

**From:** Paul Howard [mailto:PHoward@NEFMC.ORG]  
**Sent:** Monday, March 21, 2011 11:51 AM  
**To:** John Pappalardo; Grout, Douglas  
**Subject:** FW: Herring PDT Report/April Council Meeting  
**Importance:** High

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John and Doug,

I met with Chris Kellogg, Lori Steele, and Talia Bigelow on Friday to discuss the Herring PDT Report and any outstanding issues that the Council may need to address regarding the development of the Amendment 5 alternatives.

While the Council staff, NMFS staff, and the Herring PDT can continue to work to flesh out the details of most of the alternatives in Amendment 5 over the next few months, the most significant outstanding issues from the PDT appear to be associated with the proposed requirement for herring dealers to accurately weigh all fish. At the April Council meeting, we think that it may be worthwhile to update the Council regarding two elements of this measure so that everyone is clear how the requirements will be drafted in the document:

- (1) The proposed measure requires "federally-permitted Atlantic herring dealers to accurately weigh all fish." While the measure may appear to be somewhat vague, it was supported by the Council and NMFS when it was approved for consideration at the January 2011 Council meeting, and no additional direction was provided to Council staff or the Herring PDT at that time. Therefore, it is our intent to move this measure forward in the document similar to how it was discussed and approved by the Council – that is, simply as a requirement that dealers accurately weigh all fish. There will likely be costs associated with this requirement. It may be difficult for the PDT to develop a detailed analysis of the potential impacts because there is no way to predict what individual dealers may do differently (versus their current operations) to comply with this requirement. We propose to move the option forward under the assumption that NMFS will develop the details and administer any sort of weighing program for federally-permitted dealers over time, as funding and resources permit. This is similar to the approach taken when mandatory reporting was implemented in Amendment 5 to the Multispecies FMP. The Council left the reporting requirements vague in Amendment 5 because NMFS informed the Council that it would later develop the details of the requirements so that the Agency could have more flexibility to design and implement an appropriate program that can be supported by available resources and manpower.
- (2) The weighing measure includes an allowance for exemptions to be granted by the Council – "For those dealers who can demonstrate that it is unfeasible to weigh the fish, an exemption will be approved by the Council." This language is somewhat problematic because the Council does not have an exemption review/approval process, and it seems that NMFS should be the Agency responsible for reviewing, approving, and administering exemptions. We therefore propose to draft this element of the requirement in Amendment 5 such that dealers seeking exemptions would submit their requests to NMFS at least 6 months prior to the start of the fishing year, and that NMFS will review/approve exemptions for the fishing year after consultation with the Council.

It will be important to ensure that we have agreement and general support for the above from the Council and NMFS as we move forward with developing the Amendment 5 document, so that we can complete the process in a timely manner and move on to the specifications process during 2012. So, I suggest that we include a one-hour "Herring Amendment 5 Update" on the April Council agenda to summarize these two outstanding issues and inform the Council and NMFS of how we plan to proceed with developing the weighing measures for the Amendment 5 Draft EIS. We are hopeful to have the full Draft EIS ready for the Council to approve for public hearings in September, so important issues should be addressed/resolved sooner rather than later.

Do either of you have any concerns with this one hour agenda to briefly discuss the two weighing issues?  
 Thanks,

Paul



## NEW ENGLAND FISHERY MANAGEMENT COUNCIL

### FINAL Herring Plan Development Team (PDT) Report

February 24, 2011

Parker River Refuge, Newburyport MA

The Herring Plan Development Team (PDT) met on February 24, 2011 in Newburyport, MA to:

- Review/discuss the Management Alternatives Under Consideration in Amendment 5; identify outstanding questions/unresolved issues and discuss the related analyses;
- Review/discuss a general outline of the Draft Environmental Impact Statement (EIS) and agree on the valued ecosystem components (VECs) to be used for the Affected Environment and Analysis of Impacts in the Amendment 5 Draft EIS; and
- Review a draft outline of the Affected Environment section of the Draft EIS and discuss/develop plans for completing work.

**Meeting Attendance:** Lori Steele, PDT Chairman; Talia Bigelow, NEFMC Staff; Matt Cieri, Jon Deroba, Carrie Nordeen, Tim Cardiasmenos, Steve Correia, Micah Dean, Min-Yang Lee (PDT Members); Mary Beth Tooley; Dave Ellenton (Cape Seafoods, Herring Advisory Panel Chairman); Ben Martens (CCCHFA), Steve Weiner (CHOIR).

