

New England Fishery Management Council
VMS/Enforcement Committee
Final Meeting Report
May 8, 2009

The committee met in Danvers, MA to discuss enforcement issues relative to Herring Amendment 4, and other business. The attendance is attached.

Lori Steele presented the management measures being entertained and the enforcement issues to be resolved (attached) under Amendment 4.

Maximum Retention and Net Slippage (questions on bottom of page 7 of the presentation)

Mary Beth Tooley asked what the current rate of retention was. Lori Steele replied that there is no overall estimate, but about 8.7% of observed tows were fully or partially slipped. Mary Beth thought that the total by-catch must be considered. Lori said all (other) species catch and discards from observed trips during 2005-2006-2007 was low; less than 3%. Mary Beth questioned what the goal was for retention; for instance, should it be 1%? Lori pointed out that the most detailed discussion of maximum retention and slippage may be found in alternatives 1 and 3.

Dave Goethel described two issues: 1) would these measures apply to category A and B vessels only, or to category C and D, small, vessels as well, and 2) one operation pumps fish that are mechanically sorted, versus the small vessel operation that spills the net on the deck and hand sort. The difference is also hundreds of tons versus hundreds of pounds, so we cannot use a one-size-fits-all approach. Rodney Avila indicated that (one of) these operations required more enforcement. Andy Cohen stated 1) much of the by-catch under the proposed maximum retention rule cannot be landed due to regulations in other FMP's, so the (herring) committee must determine a way to land such by-catch (which might make enforcement easier), and 2) dockside monitoring must be included in the whole process. Observers and dockside monitors are not enforcement people, but they must be in the future to avoid corruption and provide data accuracy. Mary Beth Tooley agreed with Dave that (retention and slippage) options must specify to whom they apply (categories A, B, C and/or D), because some measures need not apply to small boats. She said that enforcement of maximum retention will be difficult, because vessels must keep everything and that is a problem. Mary Beth agreed the current system does not use dockside monitors as enforcement (agents), but asked if they could be used in a specific case? Andy Cohen replied they can use dockside monitors in a case, but have not used them very much because physical evidence must follow definite procedures. Mary Beth said Observers must be trained if they will be used for enforcement purposes, and there is a cost to that. Andy responded that Observers cannot be armed, but they can be trained such that the data have integrity (in a case). Andy stated that Observers and dockside monitors are different; dockside monitors should be like weigh-masters (independent).

Mary Beth Tooley stated numerous sources of landings data may not agree (nor should they), for example, a VTR measurement includes water and a dealer measurement does not. She mentioned 'sticking' tanks on vessels, and trucks (as a volumetric measurement). Andy Cohen responded that different estimates are alright, but they need tolerances. Enforcement may 'expect a degree of accuracy' due to product handling that is documented in an acceptable manner. Rodney Avila disagreed; he thought that weigh-masters need certification.

Tom Rudolph stated that his group (CHOIR/CCCHFA) drafted alternative 3, and any questions about it should be directed to him. He said 'one size fits all' does not work, as Dave Goethel commented, to sample the catch. Alternative 3 proposes Catch Monitoring Control Plans for each vessel, which is designed to allow vessel operators to craft their own suggestions to sample the catch. He said that the scope of his alternative includes categories A and B, which represent 95% of the catch. He stated further that Amendment 4 may expand herring harvest by Category C and D vessels and that such a change might justify expanding the scope of a maximum retention program to include those vessels, and tied it to the VMS power-down issue. Additionally, inconsistent estimates between databases (are) an issue now, and these problems will not be due to Amendment 4. Tom expressed support for adding new data sources.

Gerry O'Neil said he could measure the capacity of fish tanks to within 3-4 %, by dipping a measuring stick ('sticking') into the tank until he hit fish. The (enforcement) officer would have a graph of the vessel and know its cubic capacity, and this can be done also on trucks. Lori Steele questioned this accuracy; how do you know the amount of water? Gerry answered that the tanks are numbered, and this technique is very accurate. Lori thought that further discussion of this issue is required by the Herring Committee more than the Enforcement Committee, because all the fish may not be herring, and if the total catch is being measured then the catch composition is needed. Gerry agreed the technique would yield volume only, but that composition must be measured later. He said you would get the exact number during the offload at the processing plant/factory. Steve Walima, a fisherman and engineer, added that the age of the fish must be a consideration also, because densities may change (the volume estimates), and following up at the factory would be more appropriate.

Eoin Rochford said there is a lack of understanding how herring vessels operate. (Within any school of herring, there is a 'spot' that the fisherman targets with his net.) We may miss the 'spot' and get 1-2 tons, but cannot retain all of it. Slippage is both a safety and economic factor, especially when we catch dogfish. We try to catch herring and nothing else. Dogfish do not move through the pump and crew members would have to risk their lives trying to get them onboard. Enforcement must use estimates, for instance, trip landing reports (VTR) are never less than the actual landings. Eoin gave an example of a captain who reported (in his VTR) an amount of fish more than the capacity of his vessel. In another example, an enforcement agent questioned the entries for two, separate (VTR) trips; both were exactly 400,000 pounds. The fisherman was estimating the catches; in one case, it may have been (399,900) pounds, and in the second case, (400,300) pounds.

