

Correspondence
Re: Amendment 4/Atlantic Herring



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 NORTHEAST REGION
 55 Great Republic Drive
 Gloucester, MA 01930-2276

MAY 15 2009



Paul J. Howard, Executive Director
 New England Fishery Management Council
 50 Water Street
 Newburyport, MA 01950

Re: Council Recommendation on Herring Midwater Trawl Access to Closed Area I

Dear Paul:

Thank you for your letter of April 10, 2009, conveying the New England Fishery Management Council's recent request to add the following three conditions to the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Authorization Letter (LOA) when fishing in Closed Area I:

- 100% observer coverage,
- Prohibition on slipped cod ends, and
- Requirement that all fish be pumped aboard to allow sampling by the observer.

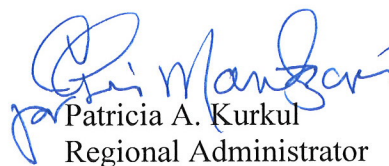
As mentioned in your letter, the regulations at 50 CFR 648.81(a)(2)(iii) grant the Regional Administrator the authority to place restrictions and conditions in the LOA if it is determined that the bycatch of regulated multispecies exceeds or is likely to exceed 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation. In addition, because your request is premised on the need for additional information to decide whether exemptions for herring vessels to fish in groundfish closed areas should be revised, NOAA's National Marine Fisheries Service (NMFS) has further authority under section 402(a) of the Magnuson-Stevens Act, to implement or amend the information collection program in the herring fishery.

NMFS has made a determination that the bycatch of regulated multispecies in groundfish Closed Area I has exceeded 1 percent of herring caught on at least two individual fishing operations and that additional information is needed to determine whether the NE Multispecies or Atlantic Herring Fishery Management Plans (FMPs) should be amended. Therefore, NMFS has decided to initiate proposed and final rulemaking to implement the Council's recommendation concerning observer coverage, the prohibition on slipped cod ends, and the requirement to pump all fish aboard the vessel as a condition of the LOA when fishing in Closed Area I.

Although this action is expected to provide valuable information on bycatch in the midwater trawl fishery, the results may not be available for some time. I encourage the Council to continue development of Amendment 4 to the Atlantic Herring FMP along the current schedule.

I will keep the Council informed as this matter progresses through the rulemaking process.

Sincerely,


 Patricia A. Kurkul
 Regional Administrator





New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3118
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

April 10, 2009

Patricia Kurkul, Regional Administrator
NOAA/NMFS Northeast Region
55 Great Republic Drive
Gloucester, MA 01930

RE: Review of Herring Midwater Trawl Access to Closed Area I – Council Recommendation

Dear Pat:

As you know, concern was expressed to the Council in November 2008 about recent bycatch events in Closed Area I involving midwater trawl vessels and, in particular, bycatch of haddock. As a result, the Council requested that NMFS review observer data from Closed Area I to determine if Council requirements for continued access have been met. Regulations specified in CFR Section 648.81(a)(2)(iii) specify that:

“...the Regional Administrator shall review information pertaining to the bycatch of regulated NE multispecies and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas” (§648.81(a)(2)(iii)).

At its April 7-9, 2009 meeting, the Council reviewed NMFS’ analysis of observer data and approved the following motion for your consideration, consistent with the regulatory language above:

That as a condition of the Letters of Authorization to access groundfish Closed Area I, there be 100% observer requirement and there be a prohibition on slipped cod ends, and that all fish would at least be pumped aboard the boat so it can be sampled by an observer.

The intent of the Council's motion is that requirements for 100% observer coverage and for all fish to be pumped on board to be sampled by the observer be added to the Letters of Authorization as conditions that must be met for a herring vessel to fish in Closed Area I. We hope that NMFS and the Northeast Fisheries Science Center can work together to ensure adequate observer coverage in this area so that better information regarding bycatch of groundfish and other species can be provided to the Council for consideration in Amendment 4 to the Herring Fishery Management Plan (FMP). The Council awaits the Agency's further review and response as it continues to work on Amendment 4, which may include provisions/requirements for access by midwater trawl vessels to all groundfish closed areas.

Please consider this request and contact me if you have any further questions.

Sincerely,

A handwritten signature in cursive script that reads "Paul".

