelled, the habitat effects of the herring fishery must be addressed.

**B) Bottom Trawl Fishery-** Since 1997 there has been a six-fold increase in the number of bottom trawl trips targeting herring with bottom trawls. Although only landing 539 mt of herring<sup>8</sup> these boats conducted more than 300 trips targeting herring.<sup>9</sup> The Herring

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<sup>5</sup> Loverich, G. 2001. *NET-Systems. Trawl dynamics and its potential impact on habitat. Report submitted to the National Academy of Sciences, Evaluating the Effects of Bottom Trawling on Seafloor Habitats. Anchorage, Alaska. June 2001.*

<sup>6</sup> Herring Amendment 1 Discussion Document, August 20, 2003, p. 40.

<sup>7</sup> Loverich, 2001.

<sup>8</sup> Atlantic Herring SAFE Report for the 2001 Fishing Year, Table 4, Page 9.

<sup>9</sup> Background Data for Consideration When Developing Limited Access Alternatives, New England Fishery Management Council memo, dated July 24, 2003.

Amendment 1 EIS must address this expansion of the bottom trawl fishery and the resultant impact on sensitive and important marine habitats.<sup>10</sup>

#### **4) Explain Oceana's Alternatives to Assess and Maintain the Ecological Role of Herring as a Major Prey Source In the Gulf of Maine**

The potential for localized, sequential, and region-wide depletions of herring and overfishing of herring is clear. Instances of each have occurred in this fishery in the past and continue to occur today. Herring Amendment 1 must contain an adequate assessment of the foraging needs of predator fish,<sup>11</sup> marine mammals, and sea birds and account for these needs in any modeling of the fishery that take place. This analysis must account for the local, regional, and fishery-wide needs of the ecosystem for the forage herring supply.

For example, the assessments cannot focus only on average fishery-wide herring abundances in the four management areas, but must assess the localized effects of reducing prey in area 1A and the resulting effects on inshore marine life. Such an approach recognizes that, although herring may be abundant in offshore areas, foraging predators in inshore areas may not be able to reach areas that are abundant in herring.

The Herring PDT uses an assumption of 350,000 mt of herring to be removed by predation annually.<sup>12</sup> While the product of Mike Morin's research into the role of herring as a forage item and the implications of this on herring management is not yet available, this analysis should illustrate the importance of herring in the marine ecosystem and also the importance for managers to account for these factors in any modeling above and beyond this assumed level of removal.

The results of this assessment of ecological needs must be used to further reduce Optimum Yield in the Herring FMP below Maximum Sustainable Yield and maintain herring's important position as forage.

#### **5) Explain Oceana's Alternatives to Ensure No Overfishing of Herring**

The use of adequate observers, hard TACs, measures to control the expansion of effort in the fishery, and precautionary annual catch levels are essential to ensuring that the fishery does not overfish, locally deplete, or collapse the herring resource. Herring Amendment 1 must include a full analysis of the risk of overfishing and other environmental impacts due to the uncertainties in the present United States stock assessment and 2003 catch levels. Furthermore, Herring Amendment 1 must analyze the beneficial environmental impacts of reducing catch levels to be consistent with Canadian survey assessment and catch

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<sup>10</sup> Oceana has discussed the appropriate alternatives to consider in regulating bottom-tending mobile fishing gear in its comments on the Scallops and Groundfish habitat EISs. Measures in the Herring FMP should be coordinated with measures in those FMPs. Please incorporate those comments by reference in this rulemaking. See Oceana letter dated July 16, 2003.

<sup>11</sup> The assessment of the needs of predator fish should be done in coordination with the FMPs of relevant managed species. Alternatives should be considered for designating herring as EFH for predator species and protecting herring from the adverse effects of fishing as defined in 50 CFR § 600.810.

<sup>12</sup> Summary of Herring PDT Meeting, March 19, 2003

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recommendations. We recommend analyzing a risk-averse TAC alternative to ensure that food web dependencies are not affected while more research is completed.

Thank you for your consideration.