Steve Weiner wanted to discuss how the proposed measures relate to enforcement; that is, improved monitoring both at-sea and dockside. He said that he has no confidence in what's being reported as landed, saying that three different totals (for the same trip) is the problem. Steve said the goal is to improve upon shore-side monitoring, with a simple plan that measures (all) the fish that come to shore. He thought that 3-4% accuracy is pretty good, and agreed that industry practice is important, as the fisherman knows how fish are caught. But, Steve questioned how will it work? He wanted to start with category A and B vessels, which are catching 95% of the fish. Mary Beth Tooley agreed tanks must be measured. She stated that the 2001 (herring) FMP required IVR (interactive voice reporting), and that hail weights (from IVR) are high because captains are optimistic. She added that VTR (vessel trip reports) are consistently in the middle and are the most accurate vessel operation numbers, and, lastly, dealer figures are the lowest numbers as they try to pay for the least amount of poundage. This is human nature, but since NMFS took over the reporting system from the ME DMR in 2007 it's been a mess. The human element seems totally turned on its head as some dealer's information might imply that they bought more than was landed. Mary Beth said maximum retention at-sea and onshore is difficult, and that dogfish is a significant problem.

Gerry O'Neil suggested that the committee members go on a trip to see how the fishery operates. He said you cannot go with a half tank of fish, and that there were only 22 to 23 (large) boats in the entire fishery.

Dave Goethel said it is not practical to bring all fish ashore. Bycatch monitoring should be handled by Observers, at the boat level. Because herring deteriorate fast, the most accurate weight measure is at-sea, not the dealers or the VTR. Dave said that he had, for example, groundfish catches recorded from Georges Bank and the Mid-Atlantic (via VMS) on trips that were never made there. The dealer never pays for an extra pound (i.e. he won't overestimate). Monitoring should be low-tech; for example, take pictures of the catch and slippage events, sign forms (affidavits), and compare these with reports from Observed trips. He said that fishermen cannot put tons of dogfish on deck (it's dangerous). We won't get (record) every pound, but we can get better estimates. Rodney Avila agreed with a lot of what Dave said, but he wanted the committee to deal with enforcement of retention and slippage measures.

Peter Mullen knew a captain who estimated 16-1/2 tons of fish, but actually had 15 tons. He advocated 15 minute test tows (to determine) the amount of small herring and whiting in the catch. Landing 3,000 to 4,000 pounds of fish (the small herring and whiting) is unnecessary.

Jim Kendall said it was not practical that groundfish boats should bring in everything. He said that if slippage is a reality, then is it a problem and what magnitude. We must prove or disprove the magnitude of the problem. The herring fishery is enormous (quantities landed per trip, and annually), so the disposal problem would be huge also. Is maximum retention necessary; are there other practical solutions? Regulations, and especially the economic burden imposed by regulations, can put fishermen out of business.

Steve Weiner said maximum retention does not have to include all fish, for instance, dogfish could be an exception, but we want an accurate estimate of the discards. If something cannot be pumped, then you cannot bring it ashore. Lori Steele stated that there are options to deal with fish that cannot be pumped under alternative 3 and suggested the Committee consider those measures. Rodney Avila and David Goethel argued that an affidavit may be an option. Tom Rudolph said safety was the reason for maximum rather than full retention. The rules for slippage should be a cap, to minimize unnecessary events (an assumed tonnage per event applied to an overall tonnage cap). Tom opposed an affidavit, and said that a camera won't tell river herring from Atlantic herring. Lori asked how a cap would be enforced? She also asked that a reason for minimizing net slippage be put into the document. Rodney wanted the affidavit to apply to dogfish. Tom agreed; it would be a start to estimate levels of big dogfish events within the context of a cap on all dumping.

Mary Beth Tooley said a cap on dogfish is a first. She said that herring fishermen don't use the term, slippage. Nevertheless, she advised 1) to deal with slippage at-sea and estimate tonnage (rather than an assumed amount), 2) that the cap may be too low, and 3) that the pump is submerged when in use, so questioned what will video surveillance show. Catch monitoring on the west coast is done by the processors. Mary Beth gave an example of one vessel that lands at various ports from Vinalhaven, ME to Rhode Island. Peter Mullen wanted to know what to do with retained fish; for instance, hand it over to NMFS?

Chris Weiner asked if herring are dumped, why do vessels catch it? Peter Mullen countered; what do haddock boats do with 20,000 pounds of too small fish? Steve Walima said that dumping is dangerous. He said on test tows 3,000 whiting were killed. He suggested using a black-box to combine all electronic recorders such as SONAR, Depth and fish finders, VMS, etc. Rodney Avila remembered the council promoted this fishery. Someone corrected him that it was NMFS.

