VMS/Enforcement Meeting Draft Summary

Holiday Inn by the Bay

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Herring Amendment 5

Lori Steele presented a review of the public hearing (PH) document and the draft Herring Amendment 5. Management measures are categorized by color in the PH document (page 5), and by section number in the draft amendment document. The blue sections in the PH document relate to FMP adjustments, including definitions specific to the herring fishery such as transfers at-sea (section 3.1.1 in the draft amendment), the VMS power-down options (section 3.1.2 in the draft), measures to address transfers of Atlantic herring at-sea (section 3.1.3.3 in the draft), pre-trip and pre-landing notification requirements (section 3.1.4 in the draft), and requirements for dealers to weigh fish (section 3.1.5 in the draft). The pink sections in the PH document provide options for catch monitoring at sea. For instance, 100% observer coverage may be required on limited access herring vessels (section 3.2.1.2 in the draft amendment), which includes category A, B, and C vessels. Lori pointed out that there are 55 category C incidental catch boats, and that the 45 category A and B vessels catch 97% of the herring. Additional measures to improve sampling at-sea (section 3.2.2.2 in the draft) include some options approved by the enforcement committee in March 2009; safe sampling stations, reasonable assistance, and notice of pumping activity for the observers. Net slippage is defined as unobserved discards (section 3.2.3 in the draft), but includes neither operational discards (fish still in the net after pumping has stopped) nor fish discarded from the deck. Option 2, requiring a released catch affidavit for slippage events, was approved by the enforcement committee in March 2009. Other options include pumping all fish onboard (with specified exeptions), as is done currently in closed area I, and catch deduction/trip termination once a maximum number of slippages occur in specific areas. Maximum retention provisions are not meant to apply with this amendment, but are included to develop a future mechanism. The green section in the PH document applies specifically to river herring by-catch. Alternative 2 establishes River Herring Monitoring/Avoidance Areas and considers several options for monitoring/avoiding river herring bycatch in those areas (including options for 100% observer coverage, among others). Alternative 3 establishes River Herring Protection Areas and includes options to close the areas to herring fishing. Both alternatives also include options for measures to become effective once a river herring catch trigger is reached. Finally, the purple section in the PH document addresses mid-water trawl access to groundfish closed areas.

Mackerel and herring are caught in a mixed fishery. Currently, the number of mackerel limited access vessels that would qualify in the herring fishery are as follows (see page 166 of the draft herring

amendment 5): of the seventy-four Tier 1 and 2 mackerel boats, twenty-eight would not qualify for limited access herring permits. There are over 300 Tier 3 incidental mackerel boats.

A requirement for 100% observer coverage must be more clearly defined, that is, does it mean one observer on every vessel or must 100% of the hauls be observed (which may require more than one observer per boat)? For instance, groundfish observers are required to observe 75% of the hauls. The resources currently are not available for 100% observer coverage, but industry funding may provide them. This may not be an enforcement issue, because observers are not considered enforcement resources.

The definition of slippage (page 31 of the PH document) is based on experience in closed area I with mid-water trawls and pair trawls, not bottom trawls or purse seines. Slippage for bottom trawls may be defined as release of fish from the cod-end, while the net is still in the water, but this is questionable. Herring in the net that is discarded, if the pump breaks, is considered slippage and not operational discards, under the current wording of the proposed definitions. Data show that about half the discards are operational discards, after the pump is removed from the net and the observer records its contents, and are typically 300 to 400 pounds. It is more difficult the define slippage versus operational discards for bottom trawl nets that do not use pumps. Also, the first bullet on page 31 of the PH document must be clarified to indicate that non-herring species are included in deciding if an event is operational discards or slippage. In the herring fishery, operational discards are primarily herring, and it is quite impossible to assure that every fish is pumped out of the net, in both the mid-water trawl and purse seine fisheries, and many of the stipulations in the slippage section do not apply to purse seine operations.

Transfers at sea are prohibited for groundfish vessels with trip limits, which may have Category C or D herring permits. If transfer of herring by these vessels is allowed, the Coast Guard would find it very difficult to enforce the possession limits. Transfers of whiting are deducted from the groundfish trip limit, at present. Both seller and buyer of herring transfers must have a receipt for the transaction, and the number of transfers must be reported in the logbook.

The committee reiterated its consensus, 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.

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.

