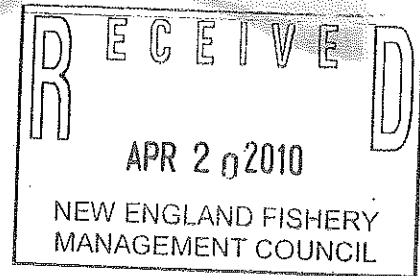


#10

April 20, 2010
Paul J. Howard, Executive Director
New England Fishery Management Council
50 Water Street
Newburyport, Massachusetts 01950



RE: Amendment 5 to the Atlantic Herring Fisheries Management Plan

Dear Mr. Howard:

I am writing to you on behalf of the Herring Alliance concerning the Atlantic herring fishery management plan, Amendment 5 to this FMP and several related issues discussed at the recent meetings of the Herring Oversight Committee (30-31 April 2010) and Plan Development Team meeting (8 April 2010). As you know, Amendment 5 was created by removing the catch monitoring provisions from Amendment 4, with the promise that Amendment 5 would be developed and moved ahead expeditiously. Improvements to catch monitoring are critical for the success of the Annual Catch Limit (ACL) provisions required by law and included in Amendment 4, and they are essential for addressing widespread concerns about accounting of all catch in this fishery including at-sea discards and landings of non-target species such as river herring and groundfish. With Amendment 4 near implementation and widespread concerns about incidental catch of groundfish and river herring, completion of a robust monitoring amendment is urgent.

The Herring Alliance consists of 15 regional, national and international organizations each with a particular interest in the Atlantic herring fishery and desire for a strong new amendment that will improve data collection and assessments through monitoring, and that will document and reduce all catch, including non-target species whether discarded or landed.

Due to its critical role as a source of food for a great many other animals in the ecosystem, the management of Atlantic herring impacts a particularly diverse group of stakeholders, including those whose livelihoods depend upon groundfish, game fish such as striped bass and tuna, and those involved in whale watching and other wildlife dependent activities. River herring was also once a more important source of forage than it is today making the Council's efforts to reduce impacts on these species in at-sea fisheries particularly important.

Though the prosecution of the Atlantic herring fishery involves a variety of gear types, single and paired midwater trawling makes up a major component of this fishery. The tows used are of long duration and the nets have relatively enormous capacity. Because of this high volume, even low rates of incidental catch of struggling stocks such as river herring, shad and some groundfish can be significant when viewed in context of the biology of these non-target stocks. Assessing

these impacts is also difficult because some incidental catch may remain mixed with landed catch and thus may not be captured in discard estimates (e.g., river herring mixed with Atlantic herring). Additionally, discard estimates for non-target species are likely low due to the release of catch to the sea in the form of *slipped bags* for a number of stated reasons including “not the desired species.”¹ As concluded in a recent NMFS analysis of at-sea river herring discards, “The low number of observed trips in the Mid-Atlantic gillnet fleets and the limitations of observing all discards associated with the fishing practices of the high-volume fisheries are two sources of uncertainty in this analysis.”² It is particularly important that Amendment 5 be developed with a full complement of alternatives that will allow effected monitoring in the face of the challenges presented by the high-volume components of this fishery.

With this letter we request the following, as detailed below:

- Keep Amendment 5 on track, without further delays.
- Keep options open for a range of monitoring alternatives and funding mechanisms.
- Do not rush the benchmark assessment for Atlantic herring.
- Keep midwater herring trawl vessels out of closed areas for groundfish.
- Retain 100% at-sea observation as one alternative for monitoring the herring fishery.
- Retain options that will allow for maximized retention as an alternative for the herring fishery.
- Include alternatives that deter at-sea discharge of un-sampled catch (i.e., an incentive to sample all catch).
- Utilize NOAA’s proposed rule (Federal Register Vol. 74, No. 171, September 2009) to craft alternatives for managing midwater herring trawling.
- Include time-areas closures to reduce bycatch of river herring as an alternative.
- Require VMS reporting for all vessels involved in offloading or transfer of Atlantic herring.
- Require observers on any vessel involved in at-sea transfers of Atlantic herring.