Dave Ellenton appreciated the good comments on both sides, but enforcement recommendations on Amendment 4 options is what is needed. Rodney Avila decided he would take three more comments before moving on to answering specific questions in the presentation. Mary Beth Tooley said the Council must manage by-catch in all fisheries, and that, of all discard problems, the herring fishery has the lowest rate.

The chairman, Rodney Avila, referred the meeting to page 7 of the presentation by Lori Steele; questions pertaining to Maximum Retention and Net Slippage. First, he asked, how landings of prohibited fish be handled? Dave Goethel proposed a consensus of the committee that prohibited-fish be handled at-sea; for example, marine mammals, striped bass, etc. Dave said that prohibited species that are landed should be dealt with as they are now. Dave described the situation in New Hampshire, for instance, where a striped bass that cannot be landed is found in the catch, the DF&G Law Enforcement Division is notified and they take possession and dispose of the fish. Lori Steele cautioned the committee to consider also non-permitted species, undersized fish, and those that exceed

any species trip (or possession) limits. She said that allowing the herring fishery to land undersized fish and species over a trip limit requires working with the MAFMC, or use Dave Goethel's solution to this situation and dispose at-sea, as is currently done.

Steve Weiner, referring to a recommendation not to land prohibited fish, questioned whether that was possible, legal, or feasible. Dave Goethel commented that what we have now works, and to do otherwise we must amend all the other FMP's. Dave explained that fish going through the pump cannot be sorted until landed, and state enforcement should be notified and dispose of the (prohibited) fish. These fish cannot be sold. Dave Ellenton asked if these fish could be handled at-sea too, and Dave Goethel replied yes.

Tom Rudolph described alternative 3's three options for landing fish not permitted to be landed: 1) Lori Steele's description above (work with other agencies to amend all FMP's), 2) annual exempted fishery programs, or 3) use of additional video-based electronic monitoring and/or Observers to gather species composition data on some or all discards at-sea. He said another option could be the status quo (Dave Goethel's consensus), which may be feasible in NH but he questioned whether other states procedures would be adequate. He thought a careful analysis of these procedures would be necessary. Andy Cohen described the federal OLE process; when a call is received, they send an agent and handle the fish by donating it to a charitable organization or disposing of it. They, in general, don't prosecute self-reporters.

Lori Steele asked, if enforcement supports maximum retention, which may significantly increase prohibited landings, then is the burden of reporting on the dealer? Eoin Rochford explained that, currently, every boat reports to allow checking for prohibited species, and they must document (each case). Andy Cohen asked if the current system works, and Eoin replied yes. Rodney Avila asked if such trip reports occur before the boat hits the dock; Eoin answered yes.

Steve Walima wanted to know what would happen if the magnitude of the by-catch proves enormous? Rodney Avila added that we don't know the magnitude, and we need evidence: is the current monitoring system working? Joe McGuinness remarked that the enforcement committee shouldn't decide if slippage is allowed or not, but how to regulate it. The question is too broad. Lori Steele explained that she made up the questions only as discussion points.

Mary Beth Tooley said the USCG has concerns about stability, and that herring tanks are a problem in this regard. She wanted advice on stability first, then advice specifically on the tanks. Peter Moore encouraged new technology, and application of study fleet technology. He said slippage can be monitored remotely, to detect incidents and their duration. Steve Walima stated that slippage is dumping. Lori Steele explained that 'slippage' is used to be consistent with the scientific term.

Joe McGuinness stated that, as part of stability management, it is better to have a full or an empty tank, not a slack tank. Mary Beth Tooley agreed strongly, and added that other

factors are important as well, such as location inshore or offshore and weather. She said the other regulatory provisions add to the difficulty of stability management. Eoin Rochford described boat modifications that impact stability; scallopers and draggers have ballast and low centers of gravity, whereas herring mid-water trawls have neither and must add water to the tanks and then discharge it as fish are added. Eoin continued that slippage came from dumping small fish to attempt to then get large fish, but fishermen may slip small quantities of fish, most of which are still alive. Rodney Avila questioned that you could discharge water at-sea, and Eoin confirmed that it was done at the dock.

After a short break, Dave Goethel made the following motion, seconded by Joe McGuinness:

An affidavit be created for slippage/dumping events to be signed under penalty of perjury. This affidavit is to be accompanied by a photograph when an Observer is present. This affidavit will contain: 1) the reason for slippage, 2) an estimate of the quantity and species composition of dumped fish, and 3) the location and time of dumped fish.

Jim Kendall noted that one piece of information was missing from the discussion, and it was needed to discuss minimizing slippage by regulation. He remarked that the current estimate of slippage was 1.8% by weight. Rodney Avila answered that the herring committee had this part of the document for its discussions.

Mary Beth Tooley had several comments on the observer data. Forty percent (of the 1.8% mentioned above) were fish the captain didn't want onboard because there was not enough fish, and this is not fixable. Some cases of slippage were due to mechanical failure, and this also is not fixable. Of the slippage events left, the Observers (data) sheets were not set up to answer those questions. Mary Beth did not support bringing dead fish onboard just to count them. She said the industry goal is to bring home as much fish as possible. In 2008, the industry harvested (only) 58% of the OY, so this maximum retention is not a resource problem.