Paul J. Howard
Executive Director

cc: Council members

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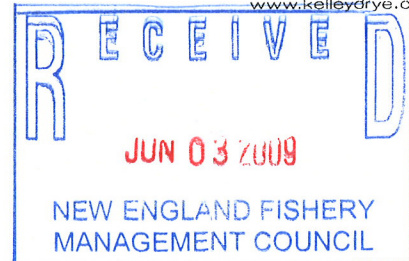
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June 3, 2009

VIA ELECTRONIC MAIL

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

RE: PROPOSAL REGARDING MIDWATER TRAWL ACCESS TO CLOSED AREA I

Dear Chairman Blount:

We submit this letter on behalf of Cape Seafoods, Inc., Lund's Fisheries, Inc., Northern Pelagic Group, LLC, Western Seas Fishing Company, and Peter Mullen (Irish Venture, Inc.), all participants in the mid-water trawl herring fishery. These comments address the New England Council's recommendation made at its April meeting regarding the conditions under which continued access to Closed Area I will be granted. Specifically, the recommendations include that mid-water trawlers have an observer aboard, that vessels do not release, or "slip," any tow in the closed area, and that all fish caught be brought across the deck.

As you are aware, these recommendations came in response to a report by Regional Administrator Kurkul that a total of just two individual fishing trips over a four-and-a-half year period had landings in which haddock comprised more than one percent of the total trip catch. In fact, the fleet-wide average haddock bycatch over that time period was only 0.56 percent of the total catch, and thus well under the one percent bycatch standard for the fishery established in Framework 18. More specifically, the total amount of haddock bycatch over the four and one-half year period was 57,560 pounds, or an average of under 13,000 pounds per year. This average annual amount is but a tiny fraction of the haddock bycatch allowance for the fishery established in Framework 43, which is 316,218 pounds for fishing year 2009. (The haddock bycatch allowance equals 0.2 percent of the 90.6 metric ton target TAC for haddock.)

As an initial matter, it is important to state that these companies welcome the increased Closed Area I observer coverage the Council has recommended. Such information should belie the vexing lack of credence that the midwater trawl sector's most vocal critics have given to the information currently collected by the Northeast Fisheries Observer Program. The National Marine Fisheries Service has reprioritized observer coverage for fishing year 2009, so that 433 days (the SBRM preferred alternative) will be allocated to the New England mid-water trawl herring fishery. This reallocation should allow for 100 percent Closed Area I coverage for herring mid-water trawlers. A year's worth of data collected by NMFS from all, or virtually all, trips to Closed Area I, should go a long way to settling the contentions about the extent of bycatch in this fishery. Currently, the industry is working with lawmakers to help ensure that observer coverage at the 433 day SBRM level can be funded for fiscal year 2010 (to cover fishing year 2010).

With respect to Council's recommendation as a whole, however, there are a few matters we wish to address. First, as to the requirement for 100 percent observer coverage in Closed Area I, NMFS should, as is customary, retain the discretion to set coverage levels once it has a full year or more worth of information on trends in bycatch. While the industry will continue to seek funding for existing, reprioritized levels of coverage in 2010, it is far from certain that additional funds will remain available in future years. If resources once again become constrained, and the new data confirms that haddock bycatch remains low, NMFS and the Council both may wish to allocate the limited available total number of observer days to higher priority tasks, either within this fishery or for others. The agency should not be locked into a fixed pattern of allocation, particularly if bycatch information already collected demonstrates that no special problems exist.

As to the balance of the recommendation, relating to released tows and bringing all fish aboard the vessel, new information and concerns have arisen since the Council took action in April. Specifically, the Enforcement Committee, the Herring Plan Development Team ("PDT"), and the Herring Advisory Panel ("AP") have all subsequently met and discussed this issue. The overwhelming consensus has been that there must be carefully crafted exceptions to these requirements for safety, operational, and practical reasons.

Taking these in order, the Enforcement Committee and members of the industry have expressed concerns relating to vessel stability when significant amounts of fish are being kept on deck. In particular, it is important to note that dewatering boxes are 15 to 20 feet above the deck. Significant weight in the box, and elsewhere on deck, can drastically impact stability depending on such factors as whether the tanks are empty, full, or slack, which tanks are full, and sea conditions. Ultimately, the vessel's and crew's safety rests with the captain, and the Enforcement Committee and AP both agreed that the decision whether to deck load fish must reside with the captain. In order to do this, the regulations must have a safety exception that is consonant with National Standard 10 and prudent operational standards and considerations.

The AP and PDT also focused on operational and practical issues that the prohibition on releasing tows and bringing all fish across the deck would entail. For instance, in some cases, it is physically impossible for certain fish, dogfish in particular, to be pumped out of the net. Furthermore, the industry engages in test tows to ascertain the composition of fish in an area.

