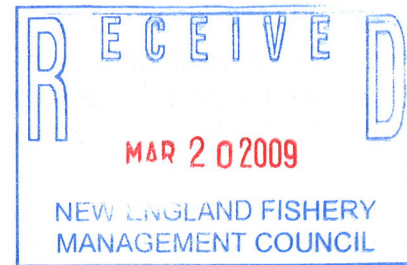




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March 20, 2009

Mr. Frank Blount, Chairman
 Herring Committee
 New England Fishery Management Council
 50 Water Street, Mill 2
 Newburyport, MA 01950

Re: River Herring and Other Bycatch Species in Amendment 4 to the Atlantic Herring FMP

Dear Chairman Blount,

A 2008 River Herring Stock Status Report to the Atlantic States Marine Fisheries Commission (ASMFC, December 2008) indicates that river herring are encountered as bycatch in many directed trawl fisheries. For the years 2000-2003, estimates of annual discards or bycatch landings of river herring in the Atlantic squid and mackerel fisheries ranged from 66,550 lbs for alewife to over 18 million lbs for blueback herring.¹ Similar quantities of river herring bycatch were found by Cieri et al. (2008) for the Atlantic herring fishery for the years 2005-2007, occurring in both single and paired midwater trawl gears.

We believe the final NS1 guidelines for ACL implementation (74 FR 3178) should require the New England Council to include river herring as one of the stocks in the Atlantic herring fishery. The MSRA of 2006 requires fishery managers to set annual catch limits at a level such that overfishing does not occur in the fishery, accompanied by measures to ensure accountability. 16 U.S.C. § 1853(a)(15). NMFS takes an inclusive approach in the new NS1 guidelines, specifying that the requirement for ACLs applies to all stocks in a fishery, including non-target species caught as bycatch and retained or discarded at sea. 50 CFR § 600.310(d)(2-4); § 600.310(f)(2). "Catch" includes fish that are retained for any purpose as well as mortality of fish that are discarded. 50 CFR § 600.310(f)(2)(i). Consistency with the MSA's inclusive definitions of "fishery," "fishing," and "stocks of fish" requires such an inclusive approach. § 16 U.S.C. 1802.

In the case of river herring bycatch in the Atlantic herring fishery, the river herring ACL would be a bycatch limit. Upon attainment of the river herring bycatch ACL, the directed fishery for herring should

¹ 2008 River Herring Stock Status Report to the Atlantic States Marine Fisheries Commission (December 2008), see Table 1.5.3.1.

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be closed or bycatch-triggered area closures should be employed. If the herring fishery has not attained its directed fishery catch limit, continued fishing should only be permitted with 100% observer coverage of fishing trips to ensure that any river herring bycatch is recorded and vessels stop fishing in areas where river herring bycatch is occurring.

Accountability measures (AMs) would include increased observer coverage on board fishing vessels, as well as mandatory bycatch reporting requirements. A system of seasonal gear/area closures should be implemented to minimize the potential for large bycatch episodes. If in-season catch data are available from on-board observer reports, NMFS should use hotspot authority to close areas where high levels of river herring bycatch occur. These measures are intended to prevent the herring fishery from exceeding its established bycatch ACL for river herring.

We believe these measures are required for consistency with both the MSRA and the terms of the new ACL guidelines to ensure that overfishing does not occur in the fishery, and are required to achieve recovery goals under the ASMFC management plan. While catch sampling for river herring in the trawl fisheries has been limited, the data clearly suggest that bycatch of river herring can be a very significant source of river herring mortality.² The ASFMC reports that river herring and American shad populations are at all time lows. It is urgent that we reduce all sources of mortality on river herring – including bycatch of these species at sea.

The Network was among the over 100 organizations from Maine to South Carolina that recently called on the Atlantic States Marine Fisheries Commission to address river herring bycatch at sea and to increase observer coverage in the fishery under Amendment 2 to the River Herring Fishery Management Plan. The ASMFC's Advisory Panel overwhelmingly supported bycatch reduction measures and increased monitoring as viable conservation measures that should be included in Amendment 2.

The New England Fishery Management Council has acknowledged these concerns. In October 2008, for instance, the New England Council called on the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission to engage in cooperative efforts to address river herring conservation. The current herring FMP amendment process provides an opportunity for the New England Council to demonstrate its commitment to addressing river herring bycatch and supporting the recovery of the region's imperiled river herring stocks.

Thank you for considering the Network's comments on this critical but often overlooked fishery conservation issue.

Ken Stump, Policy Director
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² Matthew Cieri, Maine Department of Marine Resources, Gary Nelson and Michael Armstrong, Massachusetts Division of Marine Fisheries (2008), Estimates of River Herring Bycatch in the Directed Atlantic Herring Fishery, *In*: 2008 River Herring Stock Status Report to the Atlantic States Marine Fisheries Commission (December 2008).