Tom Rudolph also had several comments. He favored test tows, but said the contents of the net must be examined. He recommended using mesh pressure testers, but pointed out that these might be able to tally total weight but could not provide catch composition. Referring to the 1.8% estimate of slippage, he said the Observers report calculates that 88% of slipped fish was Atlantic herring, but that is unreliable because one cannot determine the difference between river and Atlantic herring for slipped fish. Tom stated that dumping is a problem; in 2007, 16% of the tows on observed trips were classified as un-observed because they were dumped. Therefore, he supports a cap on dumping, and ratcheting it down over 2 or 3 years. He continued that, whether dumping was for safety or by-catch, the trip should then be terminated. He said the industry should provide sampling of fish that cannot be brought onboard for retention. Finally, Tom stated that safety is an acceptable reason (for slippage), but convenience is not.

Referring to the question posed in the presentation, how can slippage be minimized by regulation, Capt. McGuinness responded that the easiest way is to prohibit slippage, but added that although you could do that, should you? He felt the latter question would be best answered by the herring committee. Likewise, concerning the exception (from a slippage prohibition) for safety question, he replied that you must have a procedure or template to prevent spurious claims. Dave Ellenton asked how a slippage prohibition could be enforced, and Capt. McGuinness answered with Observers.

Dave Goethel, referring to item 2 in his motion above, explained that the fisherman cannot report, for example, 7 pounds of river herring, 10 pounds of (Atlantic herring), etc., and that a comparison between Observer and captain reports would be the basis (for change in the regulations). Lori Steele described Dave's motion as an option to alternative 3 (slippage cap and video surveillance). Dave said the requirement in his motion is serious; perjury is a felony. Andy Cohen felt the motion was a good concept, but that review by NOAA General Counsel was needed. The proposed requirement for an affidavit will make people consider their activity. Bill Semrau asked what will be done with the fish that are landed (and wouldn't have been)? He had no problem considering the use of cameras (video surveillance), but felt it should be imposed on all fisheries, not just herring. Mary Beth Tooley wanted to create a database (for future action on slippage) and attach safety concerns now. She said the motion allows slippage, and that creating an affidavit was like the VTR (in terms of reliance on honest reporting by fishermen). Andy Cohen thought a good way to implement the affidavit would be to tie it to the VTR. He said that any submission to the government is the same, in terms of penalties (for false reporting). Lacking any other information, he supported this motion (to generate more data).

Amy Van Atten commented on photos taken by Observers, that they are protected by confidentiality. That being said, those photos are available to enforcement (OLE). Dave Goethel said that, because Observers are a neutral party, they must take the photograph. His motion envisions that the Observer is notified of an event, the net must be tightened to photograph, and (an estimate can be made from the photo of), for example, 10,000 dogfish. Amy stated that Observers are issued digital cameras, and are required to download their pictures within 24 hours of taking them. Dave felt this was adequate (fit to the intent of his motion).

Joe McGuinness amended the motion above to read:

That as an option to address slippage, an affidavit be created for slippage/dumping events to be signed under penalty of perjury. When an Observer is present, the event would be fully documented with photographs. This affidavit will contain: 1) the reason for slippage, 2) an estimate of the quantity and species composition of dumped fish, and 3) the location and time of dumped fish.

Amy Van Atten stated that Observers, when they process their data, include photos, one for every tow, and the photo documents are time/date stamped. Dave Goethel was happy to have corroborating data from VTR, affidavit, and stamped photos. Jim Kendall

thought it ironic that, the same people who pushed for 100% Observer coverage, now challenge the Observer data.

Tom Rudolph asked if this proposed affidavit is enforceable; Andy Cohen responded, partially, and it serves as a reminder to the fisherman that the slipped catch needs to be documented. He stated that the measure has potential but needs to be tied to a prohibition on slippage. Steve Weiner asked how a captain estimates the species composition and volume. Eoin said that most fish are floating, about 5%, except for dogfish. The captain makes guesstimates (by observing the floating fish) of the proportions in, say, the 2-1/2 ton total. He added that, if Observers data is not accepted (as valid), then why require Observers? Three boats were lost this year, because the herring fishery is being decimated by (bankruptcy, economic trouble). Herring fishermen face low haddock trip limits. He said that landing useless fish, is useless. Amy Van Atten stated that (Observers) estimate the quantity of fish in the bag by asking the captain; some nets have sensors on them to indicate how much fish is in the bag. As an example, on a recent mackerel trip the Observer asked the captain for an estimate of what was in the bag (species composition and proportion), which was very good. The vessel pumped fish onboard for an hour and a half. The Observer found that the species composition and proportion was similar to the captain's estimate. She said that the captain estimated that it would've taken 12 hours to pump the remaining catch aboard, and that may be a safety consideration.