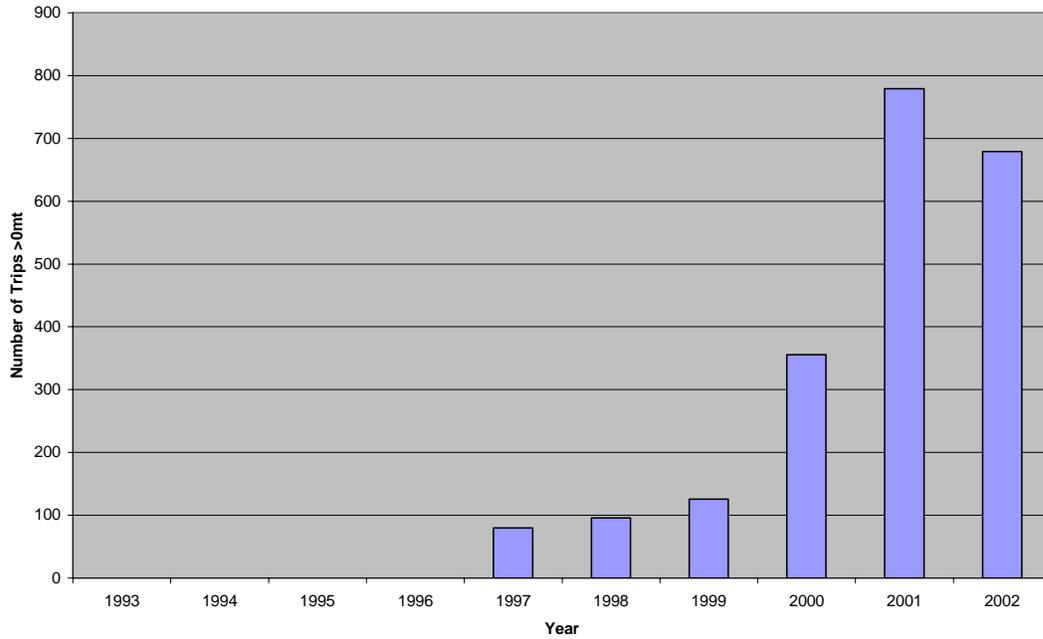
Sincerely,

Gib Brogan  
Field Organizer/Fisheries Specialist  
Oceana

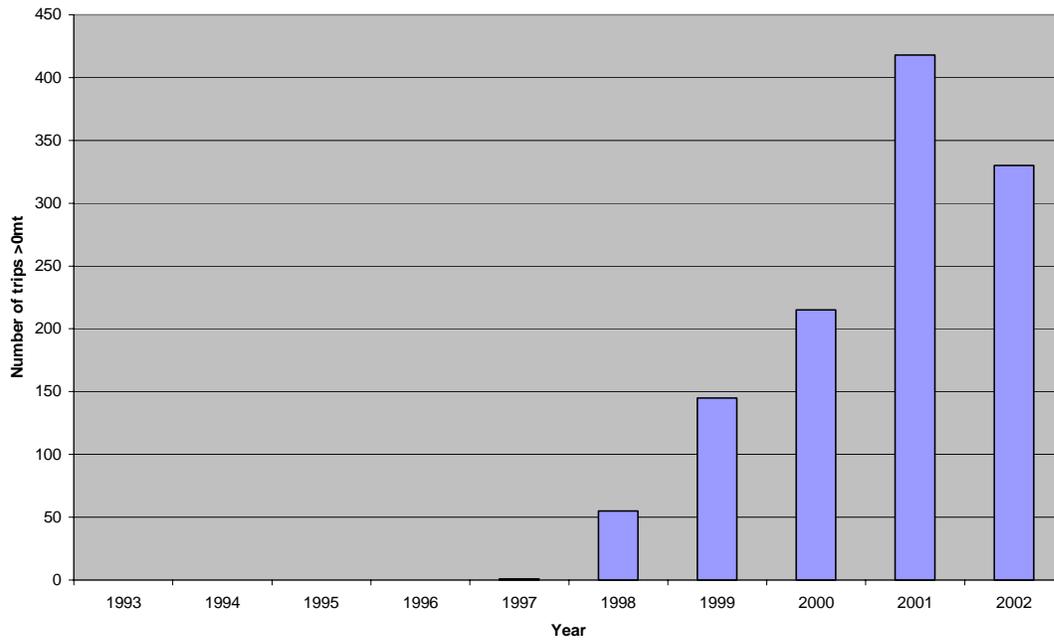
Attachment

Figures 1 and 2:

**Expansion of Midwater Trawl Gear in the Atlantic Herring Fishery**



**Expansion of Bottom Trawl Gear in Atlantic Herring Fishery**



Source: New England Fisheries Management Council Memo,  
July 24, 2003