Keep Amendment 5 on Track

In November 2007, the Council identified improved catch monitoring and measures to reduce bycatch as priorities³. After 18 months and extensive public comment about the herring fishery, during the June 2009 meeting, the Council split the Amendment 4 action into two amendments, removing catch monitoring and measures to reduce bycatch from Amendment 4. In order to meet its legal obligation to develop ACLs and Accountability Measures (AMs) for the 2010 fishing year, the Council had to split off monitoring to a future amendment (i.e., Amendment 5). Insufficient progress had been made on the original components of Amendment 4.

¹ A. van Atten Presentation to the Herring Oversight Committee 22 May 2008; A. van Atten Presentation to the Herring PDT 12 November 2008.

² SE Wigley, J Blaylock, and PJ Rago (2009) River Herring Discard Estimation, Precision, and Sample Size Analysis. Northeast Fisheries Science Center Reference Document 09-20.

³ *Council Report* - An update published by the New England Fishery Management Council – November 2007: “The Council delayed a whiting amendment and included herring as a 2008 priority based on the amount of fishery information that is still lacking --- principally catch and bycatch versus landings and the associated need for better monitoring through more comprehensive observer coverage.”

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Nearly a year ago in June 2009, the Council wrote “Because of the importance of a catch monitoring program for tracking ACLs and generating better information about bycatch, the Council formally committed to continuing work on this issue through a series of Herring Committee meetings over the next several months... Because of increasing concern about the status of river herring, and in light of the recent Atlantic States Marine Fisheries Commission request for Emergency Action to monitor river herring bycatch, the Council also agreed to request that the Secretary of Commerce initiate a program to collect additional information about bycatch in all small mesh fisheries throughout the range of river herring and shad.”⁴ Thus, the Council recognized the urgency of completing a monitoring amendment quickly, committing to moving this work ahead within *several months* as of last June (2009).

This month (March 31, 2010) the Herring Oversight Committee again proposed a revised timeline, shifting Council approval of alternatives for Amendment 5 out to next fall (September 2010). Improved monitoring is essential to operating within Annual Catch Limits; it is crucial for a successful benchmark assessment for Atlantic herring and needed to better understand the impacts of Atlantic herring fishing on river herring and groundfish. For these reasons, among others, a number of groups and individuals, including the Herring Alliance, vigorously opposed splitting Amendment 4 into two parts last summer.

The emerging history of delay on data acquisition for this fishery poses an unacceptable risk to the community. It is a disservice to the public, to the industry, and to all those who indirectly depend upon the health of the Atlantic herring and the other resources that the fishery impacts. We strongly urge you to increase staffing, schedule additional meetings, or do whatever is required to keep this amendment on the time line that was promised last June (2009) when splitting the amendment was contemplated and approved.

Keep options open for monitoring and funding.

The alternatives included in Amendment 5 for catch reporting and monitoring should be designed to achieve clear goals and objectives. That is, the alternatives should be developed so that essential questions about all catch can be reliably answered based on the data that will be generated by monitoring program built from the available alternatives. Prior to the split of Amendment 4, the document included a robust set of alternatives from which a number of different monitoring programs could have been crafted, including use of electronic monitoring, portside sampling, full at-sea observer coverage, and systems based on maximized retention and sampling. Unfortunately, last week the committee moved to eliminate a number of important alternatives apparently due in part to industry concerns about funding.

The funding concerns were heightened by a communication from NMFS to the Council urging the Council to identify funding sources beyond NMFS for any proposed major expansion of the monitoring program.⁵ While the Herring Alliance does not recommend developing Amendment 5 blind to costs, we urge the Council to ensure that the Amendment includes a robust set of alternatives that are suited to obtaining the data that are needed for this fishery even if resources beyond those now in the NMFS budget are required.

⁴ *ibid* – June 2009

⁵ Letter from Patricia Kurkul to John Pappalardo, 22 May 2010.