Frank Blount, Chairman
June 3, 2009
Page 3

KELLEY DRYE & WARREN LLP

These are brief, twenty or thirty minute tows in which the net is pursed and the crew examines the catch composition to insure that it is the target species, not mixed with other fish, and of suitable market quality. Quick release of these tows can lead to survival of at least some of the fish, which otherwise would not survive if brought aboard for counting.

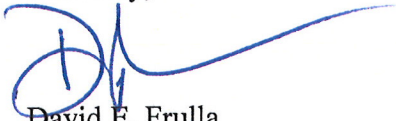
Finally, observer data shows that the highest volume of catch that is discarded at sea is released due to mechanical problems, and that most of that fish is herring. Obviously, the vessel would want to retain this target catch, but it cannot due to problems beyond the crew's immediate control.

Thus, it is important that the action NMFS takes in response to the Council's recommendation must, at a minimum, have exceptions for safety, the impossibility of pumping the net due to species composition, and for mechanical failures. It may also be consistent with the Council's policy to minimize catch of non-target species to create an allowance for test tows.

In all instances, however, it is feasible for the captain, officer, or other qualified crew member to work with the observer to facilitate estimation of the catch composition and volume of any tow not brought aboard under one of these exceptions. Not only is this possible, but it is a routine practice, which is why test tows are a successful and increasingly used tool. Experience allows these estimates to be relatively precise.

We appreciate your attention to these comments, which we have likewise shared with NMFS, and look forward to continuing to work with the Herring Committee and Council in the development of Amendment 4. If you have any questions these matters, we will have representatives at the meeting to provide further information.

Sincerely,

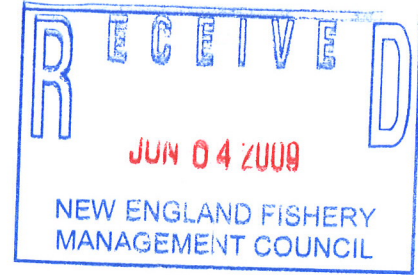


David E. Frulla
Shaun M. Gehan
Andrew E. Minkiewicz

cc: Regional Administrator Patricia Kurkul
Lori Steele, NEFMC



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Chairman Frank Blount
NEFMC Herring Committee
PO Box 3724
33 State Street
Narragansett, RI 02883

June 3, 2009

Dear Chairman Blount:

This letter is in regards to the agenda for the upcoming Herring Oversight Committee Meeting and Amendment 4 Discussion Document. We greatly appreciate the effort by all involved in the advancement of Amendment 4 and the commitment to work on finishing the Amendment by scheduling a two day committee meeting.

Splitting the Amendment

CCCHFA strongly opposes splitting the amendment and not including monitoring when completing ACLs and AMs. ACLs and AMs will not be valid without the monitoring component. While it is important to create comprehensive AMs to support the established ACLs, more comprehensive changes are urgently needed in the management of this fishery. According to the approved Fishery Management Plan, the herring fishery is managed under a total allowable catch (TAC) set by the New England Fishery Management Council (NEFMC); however, the fishery is actually managed by total allowable landings (TALs). Toward this end, a vastly expanded monitoring system is necessary to ensure accurate mortality estimates for both herring caught and discarded as well as any associated bycatch. The fishery cannot continue with captains self reporting landings and unknown weights and species composition of slipped tows.

Managers at the ASMFC are looking to the NEFMC to develop a monitoring program for the Atlantic sea herring fishery in order to accurately estimate river herring catch in federal waters. Even with scant monitoring it is apparent that the Atlantic sea herring fishery catches vast amounts of river herring and therefore the ASMFC Shad and River Herring Management Board has sent a letter to the Secretary of Commerce requesting Emergency Action to immediately implement a monitoring plan for the Atlantic sea herring fishery in order to monitor river herring bycatch. Splitting the amendment using the current staff proposed plan will slow the development of a monitoring plan and could result in catastrophic negative impact to river herring.

In the event that the amendment is split, monitoring needs to stay in Amendment 4. If monitoring is not included in Amendment 4 the PDT should immediately be tasked with determining assumed discard rates that will be applied to all trips and the SSC must consider monitoring uncertainty when setting the ACL.

ACLs/ AMs

It seems clear from the discussion document that area management TACs will be considered sub-ACLs. We would appreciate if the committee clarifies and also includes language in the Amendment 4 Discussion Document stating that sub-ACLs will be subjected to SSC review.

rec'd 6/4-6/5/09 Ch. Mtg.



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We support options 1, 2, 3A and 4 under section 2.3.6.2 AM Alternatives.