Turning to the river herring section, there was concern for how the poundage is determined that sets off the various triggers. In the PH document, the trigger areas are shown on the map on page 45, and the trigger pounds are shown in the chart on page 44. There are nine options for the triggers; three for each area. On pages 46 through 48 are the options for monitoring the triggers. Option 1 requires fishermen to record, daily through VMS, catch by herring area, catch by river herring trigger area, and catch by

haddock stock area. The reports are then extrapolated to the entire fleet. The herring areas overlap with the river herring trigger areas. Compliance with such complicated reporting requirements may become an enforcement issue, for an additional example, a carrier vessel may have 3 or 4 VTR's per day. In general, some of these options will be difficult to enforce and difficult to comply with; the herring committee must try to simplify them.

Bill Semrau, VMS program manager, recommended including the gear type in the herring declaration requirement, rather than the VMS catch report as shown on page 47-48. Then, when a herring vessel declares a trip and declares a gear type, that information will be readily available to the enforcement agents at sea within the VMS monitoring system. VMS catch reports would be more difficult for the agents to access in real time. This requirement, to add a gear declaration to the pre-trip VMS declaration, is proposed under trip notification requirements, option 2, number 2, on page 15 of the PH document. The reason that the gear type is also required on the VMS catch reports is because the mid-water trawl vessels have a haddock catch cap.

Some of the river herring options are simple, for instance, alternative 3, option 1, on page 55 of the PH document simply closes river herring protection areas, although this may have serious implications for inshore fishermen of other species.

The enforcement committee unanimously approved a motion by David Goethel, seconded by Rodney Avila, to recommend to the herring committee that, in general, some of the options in the river herring section are difficult to enforce and difficult for the industry to comply with, and the whole section should be simplified so a clear decision may be made.

The committee returned to the options to address net slippage, on page 32 of the PH document. The enforcement committee had supported the released catch affidavit, now option 2, in March 2009. It had cautioned that pumping aboard all fish was dangerous, and this requirement, now 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. A new option 4 would require catch deduction and/or trip termination, depending on which of four sub-options are selected.

Observers are not enforcement agents. Enforcement agents must monitor observer data and determine that 1) a trigger is met, and 2) once a trigger is met for a particular area, that a slippage event has occurred and the trip must terminate. In the latter case, the observer will not be in a position to tell the operator to terminate the trip. The observer will estimate the quantity and composition of slipped fish, and the operator must sign the affidavit but may provide additional information if he disagrees with it.

The intent of all these options to address net slippage is that all fish be observed. The safety caveat in option 3, however, applies to pumping operations only, and must be clarified. Bottom trawl vessels, especially small boats, that do not pump would be required to bring all fish aboard, which is extremely dangerous and may sink the boat.

The enforcement committee unanimously approved a motion by Mark Alexander, seconded by David Goethel, 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.

With respect to improving sampling at-sea (page 30 of the PH document), the enforcement committee had approved, in March 2009, of 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, the vessel operator would be required to work with the observer to ensure that they can see its contents clearly.

Fish that are lost when the net is lost, or spill out of the mouth of the net or through a rip in the net, are considered normal loss. The observer will record such events and enforcement agents must review these logs to determine what type of event occurred. The observers should be required to give a copy their logs to the operator, at the time of recording. Apparently, the observer's debriefing log is not available to the operator. Observers on the west coast are considered enforcement agents. No one has been prosecuted solely based on observer logs, but the logs may be one item in establishing a case. This may change the relationship between the crew and observers, for the worse.

The committee also had supported the elimination of the VMS power-down provision, now 2B on page 10 of the PH document, and the consensus of the committee was to continue to support its elimination and make this herring provision the same as the other fisheries.

The question was raised how to require dealers to accurately weigh all fish, on page 17 of the PH document, and make it enforceable? Dealers are now required to report all of their fish in pounds, and the analysis starts on page 345 of the draft amendment document. The baseline, however, is not known, so several options are analyzed: a hopper scale shore-side, truck scales, and volumetric estimation (totes). Herring are exported in 20 kg boxes, for instance, but there is no way to standardize what all the dealers do now. NMFS is expected to work with the industry to develop a weighing process. Sub-option 2C, on page 17 of the PH document, is such an attempt to coordinate dealer reporting with other instruments. Dealing with mixed catch is difficult also, because the catch is not being sorted by species and weighed and is reported as all herring, and 60 to 70 % of the dealers are expected to continue this way into the future. There was concern particularly with using Fish-on-Line (FOL) as a corroborating factor and resultant violations, because of the time-lags associated with FOL availability, on a weekly basis. Both options 2A and 2B require dealers, who do not sort by species, to document how they estimate mixed catch composition, and this may be a useful precedent in establishing the desired standardization. The herring or fish would have to be placed on a scale at some point to accurately weigh it, but changing the rule to accurately estimate would give latitude to use, for example,