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The Council should not be eliminating good alternatives at this stage, without careful analysis and prior to the DEIS, on the basis of anticipated costs and budget projections. A good monitoring plan designed to obtain essential information will be an asset in the quest to secure funding. NOAA has already provided unanticipated funds to New England fisheries and may be able to do so again.⁶ The Amendment should include a full range of non-NMFS options for support of monitoring, including research set-aside funding and industry-supported monitoring. Groundfish sectors are supporting some of their own observer coverage in New England,⁷ and fisheries in other regions also pay for their own observers as an expense incurred while harvesting public resources.⁸

We urge the Council to craft language for Amendment 5 that allows for securing the funding needed for an effective monitoring program above and beyond those available through the NMFS budget. It is better to have the mechanisms for a good monitoring in place and ready to go when funds are available than to produce a weak amendment on the speculation that funds will not be available. In this context, the Council should adopt the motion introduced by the Herring Oversight Committee for developing monitoring set-aside alternatives.

Do not rush the benchmark assessment for Atlantic herring.

The schedule for the next benchmark stock assessment for Atlantic herring should continue as planned for June 2012. While all concerned, including the Herring Alliance, would like to see an improved assessment for herring, accelerating the schedule is not the best way to achieve this. The outcome of this assessment, or any assessment, depends not only on the details of model formulation but importantly on the quality of the data going into the model. If the assessment is rushed, it will come at the expense of new data that are essential to determining stock status. The Northeast Science Center has detailed the consequences of shifting the schedule in terms of data availability and opportunities for model improvements.⁹ The Herring Oversight Committee wisely moved to adhere to the original schedule and the Council should support this.

Exclude midwater trawling from areas closed for groundfish protection.

Midwater trawling was originally permitted inside groundfish closed areas on the belief that trawls through the midwater would not impact the groundfish that the closed areas are intended to protect. Recent history has shown that there is bycatch of groundfish in the closed areas.¹⁰

⁶ FY 2010 NOAA BUDGET HIGHLIGHTS

(http://www.corporateservices.noaa.gov/nbo/FY10_BlueBook/MSRA_OnePager050609.pdf);

NOAA Provides \$10 Million to Support New England Groundfish Fishery, March 2010

(http://www.noaaews.noaa.gov/stories2010/20100301_support.html)

⁷ Northeast Multispecies FMP Amendment 16, dated October 16, 2009, page 109: *Proposed Action - Fishery Program Administration*

⁸ William A. Karp and Howard McElderry (1998) Catch monitoring by fisheries observers in the United States and Canada. *Proceedings of the International Conference on Integrated Fisheries Monitoring; Electronic Fisheries Monitoring Workshop Proceedings Alaska Fisheries Science Center Seattle Washington July 29-30, 2008* (http://www.fakr.noaa.gov/npfmc/misc_pub/EMproceedings.pdf)

⁹ Letter from Nancy Thompson to Paul Howard dated 20 January 2010.

¹⁰ NMFS (2009): *Observed Haddock Bycatch in the Closed Areas in the Midwater Trawl Herring Fishery. Report based on NEFOP data at the request of the Council. Regional Administration Kurkul reported that more than half of the observed midwater trawl herring hauls (55%) in Closed Area 1 included haddock and 20% of observed hauls*

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This is not surprising since groundfish are not always on the bottom and because “midwater” trawls are not always in the midwater as herring may be near the bottom.¹¹ No herring or other pelagic fishery gear capable of catching groundfish should be permitted to access groundfish closed areas. These areas are critical to groundfish rebuilding programs and should not be compromised.

Include monitoring alternatives based on full at-sea observer coverage (i.e., 100% coverage). Amendment 5 should include, as one of its alternatives, the option of having a NMFS-certified observer on every vessel. This is an approach that has been used successfully in other fisheries.¹² Arguments put forth by representatives of the herring industry that 100% coverage is not feasible are without merit. This option may not be convenient or desirable for those monitored, but it is feasible and has some clear advantages. Full at-sea observer coverage can reduce the costs of shore-side monitoring, level the playing field (i.e., everyone monitored equally) and eliminate any concern that observed trips are somehow different from those without observers (i.e., *observer effects*). Full observer coverage should be an option particularly for the larger vessels in the fishery (categories A and B).