Option 1: There is no point in having a hard TAC if mortality is going to continue after the ACL has been caught. At the PDT meeting, members argued against this measure because they felt that mortality of herring was going to continue, even if the fishery was closed. This is a concern. **If the PDT believes that there is unreported catch and sub-ACLs are likely to be exceeded, than the directed fishery should be closed at a number less than 95% of the ACL.**

Option 4: This option needs to be expanded to include penalties for exceeding the Haddock Catch Cap sub-ACL.

We support the PDT's proposed rejection of Option 3B. The committee also determined that option 3B was not favorable when passing the following motion at the March 24, 2009 meeting "That in the Herring FMP, the stock-wide ACL will be equal to OY, and the potential for overages of Area TACs (sub-ACLs) will be minimized through accountability measures for each area". The committee considered the concept of retrospective analysis of negative biological impact during the discussion and specifically chose not to include it in the motion or in the amendment. ACLs and sub-ACLs are set and aren't meant to be exceeded. Option 3B gives the fishery an excuse to exceed the ACL and assumes that the ACL setting process is flawed.

We also understand that shifting fish from Area 3 to Area 2 has been introduced. We have concerns regarding transferring catch from one sub-ACL to another without scientific support. Any discussion of transferring catch should be investigated by the PDT and SSC.

Monitoring

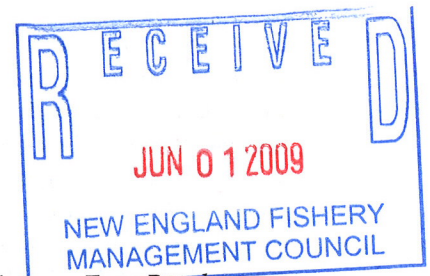
The Council voted twice to make monitoring of the herring fishery a priority. We support those decisions and remain in favor of completing monitoring in Amendment 4. We do not see how this fishery can be scientifically managed without a monitoring program that accounts for all fish caught.

We continue to support maximized retention and shore side monitoring. There are solutions to the industry's questions concerning safety and what to do with prohibited fish. Any shoreside sampling program currently in place or in the future must have protocols that allow shoreside monitors to determine total landings weight, be able to sample the entire catch and extrapolate discards instead of relying on captains, and crew for estimates.

Thank you for considering our comments.

Sincerely,

Susan Nickerson
Executive Director



Coalition for the Atlantic Herring Fishery's Orderly, Informed and Responsible Long Term Development

June 1, 2009

Frank Blount, Chair
NEFMC Herring Committee
PO Box 3724
33 State Street
Narragansett, RI 02883

Re: June Herring Committee Meeting

Dear Frank,

I am writing on behalf of the CHOIR Coalition to offer our comments regarding ongoing development of Amendment 4 in advance of the June Herring Committee meeting. Specifically, we would like to offer some additional management measures for Alternative 3 that are designed to address some of the concerns that have been raised and improve the alternative in other areas. We urge the Committee to include the following options into Alternative 3 for further development and analysis.

Before going into the specific discussion regarding Alternative 3, we wanted to first highlight a certain inconsistency to the Committee in that there seems to have been a great deal of "pre-analysis" of Alternative 3 since the Council voted to include it in the document, but almost no discussion of the other three alternatives. We believe that this is primarily due to the highly detailed level to which this alternative was developed before submission in comparison to the others. While this pre-analysis has been helpful in refining the alternative, it is important to note that if the remaining alternatives were held up to the same scrutiny as Alternative 3 that many similar problems would be brought to light. We would strongly urge the Committee to continue to develop Alternative 3 while also putting more time and effort into working out the problems in the other alternatives.

Safety Issues

At both the Enforcement Committee meeting and the Herring Advisory Panel meeting last month there was discussion centered on safety concerns regarding the Maximized Retention (MR) program at the core of Alternative 3. Some believe that it is unsafe to force a captain to bring fish aboard as it could lead to the vessel being overloaded. In other words, they are saying that there will be occasions when boats are trying to top off the hold and end up with more fish than they can physically hold; if forced to pump all this fish aboard the vessel may become overloaded. While maximized retention has not been shown to be inherently dangerous in the west coast whiting fishery, we take these safety concerns very seriously and feel that there are several simple solutions to this potential problem. The first addition is a Trip Termination exception and we feel that it is something that should be formally added to Alternative 3.

Trip termination has actually been considered by the Council's Ad-Hoc Bycatch Committee during the deliberations that ultimately led to Framework 43 to the Multispecies Plan, and the Council may find useful language and/or analysis by consulting these records. But basically, we recommend that the Committee include for analysis in Alternative 3 a measure that would require a herring vessel to terminate its trip and return to port in the event that a dumping event takes place. This measure would enhance vessel safety by ensuring that herring vessels are not repeatedly exposed to any unsafe loading and/or sea state conditions that require dumping unsampled catch. Furthermore, it would ensure that herring captains do not take advantage of a safety exception in order to dump fish.