After a round of introductions, Council staff summarized recent Council decisions related to the development of Amendment 5 and the anticipated timeline for completing the Draft EIS document (target September 2011 Council meeting). The PDT briefly reviewed an outline of the Draft EIS and discussed responsibilities related to completing various sections.

The majority of the Herring PDT meeting was spent discussing the Management Alternatives Under Consideration in Amendment 5, focusing on outstanding issues and possible ways to approach the analyses.

- The PDT discussed the importance of being able to track herring catch that is transferred to carrier vessels clearly from the catcher to the carrier and the dealer. Reporting requirements are complicated because fish can be transferred at sea using carriers and landed/sold to multiple dealers. The Amendment 5 document will clarify that carriers are required to provide a NMFS-specified trip identifier for the catcher vessel to the dealer even if the amendment eliminates VTR reporting requirements for carrier vessels themselves. The PDT will also provide additional information in the document about the utilization of observers on carrier vessels.

#### ***Proposed Requirement for Herring Dealers to Accurately Weigh All Fish***

At its January meeting, the New England Fishery Management Council voted to include the following measure in Amendment 5:

This option would require federally-permitted Atlantic herring dealers to accurately weigh all fish. For those dealers who can demonstrate that it is unfeasible to weigh the fish, an exemption will be approved by the Council.

The discussion about this option at the Council meeting suggested that the provisions in Amendment 5 are intended to be very simple; no specific requirements for weighing the fish (ex., weighing standards, requirements for scales, procedure certification/approval process) and no process/standards for approving exemptions were identified by the Council or NMFS during the discussion.

The Herring PDT discussed this measure, considered the discussion at the Council meeting, and identified a number of questions/concerns. The issues, challenges, and complexities related to accurately weighing fish and sampling landings in the Atlantic herring fishery have been a primary focus of discussion by the Herring PDT, Herring Committee, Advisory Panel, and Council during the development of Amendment 5. Therefore, a simple requirement that dealers accurately weigh all fish is unclear and somewhat confusing. In July 2010, Council staff provided an extensive white paper regarding the potential applicability of various scales and weighing methods in the fishery (see *Potential Applicability of Flow Scales, Truck Scales, and Volumetric Measurement in the Atlantic Herring Fishery*). This paper generally describes several practices that are currently utilized by herring vessels, dealers, and processors to offload fish, determine the weight of fish that are bought/sold, and distribute it to various markets. The paper provides information about the types of scales that are used/could be used to weigh fish and some general information about the potential costs (financial and other) and benefits associated with them. It also provides information about methods to consider for improving volumetric-based weight estimations and/or confirming them through a third party. It identifies challenges, potential problems, and issues to address with respect to estimating catch in a high-volume fishery like the Atlantic herring fishery and considers approaches that are applied in other, similar fisheries. Many of the approaches were considered during the development of Amendment 5, but replaced with this proposed requirement for dealers to accurately weigh all fish.

- This measure is vague, and no additional direction was provided to clarify it. At this point in the development of Amendment 5, the Council should be aware of the nature and scale of this fishery, the details of various fishing practices, and the challenges associated with accurately weighing all fish. If the intent is for dealers to weigh all fish, then it seems that standards should be set to clarify how that requirement can be complied with by all herring dealers and how it can be enforced (i.e., how it can be verified that the fish are weighed and that the weights are accurate).
- It is not clear how this measure relates to the Goals and Objectives of Amendment 5. The second goal of the Amendment 5 catch monitoring program is *to develop a program providing catch of herring and bycatch species that will foster support by the herring industry and others concerned about accurate accounts of catch and bycatch, i.e., a well-designed, credible program*. One of the objectives related to that goal is *to eliminate reliance on self-reported catch estimates*. How does this measure enhance the catch monitoring program and improve the accuracy of catch and bycatch information in the herring fishery?
- What does the Council mean by “accurately weigh all fish”? Would scales be required to be utilized by all dealers? Would dealers (bait and food) be required to sort all fish by species prior to weighing them? For high-volume landings, would estimation of total landings from

a subsample be allowed? If so, what amount of precision is required by the term “accurately”?