Ensure that the alternatives necessary for a well designed maximized retention plan are retained in Amendment 5.

Maximized retention is a management policy that requires that all or most fish caught are retained and brought to port. This is an approach that minimizes discarding and waste, and which allows for comprehensive sampling and data collection on shore. The Council has examined this approach as it is being interpreted in fisheries throughout the world and produced an excellent white paper on this subject by Alan Lovewell.¹³ The success or failure of this approach rests on strong incentives to retain all catch, including electronic monitoring or other methods to detect discarding. Advantages include the sampling all the catch instead of discarding unhealthy or dead fish to the sea, conducting catch sampling on solid ground, and the potential for reduced need for human observers on board.

Maximized retention type systems will be disastrous if retention is incomplete, however. The Herring Oversight Committee has recommended removing a number of at-sea monitoring options from Amendment 5 that are necessary components of an effective maximized retention system. These should not be eliminated. The revised Amendment should include a clearly-presented package of options that could be used for a maximized retention system. We also encourage the Council to involve the interspecies committee in an analysis of the interactions between such a system and other FMPs.

exceeded the actionable 1% bycatch limit for groundfish; there have also various verbal reports from fishermen relating their observations of bycatch at sea in the closed areas as reported in the media.

¹¹ Makris et al (2009) Critical Population Density Triggers Rapid Formation of Vast Oceanic Fish Shoals. *Science* 323, 1734 (2009); Collette BB, Klein-MacPhee G (2002) *Bigelow and Schroeder's Fishes of the Gulf of Maine*. Second edition, Smithsonian Press (e.g., see chapters on Gadids Atlantic Cod, Pollock, Haddock).

¹² Pacific shore side whiting fishery and other examples....

¹³ Lovewell MA (2009) Case studies in maximized retention and monitoring for the New England herring fishery. Meeting materials, Herring Oversight Committee meeting 30-31 March 2010.

Maximized retention management is not without its challenges. Nonetheless, the alternative of discarding non-target species at sea leaves important problems unsolved. The survival of river herring and other fish, after being discharged from a midwater trawl net is expected to be low, though this is a subject that would benefit from quantitative study. When the mortality expected for released fish is taken into account along with the long-term benefits of incentives to fish more selectively and improved data for stock assessments, the potential benefits of maximized retention may be greater than some have conjectured. A careful analysis of maximized retention for the herring FMP is warranted, and a full suite of appropriate alternatives included in Amendment 5.

Include management alternatives for midwater trawl vessels based on NOAA'S proposed rules (Federal Register Vol. 74, No. 171, September 2009).

The midwater trawl fishing operations for Atlantic herring (single and paired) represent a distinct class based upon the large scale of their operations, the potential to impact many components of the marine ecosystem and the challenges those operations pose for catch monitoring.

Last September NOAA published a proposed rule on *Modification to the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Authorization Letter* in the Federal Register.¹⁴ This proposed rule included a well-developed set of management measures for midwater trawl gear, originally developed to address concerns about the use of this gear in groundfish closed areas (Area I: CA I). With some additional development, the measures outlined in the proposed rule could be incorporated into Amendment 5 as alternatives pertaining to midwater trawling throughout the region (i.e., not just in the closed areas).

The Herring Alliance recommends that the following eight elements be added to Amendment 5 before it goes out for public comment:

1. All catch taken by midwater trawl vessels must be systematically sampled by NMFS-certified observers.
2. At least one independent NMFS-certified observer required on each midwater trawl vessel, on every fishing trip (i.e., mandatory 100% observer coverage). In paired trawls, both vessels must carry at least one observer.
3. At least one independent NMFS-certified observer on each vessel that will receive fish caught by a midwater trawler.
4. Any vessel that receives catch from a midwater trawl vessel must have at least one NMFS-certified observer if the catch has not already been systematically sampled by NMFS-certified observers.
5. Midwater trawl vessels are prohibited from releasing catch to the sea without systematic sampling by NMFS-certified observers except under exceptional circumstances arising from mechanical failure or other situations jeopardizing vessel safety.
6. If exceptional circumstances arise from mechanical failure or other situations jeopardizing vessel safety and catch is released to the sea without systematic sampling by NMFS-certified observers, vessels are required to return to port following discharge of the net to the water. This provision serves as a deterrent to unnecessary release of catch.