The motion as amended then passed unanimously:

That as an option to address slippage, an affidavit be created for slippage/dumping events to be signed under penalty of perjury. When an Observer is present, the event would be fully documented with photographs. This affidavit will contain: 1) the reason for slippage, 2) an estimate of the quantity and species composition of dumped fish, and 3) the location and time of dumped fish.

Options to Improve At-Sea Monitoring (bottom of page 6 and the top of page 7 of the presentation)

Rodney Avila then turned to Options to Improve At-Sea Monitoring, on the bottom of page 6 of the presentation. Reviewing the five items, Rodney started developing a consensus for the committee to consider: safe station (yes), basket and discards (yes), cod-end onboard. Amy Van Atten said that bringing the cod-end onboard was not in the Observers protocol currently, but that new measures for herring vessels fishing with mid-water gear in Closed Area 1 may require it. Mary Beth Tooley responded that may not be possible for all vessels to bring the cod-end on board. Joe McGuinness suggested that the decision about vessels bringing a cod-end on board should be made by the Herring Committee. Peter Baker asked the committee to provide 'enforcement' recommendations on these items. He said that the last two items, to provide details and notice, were already

accommodated in the motion, approved above. Mary Beth thought the committee should deal with guidelines, not regulations.

Amy Van Atten said guidelines are better than regulations, but for some vessels they are not. Dave Goethel pointed out that providing a safe station occurs before the vessel sails, but providing assistance in obtaining basket samples and sorted discards is not. Deirdre Casey stated a regulation already exists to provide such assistance, in section 640.14(e)(3). Moira Kelly read that regulation. Deirdre Casey added the vessel owners are required (to provide assistance), but suggested more specifics (for herring). Mary Beth Tooley suggested adding a special shoot, and other items, to ease the assistance of the crew to the Observers. She stated that many of these issues could be addressed through the development of a Code of Conduct for herring vessels.

Rodney Avila questioned the fifth item on page 6, to provide observer notice when pumping may be coming to an end. Mary Beth Tooley thought that notice would come at the beginning of pumping. Joe McGuinness asked why this was important. Amy Van Atten described the Observers procedure to sub-sample at different times of the pumping process. She said, under 50 CFR 648 MSA regulations, Observers must be informed when fishing operations are to begin and end, but it is not specific to pumping operations (i.e. when the pumping will begin and end, which is important for properly sub-sampling the catch). She requested more specifics, to help the Observers, from OLE and USCG.

The committee then approved by consensus the Options to Improve At-Sea Monitoring on the bottom of page 6 of the presentation by Lori Steele, as follows:

- **Provide Observer with safe sampling station – Yes, and enforceable**
- **Provide assistance in obtaining basket samples and sorted discards – Yes, and not enforceable**
- **Bring cod-end on board whenever possible and open it for the observer to inspect – No**
- **Provide accurate details about why a bag may be partially pumped/slipped – Accommodated in first motion, and enforceable**
- **Provide Observer notice when pumping may be coming to an end – Accommodated in first motion, and enforceable**

Rodney Avila moved the committee to the top of page 7 of the presentation, with more options to improve at-sea monitoring. He said the first item to notify an Observer of any marine mammal in the net was already covered by existing law (Marine Mammal Act). Rodney asked for comments on the second item, to use two Observers on large vessels or pair-trawlers. Dave Goethel and Joe McGuinness asked that the herring committee define what is large (length, weight, etc.). Dave said that the second item, to require additional communication during pair pumping, was not necessary if 2 Observers are required in item 2. Joe thought the herring committee was probably preparing for there not being enough Observers to go around, or if the 2 Observers concept fails. Amy Van Atten stated that they won't always have 2 Observers available for pair trawls, and additional communication in that case should include counts of everything caught made by the

captain. She continued that the decision on the number of Observers is complex and depends on the number of decks, for instance, we may need 2 Observers on one boat. But the regulations don't specify that now. Joe agreed that more specifics are needed, that is, what is supposed to be communicated. Dave added that we need a protocol, a list of information from that other boat. (Someone) said that all fish must be pumped in Closed Area 1, which was adopted by the council, but not by the herring committee yet.

Rodney Avila asked if every vessel in Closed Area 1 must have an Observer (referring to the last item at the top of page 7); Lori answered yes, if the Council's recommendation is approved by NMFS. Dave Goethel questioned if the pump stops, how all fish can be pumped aboard when they cannot get it started again. Joe McGuinness asked what must be sampled from the bag; Lori answered the entire catch. Joe said that the safest way is for the Observer to ask the captain one or two times per trip; we must be careful about who makes the decision concerning the amount of weight allowed on deck. We must know the composition of the bag (only) in a statistical sense. Amy Van Atten said, for vessels that bring the bag onboard we can observe/sample all fish, but for bags that are not brought onboard we just observe them over the side, and ask the captain. Mary Beth Tooley thought Capt. (Joe) McGuinness' comment should be highlighted; we can pump and shoot overboard as discussed, but that still may be a dangerous condition. Dave Goethel reminded that aboard is different from onboard, and advised that the committee cannot rule yet. There are only a few trips into Closed Area 1, and those should be examined to see if such rules are feasible and enforceable.