- Analysis of this measure by the Herring PDT will be limited because there is no way to predict what dealers may do differently to comply with this measure, so there is no way to predict any potential costs or benefits. The Amendment 5 document will provide detailed information about herring dealers (number, location, markets, etc.) and can describe some approaches that may be utilized to weigh fish, but no specific analyses can be developed.
- The provision allowing the Council to approve exemptions for dealers who can demonstrate that it is infeasible to weigh the fish is unclear. NMFS staff in particular expressed concern about this measure. The language should suggest that the Council would consider exemptions, not approve them. There is currently no process for the Council to consider/approve exemptions, or standards by which to evaluate the need for an exemption. Without any standards for meeting this requirement, it is not possible to predict how many dealers would seek exemptions. Would exemptions be granted annually, prior to the start of a fishing year? Would this process involve a framework adjustment or rule-making? Would exemptions be permanent, or annual, with/without an expectation that the dealer would make efforts to meet some standards for accurately weighing fish in the future? These are administrative/policy issues that should be resolved by the Council and NMFS.

### ***Options for Observer Coverage Levels***

The Herring PDT discussed the options in Amendment 5 for observer coverage levels in the herring fishery. There was general agreement that currently, the options are vague and require further analysis/development. The PDT agreed to develop a comparative analysis of the options to more clearly illustrate what the coverage levels may be under each of the options, while considering how the options relate to the current (SBRM) approach and what the process would be for analyzing/determining coverage levels in the future. Particular attention will be focused on stratification of the data (precision versus accuracy) and ways to address/resolve variability in the datasets. This will be a very complicated analysis and a critical component of the Amendment 5 Draft EIS. The PDT agreed that the first step should focus on the statistical/technical analysis related to potential coverage levels. Then, additional work can address potential costs and fishery-related impacts.

### ***Measures to Address Sampling/Slippage and Maximized Retention***

The Herring PDT briefly discussed options in the document to increase sampling, measures to address net slippage, and an alternative to consider an experimental fishery to evaluate maximized retention. Many of the measures in this section will be revisited by the PDT once some of the preliminary analysis in the DEIS has been drafted. One option that the PDT expressed particular concern and raised some questions about is **Option 12 in Section 4.3.13 of the January 2011 Amendment 5 Discussion Document – Catch Deduction (and Possible Trip Termination) for Slippage Events:**

- This measure does not enhance catch monitoring. If this measure is intended to provide a disincentive for slipping catch (versus improving the sampling of slipped catch and the accuracy of catch data), then it will be important to account for the 100,000 pound catch

deductions in a way that separates this catch from fish that are landed/sold, to avoid further discrepancies in the datasets.

- If this measure is implemented, a separate code should be developed for the IVR/VMS/VTR data to identify the slipped catch, so that it remains separate from the other data. It also will be important to ensure that this catch is not included in the catch-at-age matrix.
- Available information (previously provided by the PDT) suggests that the estimated weight of slipped catch is less than 100,000 pounds. The PDT will review/update this information in the Amendment 5 document.
- Safety concerns related to the consequences of this measure were acknowledged by the Herring PDT. The PDT also reiterated concerns about placing observers in undesirable situation because of perceptions that this measure is punitive in nature.
- The PDT expressed some concerns about potential inequities associated with this measure. For example, the consequences of exceeding the 10-event slippage threshold (trip termination, ACL/sub-ACL overages, and/or accountability measures) could be significant particularly for the directed herring fishery participants, yet the consequences could be the result of the actions of non-directed vessels (i.e., Category C and/or D vessels). Furthermore, the measure provides a very weak incentive for individual vessels to avoid slippage until there are ten slippage events in an area. Once ten events are reached, the trip termination is an extremely strong incentive to avoid recorded slippage events, which may have impacts on vessel safety and observers (see above).
- The PDT emphasized the importance of focusing on management measures that will enhance the collection of accurate catch information in the Atlantic herring fishery. There are many other measures under consideration in Amendment 5 that address this objective. Council staff will develop a table/matrix for this section of the document (Measures to Maximize Sampling and Address Net Slippage) to better illustrate the combinations of options the Council should consider to achieve the goals and objectives of the catch monitoring program.

The PDT briefly discussed the alternative in the Amendment 5 document to evaluate maximized retention through a time-limited experimental fishery sponsored by NMFS. The PDT agreed that without a connection to a portside sampling program, there seems to be less justification to consider maximized retention in the fishery at this time. Many options in the document focus on improving catch reporting and increasing/enhancing sampling at sea. NMFS and Council staff identified some administrative details associated with this alternative that will require further discussion. The PDT will revisit this measure at a future meeting.