totes to determine the weight. If the intent is to accurately weigh the fish, then it may be necessary to require certified scales in order to make a case. **In its current state the section on dealer reporting requirements is not enforceable.** One suggestion is to make the weighing technique verifiable by a third party. Even if FOL worked flawlessly, is it non-compliance to not verify the weekly FOL report? There is concern that the industry is being asked to validate the dealer reports in the SAFIS database and report any discrepancy to the agency. Additionally, fishermen don't have access to the SAFIS database.

NOAA Final Draft Priorities

The committee reviewed the Final Draft NOAA Enforcement Priorities for 2012, which were published March 19, 2012. The priorities are intended to be an annual process, and this first iteration lasted for a year and a half. Thus, the first recommendation is to streamline the process such that it is completed within the annual time-frame.

A high priority, under the ESA & MPA section for the Northeast Division, concerns compliance with TED's. While TED's may not be required in New England, some New England fishermen must use TED's below a certain line when they fish for summer flounder, and the Northeast Division includes the Mid-Atlantic region where some of these interactions may occur in the scallop and summer flounder fisheries.

One concept is to use quarterly NEFMC Enforcement Committee meetings as a forum, to provide regional input to the priority setting process for the following year. NOAA will receive all comments at any time, but a formal process such as this would be helpful.

MAFMC letter regarding more enforcement attorneys

ASMFC sent a letter in November, similar in tone and demeanor to the MAFMC, and this council should do the same. The following motion by Peter DeCola and seconded by Rodney Avila was approved by consensus:

That the Executive Director or Chairman 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) Express appreciation with efforts made to date to address the current case backlog

3) Request 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.

The current backlog consists of approximately 100 cases, but a backlog plan has been approved. There are three attorneys at headquarters who are assigned to the Northeast as their priority, but it is preferred to have attorneys locally.

One idea was to have "floating" attorneys travelling to where the cases demand, but it was felt that headquarters should devise various options to deal with the backlog.

NEFMC letter regarding sector landings

Logan Gregory, the new Agent in Charge of OLE in the Northeast, indicated that their record system for sectors doesn't collect boarding information by boarding type. JEA officers are boarding sector vessels as one of OLE's priorities, but there are no documented violations with hails and landings. He asked if the council wants dockside monitoring, which was abandoned last year, to be replaced by JEA's checking offloads?

All the states operate differently, but the question was posed, for Massachusetts, are the offloads checked in New Bedford and Gloucester. Offloads are checked in New Hampshire on a regular basis, but the council didn't have information on all the states. There is, however, someone at the New Bedford auction every day, and, in Gloucester, about 80% of the time, JEA officers are waiting for boats to land; less so in Boston.

Currently, 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 for OLE to do this type of work. They can report on the number of boardings by states and OLE. There are no observed violations for sectors, and there have been checks.

The hail system is not considered a deterrent to false reporting of actual landings. The deterrent factor is people on the dock, checking boats. The hail system is useful to enforcement agent to know what to expect at the dock. The expected time of landing is useful for the agents to be more efficiently deployed. VMS is one tool, but does not provide pinpoint information of the specific dock/landing location. 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. Estimated hail information should be close to actual landings; it is not expected to be exact, but close, given all factors and conditions involved.

Coral Zones

Michelle Bachman gave a presentation showing the alternatives for deep-sea coral zone management measures (attached). Two alternate management frameworks are proposed, based on broad areas (large shelf/slope area extending to the EEZ) or discrete areas (individual canyons, seamounts, and specific locations in the Gulf of Maine). Fishing restrictions options include either no mobile bottom tending gears or no bottom tending gears, with exceptions, under either framework (broad or discrete areas). For example, there could be a blanket exemption for the red crab fishery, because it operates at depths deeper than the minimum depth of these different zones. An exemption program would need to be developed, as there is no single set of standards for exempted fishing permits or letters of authorization. Among other requirements, applicants are expected to be up-to-date on VTR's and not have any violations. In addition to those used previously, a move-along provision (once a certain amount of coral is observed in the catch) might be appropriate. The management measures within the zones may be changed via frameworks, but changes to the zones themselves would require amendments. Although there is spatial overlap between the broad areas and the discrete canyon and seamount areas, it could be useful to implement the broad and discrete approaches simultaneously, depending on the desired mix of fishing restrictions.