¹⁴ Federal Register / Vol. 74, No. 171 / Friday, September 4, 2009 / Proposed Rules pp 45798-45801.

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If there is a true safety issue with a vessel requiring release, then trip termination would also be expected to contribute to safety.

7. All catch remaining in the net at the conclusion of pumping herring from the net to the vessel hold (i.e., *operational discards*) must be systematically sampled by NMFS-certified observers. This residual catch has been pre-sorted due to the use a fish-pump intake grate and catch stratification within the cod end. It is therefore particularly important to sample this catch in order to make reliable bycatch estimates. Release of the cod-end without systematic sampling by NMFS-certified observers is a violation that requires trip termination (see #5 and #6 above).
8. Cod-ends of trawl nets must be brought on board for systematic sampling by NMFS-certified observers at the completion of pumping, and/or to verify that the net is empty.

Amendment 5 should include alternatives for time-areas closures to reduce bycatch of river herring

The reduction of bycatch has been a Council priority for this fishery since the earliest discussions of Amendment 4 and not Amendment 5. River herring bycatch in the Atlantic herring and mackerel fisheries has been a major concern for the public and the Council and Amendment 5 should include additional alternatives to address this specific issue. Last spring, the Council wrote to the Secretary of Commerce in support of an ASMFC call for emergency action on this issue, expressing concerns about bycatch in small mesh fisheries.¹⁵ The Council and its committees (Herring Oversight Committee and Plan Development Team) have seen presentations of observer data on river herring bycatch in the Atlantic herring and other fisheries on several occasions. After a presentation from Dr. Matt Cieri (Maine DMR) to the Herring Oversight Committee, committee member Dr. Mark Gibson introduced a motion calling on the herring PDT to craft alternatives for time-area closures to protect river herring (1 October 2008). Shortly thereafter (8 October 2008), the Council moved this forward, asking the PDT to carry out the needed analysis.

Concerns have been raised about whether data from the NEFOP program are sufficiently strong to support management actions to reduce encounters with river herring in particular areas. However, at the most recent PDT meeting new data were presented showing the at-sea distribution of river herring based upon NMFS fishery-independent seasonal trawl surveys.¹⁶ These data corroborate the picture that emerged from the observer program: areas where the most catch of river herring was observed by NEFOP are among those areas where the NMFS surveys picked up river herring at sea. That is, the problem areas revealed by the observer data are where one would expect them to be based upon a new and independent source of information.

It is clear that additional research could be done to further pin-point the times and areas where the at-sea capture of river herring is greatest. However, the best available data do provide a basis for a management response now in the form of time-area closures. The observer data that

¹⁵ Letter from Paul Howard to Secretary of Commerce Locke, 26 June 2009: "The Council believes that recent and significant concern about the status of river herring and speculation about river herring bycatch in many fisheries warrants the establishment of an information collection program to determine the nature and extent of bycatch occurring in all small mesh fisheries throughout the range of river herring and shad."

¹⁶ Presentation of preliminary results by PDT member Dr. Jamie Cournane, 8 April 2010, Mansfield, MA.

formed the basis of the Council's 8 October 2008 motion to develop time-area options has now been augmented by fishery-independent data.

Observer data show that single trawls in the herring fishery can take hundreds of thousands of river herring – more than an entire healthy herring run – even if small compared to the catch of Atlantic herring. Meanwhile, on-shore fishing for river herring is now prohibited in many coastal states because the states recognize the serious trouble that many runs face.