Rodney Avila described an overweight boat, saying that you don't know when you will tip the balance. Eoin Rochford agreed with Capt. McGuinness, that it's got to be the captain's decision. He described a situation fishing for mackerel in the SE part, which was not a normal fishing area for them, and the unusual seas got their decks awash.

Chris Weiner stated that there must be rules, that there were 5 hours of Council discussion on this requirement, and was concerned that the committee hadn't voted for anything. Rodney Avila reminded him that the committee had just voted more items up than down.

Rodney Avila returned the discussion to item 5. He said most boats this year went down due to overloading. Joe McGuinness said it was not a matter of being in favor or not, but if every fish must come up onboard it is dangerous. He stated that requiring that the master must do something, in general, is bad. Jim Kendall remarked that every boat is different. He hadn't experienced that (herring) fishery, and cautioned people from restricting a captain's (flexibility).

Capt. McGuinness proposed a consensus for the committee to discuss: *The enforcement committee strongly recommends against the last item at the top of page 7, that all fish must be pumped aboard so that the entire catch can be sampled, because of safety reasons and that it takes the decision out of the hands of the master.*

Dave Goethel said the committee should find language to accomplish this (idea), but not take control of the boat from the master. Rodney Avila commented that the word 'must' makes it at once enforceable and unsafe. Tom Rudolph asked if the consensus applies to Closed Area 1 or the herring fishery; committee member(s) answered both. Tom felt that both is two different things -- inclusion of something like this in Amendment 4 for the fishery as a whole is one thing, but the Closed Area 1 fishery is voluntary and vessels don't have to fish there. Dave Goethel observed that the agency (NMFS) hadn't ruled on this council recommendation, that all fish must be pumped aboard, and hadn't interpreted language like "must". Mary Beth Tooley agreed that it was dangerous, as the weather changes in 2 hours, for example.

The enforcement committee consensus was clarified, that if "all fish must be pumped aboard" is going to be included in the amendment, the herring committee should get some advice from NOAA General Counsel to word this in such a way that safety is considered.

Eliminate the VMS power down provision (bottom of page 5 of the presentation)

Rodney Avila moved the committee on to discuss the elimination of the VMS power down provision. He said that the first item is enforceable, agreed that the second item was consistent, and asked about OLE support for TAC monitoring. Lori Steele asked why OLE supported this for TAC monitoring. Andy Cohen replied that eliminating the VMS power down provision would make the herring fishery consistent with all other fisheries, with the sole exception of General Category scallopers. He stated that VMS allows OLE to know where a boat is. He explained that General Category scallop permits are exceptional in that they may be very seasonal operations and many have no shore power with which to run the VMS. OLE would like the herring VMS to be on 24/7.

Eoin Rochford said that all herring boats have multi-species permits and/or surf clam/ocean quahog permits, and must use the most restrictive rule. So, they must have the VMS on all the time anyway. Bill Semrau questioned that may not be always the case. Mary Beth Tooley said there are herring only permitted boats. Rodney Avila stated that, even under the other fisheries' VMS rules, you can power down for 30 days (minimum). Bill Semrau added that you can request a power down, but must have a Letter of Authorization.

Jim Kendall indicated that Boatracs (one of the VMS vendors) will offer a monitoring system to its customers, similar to a security system on a house, so those users won't shut off their VMS.

Rodney Avila got the committee consensus:

To support eliminating the VMS power down provision.

Measures to Address Transfers as Sea (options on the top of page 6 of the presentation)

Moving to page 6 of the presentation, Measures to Address Transfers as Sea, Rodney Avila immediately got a committee consensus on Option 1:

Restricting transfers to only limited access directed fishery vessels (herring category A/B) is enforceable.

Option 2 would prohibit transfers to non-(herring) permit vessels. Andy Cohen felt that this was not an enforcement issue, but was concerned that recreational boats would no longer be able to buy a bag of herring. Rodney Avila said that those recreational boats could get an open access herring permit, thus allowing them to buy a bag. Lori Steele mentioned that any vessel obtaining a federal permit would then be subject to all reporting requirements, including VTR submission, and that this could significantly increase the number of vessels submitting VTR's. With that, Andy got the committee consensus:

Prohibiting transfers to non-herring permit vessels is not enforceable.

Mary Beth Tooley had some (data or advice) from the Regional Office, concerning traditional activity, including selling bags of herring at sea to lobster boats, but she said that doesn't happen as much now. Instead, for example, a purse-seiner will fish alongside a (herring) carrier. Option 3 would place limits on transfer amounts and require written receipts, similar to small multi-species provisions. Mary Beth Tooley said that recreational boats were not an issue, but lobster boats were. Dave Goethel indicated that there are about 2400 lobster permits, but over 12 thousand tuna permits, so the committee must consider caveats, such as (herring) carriers.

The committee reached no consensus on Option 3 for transfers at sea.