### ***Measures to Address River Herring Bycatch***

The Herring PDT reviewed the River Herring Monitoring/Avoidance and Protection alternatives under consideration in Amendment 5. Some clarifications were made, and some general analytical issues were discussed. Much of the discussion focused on developing the new **river herring catch trigger-based monitoring/avoidance and protection options proposed by the Council at its January 2011 meeting:**

- The PDT reiterated its concerns regarding the variability associated with the river herring catch estimates. Even when utilized as triggers, the numbers represent expansions from variable estimates that result in more variable estimates, that will then be used to monitor the

fishery (see Draft Herring PDT Discussion Paper: *Developing River Herring Catch Cap Options in the Directed Atlantic Herring Fishery* and December 2, 2010 Herring PDT Report). In addition, the proposed trigger options are based on expanded estimates of river herring catch from a discrete window of time: 2005-2009. If and when river herring abundance changes in the future, these triggers may no longer be appropriate and could result in initiating actions (i.e. increased monitoring, protection) much sooner or later than anticipated and/or necessary. Since a link between river herring abundance and a catch-based trigger is not available (and likely not possible), trigger-based management options could be ill-suited for achieving the specific goals and objectives identified in Amendment 5.

- Monitoring the catch triggers presumably should occur through estimation based on observer data (versus what is observed) because the triggers themselves are based on estimation based on from observer data. However, this issue needs further discussion, and perhaps some guidance from the Committee or Council. A methodology for estimating/monitoring river herring catch on a real-time basis should be developed, and time lags should be acknowledged. Other issues/details should be address (for example, how to account for trips that cross multiple catch areas).
- The PDT expressed some concerns about equity/fairness issues related to these measures. Because of the spatial distribution of potential closure areas, it is possible that the consequences of river herring bycatch will be borne by vessels which did not catch river herring. This should be discussed further.
- The PDT agreed that some flexibility should be incorporated into these measures so that the river herring areas (monitoring/avoidance/protection), as well as any catch triggers, are reviewed/updated regularly. Including this review during the specifications process (every three years) and allowing updates through framework adjustments would be appropriate.

### ***Amendment 5 Affected Environment***

The Herring PDT reviewed and discussed a general outline for the Amendment 5 Affected Environment (AE) and provided Council staff with suggestions for updating information that will be required in the document. The AE will update information from 2006-2010 (five years since the implementation of Amendment 1) and will focus on providing data that are related to the management measures under consideration and the evaluation of the impacts of those measures. The intent is to build from the Amendment 1 EIS and update all of the related stock and fishery information since the implementation of Amendment 1 in 2006. The Herring PDT agreed to focus on the following “valued ecosystem components” (VECs) in the Amendment 5 AE and analysis of impacts:

1. Atlantic Herring
2. Non-Target Species and Other Fisheries
3. Physical Environment and EFH
4. Protected Resources
5. Fishery-Related Businesses and Communities

“Non-target Species and Other Fisheries” will include a summary of available information about catch/bycatch of all species in the Atlantic herring fishery, with particular attention to and additional information about river herring, Atlantic mackerel, and multispecies (groundfish). The utilization of herring as bait and the importance of herring to the lobster, tuna, and recreational fisheries will be discussed as part of the “Fishery-Related Businesses and Communities.” The importance of herring to other non-consumptive users (whale watching, etc.) will be addressed in the background section regarding the importance of herring as a forage species (part of the Atlantic Herring VEC). The target completion date for drafting the AE section is May 2011, so that the analysis can build on the information in the AE. The PDT recognizes that some data for 2010 may not be available by May; placeholders will be left for these data so that the document eventually will be completely updated through 2010.

### ***Other Issues***

The Herring PDT discussed work priorities and timelines and agreed that the PDT working group to explore data issues and sampling variability should schedule a meeting and begin discussions soon. While there is no longer a portside element to the catch monitoring program proposed in Amendment 5, improving catch data involves addressing/resolving sampling variability. State portside sampling programs will continue to play a critical role in addressing sampling issues improving the accuracy of catch information. The working group will work informally prior to the next PDT meeting to develop analyses related to sampling issues, so that the full PDT can have a more informed discussion and focus on developing analyses and recommendations for the Council.

The PDT anticipates meeting again in April to review preliminary analysis and continue work on the Amendment 5 Draft EIS.