We urge the Council to use the available data to craft targeted time-area closure alternatives based upon the best available scientific information. As new data and studies become available, management can be improved and refined. Additionally, an alternative should also be developed that establishes a simple near shore trawl exclusion zone as detailed in a previous correspondence from the Herring Alliance to the Herring Oversight Committee (26 March 2010).

VMS reporting should be a requirement for all vessels involved in offloading or transfer of Atlantic herring.

VMS reporting equipment is in place on many vessel involved in the Atlantic herring fishery,¹⁷ and VMS reporting must be required for all offloads and transfers to enhance data on all catch in this fishery. We urge the Council include this as an alternative in Amendment 5. The draft Amendment 5 alternatives discussed at the recent Herring Oversight Committee meetings (30-31 March 2010) included such an alternative (Option 1.3.2.5) but the committee voted to remove it from the draft Amendment. Together with observers, VMS is an essential data acquisition tool that must be used. Full accounting of catch is essential to adhering to the annual catch limits and to the success of future stock assessments. We ask that the Council retain a strong VMS reporting alternative for offloading and transfers of herring.

Require observers on any vessel involved in at-sea transfers of Atlantic herring.

Any vessel that receives or is in any way involved in at-sea transfer of Atlantic herring must have a NMFS-certified observer on board, and Amendment 5 should include an alternative for this. As NMFS has cautioned,¹⁸ monitoring of herring transfers and carriers is essential to ensure that all catch is accurately recorded. The draft Amendment 5 alternatives discussed at the recent Herring Oversight Committee meetings (30-31 March 2010) included such an alternative (Option 1.3.4.7) but the committee voted to remove it from the draft Amendment. We again urge the Council to retain this important alternative since it is essential to ensuring that the catch in this fishery is well-known. Full accounting of catch is essential to adhering to the annual catch limits and to the success of future stock assessments. Together with VMS reporting, observers offer a critical data acquisition approach that must be used.

¹⁷ Discussion at 30-31 March 2010 meeting of the Herring Oversight Committee, Portland, Maine.

¹⁸ Comments of Hannah Goodale, NMFS – NERO, to Herring Oversight Committee, September 17, 2009, Warwick, RI; *NERO staff comments on at-sea transfer provisions*, dated September 14, 2009, appended to meeting summary for September 17, 2009 and available at the following URL: http://nefmc.org/herring/cte%20mtg%20docs/100330-31/Transfers_at_Sea_Ltrs_Authorization.pdf

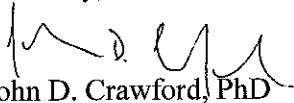
Closing comments.

There are many benefits associated with the kinds of management improvements a strong Amendment 5 can bring. For example, improvements in catch monitoring will lead to reduced uncertainty in stock assessments which should have a measurable impact on resource availability to the industry. Reduced uncertainty about stock status should be desirable for all concerned. Improved data will also help to clear the air on contentious debates about various kinds of bycatch and at-sea release of undesirable catch.

The Atlantic herring belong to all of us – a public resource – and, perhaps more than any other stock in the Northeast, the health of this stock influences a great many other fisheries and ecosystem-dependent industries and activities. The Magnuson Act is clear about the requirement to reduce bycatch and the waste of fish through FMPs.¹⁹ In addition, the Guidelines for National Standard 1 make clear the importance of addressing the role of forage species such as Atlantic herring in the ecosystem and ensuring management that is directed toward precautionary management of these species. Amendment 5 must be developed to meet the letter and spirit of the law.

On behalf of the Herring Alliance and all of its concerned members, I thank you, the Council and committees, for your efforts to address these important issues and to produce a strong monitoring amendment for the Atlantic herring fishery.

Sincerely,



John D. Crawford, PhD
Science and Policy Manager
Pew Environment Group

cc: Mr. Doug Grout, Chairman, Herring Oversight Committee
Mr. John Pappalardo, Chairman, New England Fisheries Management Council
Ms. Lori Steel, Fishery Analyst, Council Staff – Herring FMP

¹⁹ 16 U.S.C. 1853 MSA § 303 74 SEC. 303.