Dockside Monitoring (questions on the top of page 8 of presentation) and Video-based electronic monitoring

Lori Steele sought advice concerning Dockside Sampling and especially video-based electronic monitoring as an enforcement tool (last item on page 7). Dave Goethel thought (video monitoring) may disprove something, but could not prove something. Andy Cohen had no serious comment at this time. Joe McGuinness wanted a specific program and would be interested in examining it. Andy Cohen added that they (OLE) were waiting for information from the Western Pacific (council) program, and that using evidence is key. Rodney Avila thought that both need further development, and that they would be used for data collection but not enforcement. Deirdre Casey likened the dockside monitoring items to a weigh-master program. She questioned who is the customer, who is paying for it, what data are collected, and how are the data transferred.

Amy Van Atten described the 2008 conference in Seattle on electronic monitoring in the North Pacific (found on the council web site). The results, she said, were that electronic monitoring is a viable tool, but must be (implemented) cautiously and should require a pilot project. Electronic monitoring is not tamper-proof, and should be integrated with other data monitoring. There are also technical barriers to be broken, technical support to be supplied, and status checks to be run. Tom Rudolph argued that a clearly defined application is needed. He said there are legal, confidential, and enforcement issues involved. He believed that electronic monitoring could detect evidence of slippage events. Although not tamper-proof, it is evident when cameras are compromised, for example, a manual shut down is (easily, clearly) detected. Lori Steele asked if there is any potential for video (and dockside) monitoring. Rodney Avila said these programs need to be fleshed-out. Dave Goethel found them intriguing.

The Committee agreed that video-based electronic monitoring may have some applications in the fishery and preferred testing through a pilot program first before requiring the technology across the entire fleet.

Andy Cohen said that State Representative Tarr proposes ending the joint-enforcement agreement with MA, and he was looking for committee support against this measure. This will lose \$750 thousand and a vital service, that is, there will be no dockside patrol. OLE has 30 agents who concentrate on investigation, and dockside monitoring is done with MA agents. Joe McGuinness added that 9/11 showed the need for joint-enforcement agreements. Dave Ellenton said they (industry) fully supported this request. Rodney Avila suggested the committee ask the council to follow with a letter. Amy Van Atten indicated that the Observer program supports the request, too.

Andy Cohen moved, and Dave Goethel seconded, the following request:

That the council send a letter to the Governor of Massachusetts requesting the continuance of the joint agreement on enforcement.

which passed unanimously.

Dave Goethel commented that the joint-enforcement agreement works well in NH, and was concerned that, if it were repealed in one state, then others would unravel.

The meeting was adjourned by Rodney Avila.

New England Fishery Management Council
 Tannery Building - 50 Water Street-Mill 2 - Newburyport, Massachusetts 01950

ATTENDANCE SHEET
 Travel Authorization # 09-73

ATTENDANCE AT: VMS/Enforcement Committee

DATE: Friday, May 8, 2009 LOCATION: Sheraton Ferncroft, Danvers, MA

CERTIFIED BY: _____

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>TELEPHONE</u>
✓ Rodney Avila*		
✓ Capt. McGuinness		
✓ David Goethel*		
Mike Leary*		
NMFS Regional Representative		
NMFS/OLE Representative	Andy Cohen ✓	
MAFMC Representative		
Paul Howard		
Chris Kellogg	Lore Stubb	
Lou Goodreau	Lf	
Ben Mertens	CCCHFA	BEN MARTENS
✓ May Beth Today ✓		
✓ Simon Kendall ✓	NBSC	
Eoin Rochford	NORPEL	
✓ Maria Kelly ✓	NERO	
✓ Peter Moore ✓	Norpe/ADPA	
✓ Jay C. ... ✓	Advisory Panel	George Costello
Paul Bassich	USCG	
✓ DAVE ELLENTON ✓	CAPE DEAFORDS	
LT BERNADT	USCG	
✓ Hank Soule ✓	Little Pt. (darker)	Hank Soule
✓ PATE ... ✓	Western ...	Peter Miller
STEPHEN WALIMA ✓	FIS-ARMIAN	Stephen Walima
✓ ... ✓

Amendment 4 to the Atlantic Herring FMP: Development of Management Alternatives

**Lori Steele, NEFMC Staff, Herring PDT Chair
Enforcement Committee May 8, 2009**

Amendment 4 - Issues

1. Annual Catch Limits/Accountability Measures (ACLs/AMs)
2. Catch Monitoring Program
3. Measures to Address Interactions with Mackerel Fishery
4. Measures to Address River Herring Bycatch
5. Criteria for Midwater Trawl Access to Groundfish Closed Areas

Timeline – Progress to Date

- Scoping April-June 2008
- Committee begins development of alternatives June-Oct 2008
- Council reviews progress on A4 Oct 2008; identifies additional action item Nov 2008
- Council requests stakeholder proposals on catch monitoring Dec 2008
- Committee reviews proposals, develops alternatives for ACLs/AMs and catch monitoring Dec '08-Feb '09
- Council reviews progress on A4, provides guidance Feb 2009
- Committee and Council will continue to develop alternatives through June 2009

