



New England Fishery Management Council

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Draft Amendment 5
Public Hearing Meeting Summaries

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NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Samoset Hotel
Rockland, Maine
March 2, 2012, 9 a.m.

Hearing Officer: Terry Stockwell

Other Council Members in Attendance: Mary Beth Tooley

Council Staff: Lori Steele

Attendance: Dave Ellenton, Sean Mahoney, Rick Usher, Dave Mason, Don Sproul, Rich Ruais, Barry Murgita, Shawn Rockett, Zack Klyver, Pete Douvanjo, Jim Ruhle, Chris Weiner, Barry Gibson, Arnold Nickerson, Gary Libby, Kim Libby, Ted Ames, Mike Brewer, Lisa Kushner, Frank Ohara, Robert Eugley, Dana Hammond, Karin Spitfire, Scott McNamma, Glenn Robbins, Roger Fleming, Lauren Wahl, Trevor Lyle (approximately 50 people)

Mr. Stockwell introduced Council members and staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the NEFMC Amendment 5 public hearing document.

After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5. Initially, comments were solicited section-by-section, but because of the overlapping nature of the issues/measures in Amendment 5, the floor was opened to comments on any elements of the draft amendment and public hearing document.

Public Comments

Glenn Lawrence, F/V Double Eagle (Herring Carrier): I'm not sure what the requirement means that I will have to accurately weigh all fish that I have to deliver to my customers. We are not really set up for that. It's like a building with barrels that we pump fish into. Is volume going to be OK for that?

(Ms. Steele clarified that this is the kind of input that the Council is seeking regarding the logistical issues associated with a requirement for dealers to weigh all fish.)

I was guessing that you were targeting million pound carriers that load trucks all day long. I only have a thousand bushels, and that measures out the same every time.

Rich Ruais, American Bluefin Tuna Association (ABTA): (Mr. Ruais asked for clarification regarding the comment process and indicated that he would like to comment generally on several sections of the draft amendment and asked for clarification about comments on the draft amendment versus Draft EIS)

I recognize that there will be more public hearings and then again on DEIS, so we won't be lacking for time to submit comments. ABTA will submit written comments.

Tuna fishermen are legitimate stakeholders in this issue because it's known that reason they migrate at all are for feeding and reproducing. It is also known that in New England their favorite food is herring, so how goes the herring is how goes the bluefin tuna fishery. That's why tuna fishermen started CHOIR. We are very pleased to see progress to date and will continue to follow this through.

One thing I am struck with thinking about the herring plan and the bluefin plan is that that both of them are based upon false scientific premises, and they are both huge issues. What got this problem started with pair trawling and midwater trawling in the herring plan was the scientists at the Northeast Fisheries Science Center announcing that the once extirpated stock on Georges Bank was now back and you could take a million metric tons for several years without having any impact on the spawning biomass, and that you could have a sustainable yield of about 400,000 metric tons every year. And that opened a lot of eyes and brought businessmen into the fishery. And they were prepared, when dealing in a fishery with that volume, that you want to be operating with very large vessels with a million ton capacity. That was a false premise. We know see based on the revised science that the best MSYs are going to be substantially lower than that. With bluefin, quickly, the false premise was that you could draw a line in the middle of the Atlantic Ocean and assume mixing doesn't happen and that you could rebuild the stock on the other side. We were held to strict regulation on one side of the ocean while nothing was happening on the other side. We wasted an incredible amount of money and disruption to the entire New England fishery based on that. It was an interesting parallel between the two fisheries.

ABTA is very concerned about five areas of the plan. First, implementing 100% observer coverage on A and B vessels may be the most critical component of the amendment. We don't believe you can rely on self-reporting. We are also concerned about observer effect as we move forward in time. It is not unreasonable to suggest 100% observer coverage on targeted fisheries like this. For example, the Gulf of Mexico pelagic longline fleet, because of concerns about fishing during the bluefin spawning season. To wrap this up, the Feds did find that they had the manpower to provide very high coverage. They have demonstrated they can target the resources for fisheries in dire need of ground-truthing and basic information on the fisheries. Also, the midwater trawlers have a lot of privileges in the fishery, and what comes along with this is the need to cooperate with management.

The second recommendation we feel strongly about is that the Council should implement Closed Area I provisions with trip termination after ten events to reduce dumping on Category A and B vessels.

