

Enforcement Report

NEFMC

April 24, 2012

Herring Amendment 5

- To be discussed Thursday, April 26th
- The Enforcement committee met March 22, 2012
- Enforcement originally reviewed A5 in March, 2009
- Enforcement reiterated some recommendations, recognized others now in the herring documents, and made new recommendations

Herring Amendment 5

Enforcement recommendations

- Consensus: The committee reiterated, on page 13 of the PH document, that Option 2 (restrict transfers at sea to only vessels with category A or B limited access herring permits) was enforceable, and Option 3 (allow transfers between vessels possessing category A, B, C or D permits) was un-enforceable.
- Additionally, Option 2 prohibits tuna boats from receiving bait transfers at sea, and Option 3 would require tuna boats to hold a herring permit and adhere to all the reporting requirements, in order to transfer herring as bait.
- If transfer of herring by groundfish vessels is allowed, the Coast Guard would find it very difficult to enforce the possession limits.

Herring Amendment 5

Enforcement recommendations

- Motion: The committee unanimously agreed that some of the options in the river herring (green) section are difficult to enforce and difficult for the industry to comply with, and most of this section should be simplified so a clear decision may be made.
- Herring areas overlap with the river herring trigger areas.
- A herring carrier vessel may have 3 or 4 VTR's per day.
- It's critical to add a gear declaration to the pre-trip VMS declaration, as proposed on page 15 of the PH, option 2, number 2. That information will be readily available to the enforcement agents at sea within the VMS monitoring system, whereas VMS catch reports would be more difficult for the agents to access in real time.

Herring Amendment 5

Enforcement recommendations

- Motion: The committee unanimously approved to modify the third bullet of option 3 on page 32 of the PH document as follows:
 - Fish that have not been pumped or brought aboard may be released if the vessel operator finds that:
 1. Pumping or bringing aboard the catch could compromise the safety of the vessel...
 - To accommodate those operations which do not pump. This change from “pumped” to “pumped or brought” and “pump” to “pump or bring” also applies to options 4A through 4D.

Herring Amendment 5

Enforcement recommendations

- Consensus: The committee continues to support the elimination of the VMS power-down provision, now 2B on page 10 of the PH document, and make this herring provision the same as the other fisheries.

Herring Amendment 5

Enforcement recommendations

- **Consensus:** In its current state, the section (starting on page 17 of the PH document) on dealer reporting requirements is not enforceable.
- NMFS expects to work with industry to develop a weighing process.
- Both options 2A and 2B require dealers, who do not sort by species, to document how they estimate mixed catch composition, which may be a useful precedent in establishing the desired standardization.
- Herring or fish would have to be placed on a scale at some point to weigh accurately, but changing the rule to accurately estimate would give latitude to use, for example, totes to determine the weight.
- One suggestion is to make the weighing technique verifiable by a third party.

Herring Amendment 5

Enforcement recommendations

- Consensus: With respect to improving sampling at-sea (page 30 of the PH document), the enforcement committee had approved, in March 2009, the safe sampling station (now 2A), approved of reasonable assistance (now 2B) but said this was unenforceable, and dis-approved of bringing the cod-end on board (now 2F).
- However, the current version of visual access to the net/cod-end in 2F adds that if bringing the cod-end onboard is not possible (or safe), the vessel operator would be required to work with the observer to ensure that they can see its contents clearly.

Herring Amendment 5

Enforcement recommendations

- Consensus: With respect to net slippage, on page 32 of the PH document, the committee had supported the released catch affidavit, option 2, and had cautioned that pumping aboard all fish was dangerous.
- The latter requirement, option 3, now includes the caveat that if the operator finds that pumping the catch could compromise the safety of the vessel, then the fish may be released.
- The safety caveat in option 2, however, applies to pumping operations only, and must be clarified.

Herring Amendment 5

Enforcement recommendations

- Other issues:
- Does 100% observer coverage mean one observer on every vessel or must 100% of the hauls be observed (which may require more than one observer per boat)? For example, groundfish observers are required to observe 75% of the hauls.
- Observers are not considered enforcement resources in the Northeast. Observers on the west coast are considered enforcement agents. This adds a layer of complexity to recording events, analyzing them remotely, and establishing that a violation has occurred (logs may be one item in establishing a case).

NOAA Enforcement Priorities

- The committee reviewed the Final Draft NOAA Enforcement Priorities for 2012, which were published March 19, 2012.
- Subsequently, NOAA published Final Enforcement Priorities for 2012, on April 4, 2012 (attached).
- The process must be streamlined such that it is completed within the annual time-frame.
- Quarterly NEFMC Enforcement Committee meetings may be used as a forum, to provide regional input to the priority setting process for the following year. For instance, meetings in June and September this year, could provide Council input for 2013.

MAFMC letter regarding Northeast Attorneys

- ASMFC sent a similar letter in November 2011.
- Consensus: **The Executive Director or Chairman should send a letter to Secretary Bryson similar in content to the letters sent by the ASFMC and MAFMC that:**
 - **1) underscores the concerns about the lack of NOAA-GC staffing in the Northeast Region and how that undermines the deterrent effect of law enforcement effort**
 - **2) expresses appreciation with efforts made to date to address the current case backlog**
 - **3) requests that attorneys be returned to the regional office to rebuild relationships with industry (and participate in management decisions)**
 - **4) assures future staffing levels are appropriate to prevent another backlog similar to the one that exists today.**

NEFMC letter regarding Sector Landings

- JEA officers are boarding sector vessels, as one of OLE's priorities, and there are no documented violations with hails and landings, including sectors.
- There is someone at the New Bedford auction every day, and, about 80% of the time in Gloucester, JEA officers are waiting for boats to land; less so in Boston.
- OLE doesn't calculate an observed compliance rate (number of trips landed, number of intercepts by enforcement agents, number of violations), but an analyst position is being considered to do this type of work.
- Requiring the estimated hail is useful and considered a deterrent in as far as it keeps all on notice that they may be checked at any time and should expect to be based on the information they provide.
- The hail system, in and of itself, is not considered a deterrent to false reporting of actual landings. It is one element in an array of enforcement tools.

Deep-sea Coral Zone Management

- The Coast Guard finds either the broad or discrete zones challenging
- The broad zone is very large, and effective coverage would require more aircraft
- The discrete zones are more focused for monitoring, particularly for fisheries using VMS
- The Coast Guard recommends that the discrete area boundaries be coordinate based (as proposed)
- It is important that restrictions apply to generic gear types like mobile bottom tending gear, not to specific trawl types/fisheries (for example, shrimp trawls)

Other Business

- Advisors discussed fishing community participation in data collection for assessments
- The fishing industry and the fishing community must be equal partners in the assessment process, because it affects their lives and the future of the fishery and their livelihoods.
- This was deemed a discussion for the full Council