The second addition to Alternative 3 that will help address the overloading issue is in response to the specific concern of pumping large amounts of dogfish aboard. All fishermen know that dogfish are often hard to avoid and members of the herring industry have made clear that this is a problem for them at times. While we never intended for this alternative to force herring vessels to pump aboard and retain large amounts of dogfish we believe that additions to the Alternative will clarify that such exceptions are allowed (but not abused) and to also lay out how managers could account for these incidents. We would like to point out that the most effective solution for this problem, hard caps on dumping for the fishery, is already outlined in Alternative 3 and we stand by it. The following are essentially a series of proposed modifications to the dumping cap concept.

Species-based options for the target of the maximized retention program should be developed, considered and analyzed. Maximized retention can mean a lot of things- it depends on what managers and stakeholders decide to maximize. For instance, there may be broad consensus to minimize retention of dogfish, and thus dogfish would not be a target of the program. We suggest laying out a variety of options which could be mixed and matched as far as what Alternative 3 might require the vessels to bring ashore for shoreside sampling, broken down as follows: Sea herring, mackerel, haddock, other large mesh regulated groundfish, small-mesh regulated groundfish, river herring/shad, dogfish, other ASMFC-managed species.

It is important to realize that maximized retention and maximized sampling are two different things. While a decision to avoid maximized retention of dogfish may be reasonable, it will still be critical to encourage and achieve an examination of a catch containing dogfish whenever possible. In other words, there is a difference between dumping and traditional discarding in that the latter provides for a positive identification and characterization of the catch. We suggest that while an overall cap on dumped tonnage might need to be adjusted to accommodate reasonable dumping of un-pumpable dogfish; this must be done carefully to prevent abuse of the exception. Alternative 3 currently targets the retention of 99.5% of the catch in the fishery with a dumping cap of 0.05%. Various options for the adjustment of this ratio should be considered if species or species groups are shifted out of the maximized retention program, but the adjustments to the ratio should be based on historic dumping and discard data. Caps should be set at historic levels or less.

Logistical Implementation Issues

Building and refining a maximized retention program will take time. CHOIR has discussed several of these issues with NMFS staff and others, and proposes the following solutions for addition to Alternative 3 and further development and analysis:

A phased-in implementation approach for maximized retention warrants serious consideration. Three potential elements should be developed:

1. *A temporal phase-in of maximized retention over two to four years which includes a gradual but steady reduction in the amount of at-sea discarding permitted as well as the dumping tonnage cap. Data from the U.S. west coast hake fishery maximized retention program show a steady reduction in at-sea discarding as unnecessary discards and bad behavior are identified and eliminated.*
2. *A spatial phase-in of maximized retention in which bycatch hotspots, for instance the previously identified river herring hotspots or groundfish closed areas, require maximized retention.*
3. *A gradual phase-in of Video Based Electronic Monitoring (VBEM) as the verification system through pilot programs. This approach is briefly mentioned in Alternative 3 now, but warrants further attention. It will be important to provide overlapping coverage with Federal observers on pilot fishing trips to ensure robust monitoring during the phase-in period while herring fishermen dial in VBEM. Though a proven application of VBEM, maximized retention verification in trawl fisheries would be new to New England.*

Landings Issues and Fish Disposition Issues

Another issue that has been raised pertains to the landing of prohibited and/or non-permitted species; that is, the landing of catch that is currently not allowed. It should be pointed out here that Alternative 3 would not require, under any circumstances, the landing of a species prohibited under the Endangered Species Act or Marine Mammal Protection Act. A second concern raised is what to do with this catch once it is accounted for onshore. We do not feel that these issues should be seen as roadblocks as there are simple solutions that will solve these and any other problems regarding the landing of catch. In fact, both the NERO and the NMFS Office of Law Enforcement (OLE) have said that they do not see these two issues as problems.

First, in terms of the landing of species currently prohibited under the vessel's permits and/or by a Federal or Interstate Fishery Management Plan (FMP), changes would have to be made so that herring fisherman would be formally allowed to bring in all catch. It is a given that for a maximized retention program to be feasible the vessels must be able to bring in catch without being in violation.