The third concern is that the Council should implement measures to require weighing of catches across the fishery. We started this one back in the 1990s when arguments were being made that the herring FMP was one of the best plans because we had a Hard TAC, but yet there was nothing to deal with underages and overages, and that catches are not physically weighed. It's hard to make a claim that fishery is being controlled by a hard TAC when you are not weighing the fish. You need to find a way to weigh the catch through measures that are not overly burdensome to the industry or that require major investment by processors.

The second to last comment I will make is that the Council should prohibit midwater trawl vessels participating in the herring fishery from access to groundfish closed areas. We know that

midwater trawling is a bit of a misnomer, and the gear is capable of fishing on the bottom. It is not fair to groundfish fishermen or anyone else that they are allowed to fish there.

We pushed hard for seasonal GOM closure from June-September because of the localized resource depletion we saw, and the noise and fear factor the midwater trawl boats were causing that move the bluefin out. We were encouraging them to move offshore. We are sensitive to recommend now that we have been forced offshore because they still continue to fish inshore right up to the beginning of the season, and the herring stock is reduced in the Gulf of Maine as a result of that. The small tuna boats have been pushed offshore to northeast peak of Georges Bank carrying fuel bladders, and it is a very unsafe condition. And then, as soon as we find the tuna, the pair trawl vessels come there. I don't know how we solve this, whether it will take a series of time/area closures so the two fisheries can coexist, or whether managers will recognize that it was a mistake to begin with to allow vessels of that size and that efficiency to come into that fishery. It was a legitimate honest mistake based on false scientific information that suggested a much higher TAC that would have required an industrialized fishery to catch that fish.

(Chris Weiner from CHOIR asked a clarifying question regarding if/how the river herring measures may apply to Category D permit holders.)

Gary Libby, Port Clyde, ME: lobsterman, groundfisherman from Port Clyde ME. I am also shrimp fisherman.

I would like to see 100% observer coverage on A/B vessels only because they account for 97-98% of landings in the fishery. If we get that much coverage, the guys fishing under the C and D permits on smaller boats inshore would have an opportunity to go fishing without being forced to use herring observers and paying for them out of pocket, which I don't think they would be able to afford to do. That would cover the guys that are in river herring too. The catch by C and D is incidental. I think we could do an estimation of the catch of the 1-3% of the total that those guys may encounter.

The second point would about the Closed Area 1 rules. I am in favor of trip termination after ten events. There has to be some sort of accountability for either slipping or dumping. Knowing that dogfish is an exemption, I think this should be on A and B vessels once again because they are the major part of the fishery.

In terms of catch weighing, I was up in the air with this. I talked to a bait dealer in Port Clyde about this. And based on the conversation I had with him yesterday, I think that what they are doing now is accurate, and if it isn't broken, don't fix it. The dewatering has been a problem. I have been through plenty Committee meetings and discussed this one issue. I think the estimations are pretty good. I know there are a lot of folks who don't understand how you can get an accurate weight that way, but when I go lobstering, I buy bait out of barrels that hold three fish totes. And every one of those barrels all year has three fish totes in it, so it's accurate to a percentage, I'm sure. And I think it's pretty close.

The most important part of this amendment, to me, is restricting midwater trawl and pair trawls from the groundfish closed areas. I have had fishermen in Port Clyde give me their take, and they say closed is closed. They don't believe there should be any activity in these closed areas. I think that under the habitat amendment, we may be able to reach that when those areas get re-

defined. For this amendment, I don't believe that there should be access in there, but if access is allowed, I want 100% observer coverage. If it gets too expensive for the industry, I would like to see provisions put in for on-board video cameras. I used these last summer on my groundfish trips. When the observers realize there is a camera on the deck, we get better performance from the observers. They don't take tows off, they are there for every sample. If nothing else, we get better data if we use them.

Jim Ruhle, Wanchese NC: (asked a question/commented on the public hearing process and how comments from one individual are weighed/valued versus comments that are signed by multiple individuals)

The observed trips that have taken place on my boat should carry as much weight, if not more, than anything else. Observer reports should be best available data. Since Amendment 4, the level of coverage on the herring fleet has doubled to the point where you are at a very high number of observed trips. It is critical to recognize that this information is best available data. The first thing that will be said during the meeting in June is that the information has not been analyzed and we cannot incorporate it. You can, in fact, analyze it by going forward with the components of this amendment that you have data for, and state clearly that when new data is analyzed and a scientific determination is made from that information – at that point, you will act with the information that is needed to make a reasonable determination of what is going on.