There has been some exploratory fishing out to the seamounts, but not recently.

Discrete coral zone boundaries in canyons were developed based on slope, with the landward boundary based on the 3 degree contour. Broad zone boundaries were based on depth contours. The reason that depth contours, and not the 3 degree slope contour, are applied to the broad zones is because it might be difficult operationally to know where you were fishing with respect to a slope contour.

The lack of information about the existence of coral in the large area seaward of the slope, specifically the abyssal plane out to the EEZ boundary, resulted in the precautionary approach to include the whole EEZ.

Some of the proposed discrete areas (outlined in red in the presentation) are based on the existence of coral, and other areas (outlined in brown) are based on suitable habitat criteria (depth and slope), sometimes including substrate data. The corals in Oceanographer Canyon may be diverse and robust because of an up-welling there, but this area may be unique. The area of protection for Oceanographer Canyon may not be large enough. Heezen, Lydonia, Veatch, Baltimore and Norfolk Canyons also have relatively large numbers of documented coral observations. The discrete areas do not incorporate the slope areas in between the canyons, but corals are found in these slope areas.

There was some discussion about whether trawl gear could reach the depths at which corals would be found, and it was felt that monkfish trawl gear could do so. There were bigger vessels with large winches, the cliff-draggers, that fished for grenadiers and rattails, but nobody currently is fishing seaward of the 500m broad zone boundary. There is fishing, for example red crab and tilefish, between 300m and 500m, but the habitat committee felt it was too irregular a boundary to bracket those (i.e., to

exclude the abyssal plain and protect an band between 300 and 500 meters, all along the eastern seaboard). The Habitat Committee wishes to know if one broad area will be easier to enforce than many discrete areas.

Other shelf-slope management areas may have similar enforcement issues associated with them. The SAFMC has a comprehensive coral management scheme, based on a system of coral HAPCs, associated fishing restrictions, and exemptions from those restrictions for the shrimp and golden crab fisheries. One of the zones (Stetson-Miami Terrace CHAPC) follows the 400m depth contour and covers a large area north to south (22,876 square miles). The shape of the 400m contour is less complex in the South Atlantic than in the Northeast region. The existing MAFMC tilefish gear restricted areas in Lydonia, Oceanographer, Veatch, and Norfolk Canyons, which exclude mobile bottom tending gear, have resulted in no enforcement actions or violations, partly because they have been a low enforcement priority.

The Coast Guard finds either the broad or discrete zones challenging. The broad zone is an enormous amount of ocean, and there is doubt about effectively covering that much water, without more aircraft. The lesser of two evils, therefore, is the discrete zones because they're more focused for monitoring, particularly with VMS. Additionally, it is important to the Coast Guard that the discrete area boundaries are co-ordinate based (as they are in these proposals). Finally, it is important that restrictions apply to generic gear types like mobile bottom tending gear, rather than, say, differently for fish trawls versus squid trawls. All that the Coast Guard can observe from the air is that two wires go into the water (or not), and not what mesh size is being used or what species are being targeted.

Other business

Matthew Baryshyan mentioned an article by Senator Kerry in the March 9, 2012 Gloucester Times, which concerned the re-establishment of Saltonstall-Kennedy funds. Senator Kerry stated that there is a high degree of distrust between the fishing community and scientific community, as well as government, and that it's pretty well founded. Now, a large research block (of money), to assess the health of our fisheries along the coast, will be funded. We, this committee, are responsible to respect and protect the fishery, but also to protect the livelihoods of 85 to 100 thousand people who make their living on the water. Matt felt that research concerning global warming, algae for fuel, and solar energy show, for example, that science can be purchased to get the answer you want. In the case of fishery representatives and the environmental community, we need to have vetting and oversight of the companies that are going to do the research, not only their credentials but their connections. The fishing community, as Senator Kerry says, must participate fully in the data collection, which means we tell them where the fish are. Additionally, we must learn more about who's going to analyze the data (to determine) where the fish are or where they are not. The fishing industry and the fishing community must be equal partners in the assessment, because it's going to affect all of our lives and the future of our fishery and our livelihoods.

The chairman felt that this was a discussion for the full council.