Our primary suggestions to solve this issue would be annual Exempted Fishing Permits (EFP) to allow maximized retention, or for the Council to implement an omnibus amendment so that it will be legal for herring fishermen to bring in their catch. NMFS has made clear that an omnibus amendment would not only be possible, but relatively easy. A third suggestion, recently endorsed by the Enforcement Committee, would be to handle this catch as it is handled currently. We support further development of the latter to facilitate a better understanding of current procedures so that all stakeholders can assess their viability going forward.

Our additional suggestion for these issues is similar to the approach outlined above: lay out a series of different options for which species and species groups will be maximized. This will break down what appears to be an insurmountable problem (amending every plan including ASMFC plans) into more manageable options. Based on the previous list of options (sea herring, mackerel, haddock, other large mesh regulated groundfish, small-mesh regulated groundfish, river herring/shad, dogfish, other ASMFC-managed species), CHOIR would suggest that the program should seek to maximize sea herring, mackerel, groundfish, and river herring. The benefit of this is easy to see. For instance, by separating river herring and shad from the other ASMFC species, you take advantage of the fact that (as far as we know) there are no ASMFC limits or prohibitions on them at this time anyway. The argument that maximized retention will result in violations or require changes to other FMP's is neatly separated from one of the main

Amendment 4 monitoring targets, one which is also most suitable for shoreside sampling (river herring). Another way to look at this specific example is that herring boats are landing river herring now at-will and with no consequences, so maximizing retention on them is no major problem.

Second, in terms of what to do with the catch once it has been accounted for onshore, there are multiple solutions. While NMFS OLE has stated that they would be able to handle these landings, we feel there are other possible answers to this question. The first solution would be to setup a system like that used in Alaska, known as SeaShare [<http://www.seashare.org/>] which is a non-profit foodbank that distributes bycatch that is landed in that part of the country. It deals with millions of pounds of catch and distributes it to the hungry. The second solution would be to work with local fish dealers- of which there are many- to find sources for these landings. And a third suggestion would be to do what is done now- to have the vessels dump the landings once it has been counted onshore. Anecdotal reports suggest that herring vessels are often forced, for market reasons, to discard large quantities of target species they intended to land and tried to land. These are just three of many potential solutions to this problem.

Other Additions. We also suggest the following additions to Alternative 3:

Utilization of vessel electronics: *Electronic capture and addition to the official monitoring database of key data streams from vessel electronics, including mesh pressure-based catch weight sensors ("eggs") and footrope height over bottom, possibly through the NMFS Study Fleet or through an approved VBEM system. Herring industry representatives have indicated support for this approach and it warrants further development. Catch weight sensors may have a powerful ability to help derive an estimated weight for discard and dumping events. It is important to recognize that these electronic sensors will not provide catch composition data and that other solutions will need to be developed to ensure that the reliance on self-reporting is eliminated with respect to the species make-up of dumped tows.*

Modifications to Catch Monitoring and Control Plan (CMCP) measures: *Discussions with Council staff indicate that use of CMCP's in other U.S. fisheries is in some cases narrowly targeted, for instance only on processors. CHOIR suggests that a series of options be developed and analyzed under which CMCP's would be required in the herring fishery for different fleet sectors (i.e. processors only, Category A and B vessels only, pump vessels only, vessels which utilize carriers, etc.)*

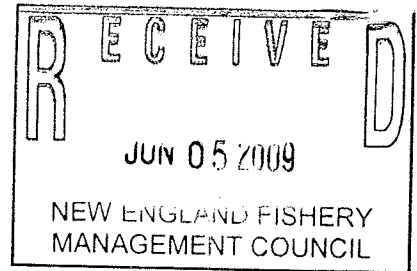
Conclusion

We have endeavored to examine and address the concerns about Alternative 3 expressed over the past several months by various Council bodies and by multiple stakeholders during outreach discussions. We formally request that the italicized management measures be added to Alternative 3 for consideration as Alternative 3 and the maximized retention program it describes are developed for further analysis in Amendment 4. We also urge the Committee to begin the necessary work of considering the strengths and weaknesses of the other three catch monitoring alternatives, as well as the all-important work of comparing the relative costs and benefits of the four alternatives to each other.

Thanks for your time,



Steve Weiner, Chair



To: NEFMC Herring Committee and Plan Development Team Members

From: Tom Rudolph, Cape Cod Commercial Hook Fishermen's Association
(On behalf of the CHOIR Coalition)

RE: Herring PDT Report for 5/26/09 (Response to questions and concerns on Maximized Retention)

Date: 6/5/2009

The PDT report dated 5/26/09 contains a great many questions about maximized retention (MR). While many of these questions are actually already addressed or answered in the text of Alternative 3, others may warrant further clarification. Both categories are addressed below. In addition, the CHOIR Coalition, as the stakeholder group which submitted the monitoring proposal from which Alternative 3 was adapted, has submitted a suite of suggested additions and modifications to Alternative 3 which further address some of the questions and concerns raised in the PDT memo (see CHOIR letter to Herring OSC dated 6/1/2009).