I am here to represent traditional small boat bottom trawl herring fleet that primarily fishes in Rhode Island. I sat on the Herring Committee as the Mid-Atlantic Council representative through the development of Amendment 1. I am involved with a fishery now that is the cleanest fishery I have ever participated in in my life. You don't have to take my word for it. I have enough observer data on my boat that this is no longer anecdotal. When I can provide to you levels of bycatch in the directed herring fleet that are less than a fraction of a percent, in the one-eighth to one quarter of a percent, this has to be included in the information. The truth is in the data. The industry that I am involved in, even the midwater boats, have reached out to get help and verify what we are talking about. I am in the study fleet and the SMAST bycatch avoidance program, as well as traditional observer coverage that takes place. And dockside monitoring of the catch takes place – not every trip, but if I am fishing rail to rail with six boats, the catch from three will be monitored, and the catch from the other three will be identical.

The abundance of these fish is at an all-time high now. I have been fishing 47 years. 85% of Area 2 was taken from the tip of Jamestown Island to the north end of Block Island this year. It is incredible that much fish can be taken from that small of an area.

We have experienced a year this year that we have never seen before. The bycatch avoidance program would have failed this year. Every alternative in the bycatch avoidance program would have failed this year because the proposed areas have no fish in them other than dogfish. Every one was too far offshore. This year, unlike any other year we have seen, the herring traditionally migrate from the beach out 20-30 miles. This year, the fish all came down 2-3 miles, one narrow piece of water. The fish, each year class, kept replenishing themselves. The race to fish for herring this year was the best thing that could have happened because it targeted a clean fishery for any size fish you wanted.

The only way to have a successful bycatch avoidance program is to have it in real time, just like with the scallop fishery and yellowtails. And just like we did with a small group of fishermen this year, we reported daily and got an email every 2-3 days with bycatch areas. We knew where the bycatch areas were. The results of this year's SMAST program need to be expanded. The potential for that is a very positive functional program that does what you want it to do. It never works to draw boxes. All the areas you suggest in this document to close were slammed with dogfish, and there were no herring there.

As an industry, we do not target river herring. In my opinion, the assessment is going to fail because they are not separating bluebacks and alewives. They don't necessarily co-exist. There are many issues going on with river herring that have nothing to do with bycatch. My concern with river herring is to verify with the bycatch that we are not responsible. There has been significant degradation of habitat, and of rivers and streams. Look at sturgeon. You can pollute a river for river herring with light and sound. These fish are very sensitive. The regime shift that has taken place from Florida to Maine with every species – the “Northeast Push” – has got to be seen as part of this problem. The entire herring fleet can demonstrate that the bycatch levels associated to the herring trawlers is minimal.

When it comes to observer coverage, there is an easy way to fix this. I fish responsibly. We have come forward and done everything we could to verify everything we are telling you. It is not anecdotal anymore. It is scientifically-supported. The study fleet is considered almost as high level of confidence as an observed trip. That's self-reporting by the industry, with everything you get – ocean temperatures on every tow, tow times – everything you get with the study fleet is now being recognized, and I think it will continue to be so.

To determine the observer coverage, the Council can review the performance of every boat in the herring fishery. You will find that the majority of players have fished responsibly for the most of their careers. Everybody can have interaction with another resource – it occurs, but the level and number of times is another thing. There are a handful of boats that have bycatch events. They are the ones that deserve 100% observer coverage. Those of us who have demonstrated responsible fishing year after year do not. We deserve the random observer coverage that is adequate to meet SBRM levels. We are there, and it is not anecdotal anymore.

I cannot fish for any other species that I have a permit for as clean as I can for herring. Bycatch is the result of management measures. Bycatch isn't a bad thing at certain levels. It is fully misunderstood. I cannot do better than I can in the herring fishery. I am excited to go fishing every day for herring because you are going to be catching a lot of clean fish. The most rewarding part is that when you establish yourself in the marketplace, you know your price. You know how many fish you are going to catch, and you can help other fishermen find clean catch. You are doing what's right for the resource and the industry, and it's fun.