Catch Monitoring

- Proposed Goals/Objectives approved by Herring Committee in December 2008
- Four alternatives (in addition to no action) recommended by Committee (details TBD)
- Measures That Can Apply to Any Alternative:
 - Improve Quota Monitoring, Reporting, and Compliance (Sec 2.3.1, p. 10)
 - Address Transfers at Sea (Sec 2.3.2, p. 18)
 - Eliminate Reporting Redundancies (Sec 2.3.3., p. 20)
 - Address At-Sea Monitoring (Sec 2.3.4, p. 23)
 - Still a work in progress, alternatives/options likely to be pared down and streamlined

Catch Monitoring

Alternative 1

- Measures to Ensure Maximized Retention
- Measures to Standardize/Certify Volumetric Measurements
- Portside Sampling Program Set-Aside (PSSA)
- Electronic Reporting
- Measures That Can Apply to Any Alternative
- Measures to Address At-Sea Monitoring
- Video-Based Electronic Monitoring Pilot Program

Catch Monitoring

Alternative 2

- Kelley, Drye & Warren January 21, 2009
- Committee Goals and Objectives
- As Close to 100% Catch Weighing/Certification as Practicable
- Alternatives for Catch Weighing Programs
- Measures to Address Observer Coverage and Protocols for Estimating Slipped Catch
- Measures to Encourage the Use of New Technology
- Portside Sampling Program

Catch Monitoring

Alternative 3

- CHOIR/CCCHFA
- Maximized retention with video-based electronic monitoring
- Catch Monitoring and Control Programs developed by the industry and approved by Council
- Target 100% shoreside monitoring through independently-verified landings (actual weights or certified volumetric proxies)
- Multi-stakeholder funding approach

Catch Monitoring

Alternative 4

- Massachusetts Division of Marine Fisheries
- Supplement the SBRM baseline for river herring and groundfish, increase observer coverage
- Measures to improve shoreside monitoring and use weighmasters to account for landings pumped directly to trucks
- More research on electronic monitoring
- Industry working group to consider funding issues
- Measures to improve data accuracy

Amendment 4 – Enforcement Issues

- Eliminate VMS Power Down Provision for Limited Access Vessels
- Measures to Address Transfers at Sea
- Options to Improve At-Sea Monitoring
- Measures to Ensure Maximized Retention
- Catch Monitoring Alternative 3 – maximized retention, VBEM, CMCPs, 100% DSM
- Measures to Address/Minimize/Prevent Slippage
- Dockside Monitoring Program

Eliminate the VMS Power Down Provision

Section 3.3.1.4, p. 46

- Prohibit herring vessels from turning off VMS units when in port unless authorized by NMFS through a Letter of Exemption
- Consistent with multispecies, scallop, surf clam/ocean quahog fleet
- OLE support for this measure to enhance enforceability of TAC monitoring and other regulations?

Measures to Address Transfers at Sea

Section 3.3.2, p. 47

Currently unrestricted and may lead to incomplete catch data and database inconsistencies

- Option 1 – restrict transfers to only limited access directed fishery vessels (A/B)
- Option 2 – prohibit transfers to non-permitted vessels
- Option 3 – small mesh multispecies provisions – limits on transfer amounts and written receipt required

Options to Improve At-Sea Monitoring

Section 3.3.4, p. 57

Remanded to Enforcement OS for comment

- Provide observer with safe sampling station
- Provide assistance in obtaining basket samples and sorted discards
- Bring codend on board whenever possible and open it for the observer to inspect
- Provide accurate details about why a bag may be partially pumped/slipped
- Provide observer notice when pumping may be coming to an end

Options to Improve At-Sea Monitoring

Section 3.3.4, p. 57

Remanded to Enforcement OS for comment

- Notify observer of any known marine mammal in the net
- Use two observers on larger vessels and/or pair trawl operations
- Require additional communication between boats in a pair trawl operation if fish are being pumped to both vessels with only one observer
- All fish must be at least pumped aboard the boat so that the entire catch can be sampled (Closed Area I recommendation)

Maximized Retention and Net Slippage

- How should landings of prohibited fish be handled?
- Who is responsible for the unwanted/unsold fish once they are landed?
- How to report prohibited/unmarketable species?
- How can slippage be minimized through regulation? Exceptions for safety and/or other factors?
- How can maximized retention and slippage provisions be enforced?
- Video-based electronic monitoring as an enforcement tool?

Dockside Monitoring

- One objective is to confirm the accuracy of self-reporting through an independent third-party (enforcement/compliance)
- “Sticking” the tank? Or “sticking” trucks and confirming dealer reports?
- How does a dockside sampler provide information for enforcement purposes?
- How does the information collected by a dockside sampler relate to IVRs, VTRs, Dealer reports, and observer reports?

Amendment 4 to the Atlantic Herring FMP: Development of Management Alternatives

Lori Steele, NEFMC Staff, Herring PDT Chair

Enforcement Committee May 8, 2009