- The PDT states that it is "unclear what the goal/expectation of a maximized retention program may be"
 - Alternative 3 as incorporated into the Amendment 4 Discussion Document contains a set of detailed goals and objectives for the proposed MR program, which includes many specific explanations of why MR is likely to be more efficient and effective than other program designs
 - The overall goal is to ensure that industry participants, managers, and stakeholders know what is caught in the fishery in close to real time
 - In addition, a key objective of MR is to minimize wasteful discarding. Herring fishery discards may appear small as a percentage of the overall herring catch, but the high-volume nature of the fishery masks the fact that the total discards, in tons, are actually quite large and wasteful. CHOIR fully supports this additional objective.
- The PDT asks whether the goal of MR is to obtain a census of all bycatch or to improve the precision and accuracy of bycatch estimates
 - Alternative 3 lays out options for both. The preferred option is to cover landings events with dockside monitoring (DSM) on a census basis (all events) but there is another option that would cover less than 100% of landings events, at a level that would cover enough events to allow extrapolation across all landings events. This would constitute an improvement in the precision and accuracy of bycatch events relative to the current monitoring program in the fishery.
- The PDT asks whether MR is being considered because there is uncertainty about the accuracy of sea sampling data, and while recognizing that coverage levels should be increased, whether there is a lack of faith in the sea sampling data that are collected
 - The answer to both is yes, but this should not be construed as a criticism of the Northeast Observer Program (NEFOP) or on the credibility of Federal observers. Current regulations allow for the dumping of unsampled catch on observed trips, negating over 15% of the tows on these trips in the most recent year for which data are available (2007) and biasing the data. NEFOP itself classifies these tows as "unobserved" and sets the data aside. In addition, there are not enough observers to achieve precision or

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accuracy in discard estimates, much less monitor catch limits. Finally, coverage levels are so low that an observer effect is likely present.

- The PDT asks whether MR is being considered because of concerns that:
 - Observed trips are not representative of the entire fleet
 - The answer is yes. Current coverage does not allow for fleetwide extrapolation. MR is proposed as an option that may allow for the collection of enough data to achieve statistical significance
 - Observed trips are biased by an “observer effect”
 - The answer is yes. Coverage rates are so low that multiple observer effects are likely present. standard minimum coverage rates to negate observer effects are considered to be 50% for fisheries like the herring fishery which feature rare but significant bycatch events
 - Precision around discard estimates are too low
 - The answer is yes. There is not enough coverage and MR with Dockside Monitoring (DSM) should, in the long term, be more cost effective and allow for a greater coverage rate
 - A census may provide better estimates of catch than statistical sampling
 - The answer is yes. This fishery features rare but significant bycatch events and warrants high coverage to achieve precision and accuracy and derive catch estimates suitable for monitoring catch limits
- The PDT asks whether the vessels would separate the target harvest and unwanted catch at-sea
 - Under Alternative 3 this would be up to each individual vessel or vessel owner to determine and describe through that vessel’s Catch Monitoring and Control Plan (CMCP).
- The PDT asks would the unwanted/discarded portion of the catch be fully sampled (high volume) or counted (very low volume)
 - This would be up to the Dockside Monitors to determine based on their assessment of what was feasible and their observer protocols, just as such decisions are often left to observers and dockside monitors currently. Subsampling, as long as the data can be extrapolated, is perfectly legitimate.
- The PDT asks would all trips or just some trips be sampled at the dock for species composition
 - The preferred option in Alternative 3 is for all trips to be sampled, but there is an option to sample less than 100% provided that statistical significance is achieved and the data can be extrapolated fleetwide.
- The PDT asks would the volume of unwanted/discarded catch be measured for all vessels or only some vessels
 - This question is unclear. The preferred option for Alternative 3 is to implement MR for Category A and B vessels provided this will ensure robust monitoring on the vast majority of the catch in the fishery (it is based on an assumption that this would capture >95% of the catch in the fishery)
- The PDT expresses concern that separating the harvest from the unwanted catch may be difficult for some vessels and could reduce vessel capacity
 - Unwanted catch needs to be separated from harvest whether MR is implemented or not. The only thing different about MR is that the unwanted catch would need to be brought to shore instead of discarded at sea