In terms of weighing the fish, all of us in RI unload the same way – we pump RSW product into trucks. That truck is how we get paid. That is all you need to know. The trucks traditionally hold 22 vats. It's 1,800 pounds per vat. You can get 1,900 pounds in it, you can get 1,700 pounds in it, but we don't have time to make the determination. Keep them at a level the driver wants. When a truck gets to where it's going, 2-3 of those vats are weighed, and then the average is carried across the truck. I haven't had a single truck come back this year far from 1,800 pounds to the vat. And that's how I get paid, and that's the only number you need to worry about. The plant isn't going to pick out 20 or 30 pounds here and there out of a vat. It's

an average, and it does work. To simplify my reporting, I have a dealer permit so that I know I report exactly what the VTR shows that I am catching. I just pass the VTR to myself, and I have not had any issues with this.

I am representing 9 boats out of RI, all single bottom trawl vessels. They will participate but don't have time to submit written comments. I don't have time to submit written comments. But take it to hear that regardless of others opinions, this is a clean fishery. Look at the data created since the implementation of Amendment 4. Use the observer data to make your determination for Amendment 5.

The Council can approve, disapprove, partially approve this amendment. My suggestion with Amendment 5 is to go forward with the non-controversial elements in June, and take the time to analyze and make the right decisions with the right data for the other components. Just establish a time certain, and you can get there.

Glenn Robbins, F/V Western Sea: I have been fishing for over 40 years. I represent the purse seiners. I have traditionally fished with a seine, and we have hardly any bycatch. In terms of trawlers, Jimmy probably does as good as anyone, and I have fished with some of the small boats with my seine down there. We have touched bottom, and we haven't caught much groundfish down there. But in the Gulf of Maine, I have run into more groundfish. I have caught pollock on Jeffreys, and I have had some codfish. I have never caught a haddock in over 40 years. But now we are starting to target herring on Georges Bank, and there is more haddock being caught. There is a problem with trawlers, we know that – and they are not midwater trawlers, they are bottom trawlers. Just as they outlawed pair trawling for codfish, they should do that with trawlers in the Gulf of Maine, especially in those closed areas – you cannot let trawlers in a closed area.

In terms of weighing fish – we used to weigh them as hogshead, then bushels, now pounds. Every time I sell a herring, I try to get the most for my buck. The carriers deliver to the islands – they don't have scales, but the totes or bins have been measured, and fish have been weighed for a long time. It will be complicated to weigh the way that they come in. Some come into port, and the fish go on a conveyor belt and get weighed after they get into a box. The best way I can see is to probably weigh the truck before and after, and subtract out a little water depending on whether it's small fish or large fish.

Mary Beth Tooley, O'Hara Corporation: I support Jim Ruhle's comments. I am speaking for the O'Hara Corp. We operate two midwater trawl/purse seine vessels and have been in the fishery for a number of years. I think that I would like to stress that we support the goals and objectives for the monitoring program – to create a cost effective and administratively feasible program. We support observer coverage in the fishery. The information that has been gathered to date has been helpful to understand our fishery. But the problem in the northeast is the cost of the program. Many people have made comments about the size of the vessels and made parallels to vessels that fish in the Bering Sea. In the Bering Sea, a pollock vessel pays \$325 day for an observer, and the gross for that vessel is more than the entire gross for the herring fishery in the northeast. The greatest challenge we have is cost effectiveness.

We support observer coverage in this fishery, even to a level of 100%, but it has to be cost effective, and the industry has to be able to afford it. It is not a beneficial program for any of us if the first thing it does is get rid of every mid-sized to small vessel in the fleet because they cannot afford to go fishing anymore.

We did have a provision in the amendment for a dockside monitoring program in this fishery. It was taken out about a year ago. We think the Council should reconsider that and move forward. The Science Center had concerns, which is why it was taken out. But for a volume fishery like herring, it is the best way to sample the fish and the fishery, and we think the Council should reconsider that.

Ed Snell, jig fisherman from southern ME: I also have seven seasons of experience on party fishing boats and whale watch boats.

I support 100% observer coverage for A and B permits. When they catch that much of the fishery, it only makes sense. I also support closures for river herring. There is data that suggests that a significant reason for decline of inshore groundfish stocks is because the groundfish were there feeding on staging river herring. Having those nearshore fisheries are vital for small boat fishermen, as well as bluefin tuna fishermen, and whale watch boats because they only have four hours to make their trips. Having the whales close to shore is valuable.