- Vessel capacity may be preserved by allowing vessels to discard at sea if they chose, by instituting a cap system and assumed discard amount. Under Alternative 3 as currently proposed because vessels would still be able to discard at-sea if they chose, within a cap system.
- The PDT expresses a concern that many boats take trips with the intention of bringing back a specific quantity of herring to fill a market, but that they may reach this quantity before a bag is fully pumped. The PDT is also concerned about the potential for landing poor quality/unmarketable fish under MR
 - Again, the MR program in Alternative 3 would make an allowance for discarding these mistakes at sea, but would cap this practice to encourage compliance with the MR program and reduce such wasteful discarding. CHOIR suggests that a gradual reduction of the cap on at-sea discarding over a two to four year period will help facilitate the process of identifying and eliminating these practices.
- The PDT asks how “test tows” are addressed, and specifically whether “test tows” would be prohibited under MR
 - Again, the decision over whether to retain or discard the catch on a “test tow” would be left to the captain but if his decision was to discard there would be tonnage charged against the cap.
 - To be clear, CHOIR questions the validity of the notion of “test tows” unless the fish are brought aboard for inspection and sampling. These tows cannot be considered a “test” in any sense of the word unless the test is “graded” i.e. the catch is sampled.
- The PDT asks how the unwanted catch will be sampled and also asks about the eventual disposition of the unwanted catch, for instance will it need to be brought back out to sea for disposal
 - The former is simple: that catch will be sampled upon offload according to the vessel CMCP
 - The latter is indeed a challenge for which several options have been proposed (market the catch and develop a way to backfill funding for the program, utilize existing state enforcement protocols to help dispense it, donate to food-banks etc.). Additional discussion is likely necessary.
- The PDT asks what would prevent non-observed vessels from discarding at sea
 - Under Alternative 3 there would not be any MR vessels without a verification system aboard. Less than 100% verification has been determined to be inadequate by managers in the West Coast U.S. Shore-Based Hake MR program. The PDT is correct in that MR would only be effective with an observer or video camera on the boat.
- The PDT asks whether or not the same goals as those of MR could be achieved just by increasing observer coverage and getting better information about slipped catch
 - The answer is yes, some of those goals could be achieved, including those of deriving catch estimates. But others could not, such as minimizing long-term costs, sampling ashore instead of in the challenging at-sea environment, reducing discarding, and utilizing the existing dockside monitoring programs
- The PDT asks whether there are safety concerns with requiring maximized retention and putting everything in the hold, as well as possible product quality concerns.
 - Safety is addressed in Alternative 3 by the discarding cap system. Vessels could still discard at sea when necessary. In addition, CHOIR has proposed additional safety-related measures for Alternative 3, such as a trip termination regulation.

- These measures also address product-quality concerns
- There has been a particular focus on dogfish in terms of the two considerations above. Alternative 3 contains measures to mitigate the dogfish issue, and additional measures are proposed in CHOIR's letter dated 6/2/2009, which outlines suggested additions to Alternative 3. CHOIR recommends the Council incorporate.
- The PDT points out that there are additional costs to be considered, including video monitoring, dockside sampling, and disposal
 - Only the last one of the above (disposal) is not already addressed in Alternative 3. The others are estimated and discussed. Further analysis, including some on disposal, is a good idea.
- The PDT asks how carriers would be addressed under MR provisions
 - As explained in Alternative 3, catcher vessels would be defined as first receivers and would be required to design and submit for approval a CMCP. If a first receiver chooses to work with carriers, this relationship and the catch handling procedures, including all the concerns raised by the PDT, would need to be specified in the CMCP. For instance, a CMCP might specify that a carrier will also have a Video Based Electronic Monitoring (VBEM) system to verify that all catch for a given cod end transferred at sea is pumped aboard and also specify that that carrier will land under DSM coverage.

The PDT concludes with a discussion of other possible alternatives to MR. CHOIR fully supports the development of a wide array of alternatives including but not limited to MR and a careful relative comparison of the costs and benefits of each. We are however quite concerned about the 4 bullets at the bottom of page 3 of the PDT report- they contain an inconsistent and somewhat troubling message.

Specifically, bullet #2 strongly recommends stopping slippage ("it is imperative that observers be provided the opportunity to sample the contents of the entire haul"). Bullet #3, however, simply calls for more detailed self-reporting of the contents of slipped hauls. And Bullet #4 calls for an extended study of slippage to determine whether or not there is a problem.

CHOIR respectfully submits that we do not need to study slippage. We need to minimize it, cap it, and hopefully eventually eliminate it.

On behalf of the CHOIR Coalition and the CCCHFA, thanks for your time and consideration of these remarks.

Tom Rudolph
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