It makes no sense for midwater trawlers to be in groundfish closed areas. Closed areas are closed areas. Lobster fishermen should not be using haddock for bait.

Some of the problems we have is because these boats fish rail to rail. That kind of concentration is detrimental and disrupts the migrations of a lot of fish looking to feed on herring.

I am young fishermen, and I am not going to inherit any money from midwater trawl boats, but I will inherit what they leave behind.

Barry Gibson, NE Regional Director for Recreational Fishing Alliance (RFA): RFA urges 100% observer coverage on Category A and B boats. The amount of discards these boats are capable of fully warrants observer coverage, and this is done in other parts of the country.

Second, RFA encourages trip termination after 10 dumping or slippage events in Closed Area I to dis-incentivize non-legitimate dumping incidents.

Third, we feel the Council should implement measures to require the actual weighing of catch rather than estimates.

Finally, RFA feels that access by midwater trawlers to groundfish closed areas should be prohibited. I served on Council from 1986-1995, a number of those years as Chairman of the Groundfish Committee, when we developed these areas and implement restrictions to protect spawning cod and other groundfish. As we know, herring nets are quite capable of catching groundfish of any size. These fish need these areas to reproduce, something we are all encouraging, especially given the results of the latest cod assessment and recent projections on haddock and other species. RFA believes that we need to do everything we can to protect groundfish and bolster the stocks.

Karin Spitfire, river herring advocate: I am a river herring advocate. I eat fish. I have been eating sardines and herring my whole life. In 2007, I heard the herring quotas were cut in half and I started paying attention. I am here to provide an outsider point of view for a minute.

Since the Grand Banks collapsed in the 70s, we are down to shellfish and herring. All the other species are a dribble of their former abundance. Fishermen were not included in the dialogue or regulation and science until recently. The fishermen who used to see herring talked about being able to walk across the coves on top of them along the coast of ME.

It is also astonishing to me that fish are still being managed by species instead of a holistic ecosystem approach. This is 2012, and we know that everything is connected to everything. I want you to choose the most restrictive amendments. I want 100% observation on Category A and B because they are the bulk of the herring catch. Based on what I have heard today, I don't need to weigh the fish. The river herring areas should be closed. Groundfish closed areas should be closed and restricted to herring vessels as well as the groundfish fisheries. I couldn't understand the information about the dumping restrictions, but I would like that to be the most restrictive on Category A and B vessels. I am asking for this because we all know that this is already a big compromise. There are many people who would ban midwater trawlers altogether, and that isn't even on the table. It is also a big compromise because the data we are using are based on what fish we have left and has no relationship to what we had before the fisheries got to this state, when we couldn't possibly have counted herring or cod.

Zack Klyver, Bar Harbor Whale Watch: We favor Section 3.2.1.2 Alternative 2, Option 2 – 100% observer coverage and government/industry funding. We got involved in this issue because of a bycatch event we saw in 2003, where we saw hundreds of thousands of pounds of whiting on the water. We saw the impact of what can go wrong. We feel that 100% is necessary to get the good information. This will always be a political issue unless we get the information. We need this information for stock assessments, for determining mortality of herring and other fisheries. Having the full amount of information is critical. We hear that midwater trawl and pair trawl boats don't want to catch groundfish or occasionally marine mammals, and don't want to dump fish, but that these are the prices of doing business. This mentality has to end. It is no longer the wild west out there.

35% observer coverage doesn't get us there. To me, 100% observer coverage is the compromise. This is because these large boats are so mobile. Without observers, they can fish close to the bottom, they can be more aggressive about pursuing fish they may not be sure are herring, they can fish closer to mammals, and they can dump fish. Having observers will bring transparency to the process that is critical. During Amendment 1, we heard a lot of stories of what is capable with bycatch – codends full of seals, pods of dolphins being caught, tons of groundfish and striped bass. Without 100% coverage on these larger boats, there will always be speculation. The Council needs this to be good stewards of the resource.

Regarding funding, if the industry believes they have a clean fishery, they should support 100% observer coverage because that will clear up the question. I am glad to hear that they are in support of 100% coverage. To me, if the bigger boats need to pay for observers, then that is fair. That should be the price of doing business. They are reaping the benefits. If they have a sustainable fishery that is managed well and is healthy, they will get the windfall for that. Having an observer is not too much to ask.

Don Sproul, Bath, ME: Tuna Fisherman, representing NETC and ABTA. I agree with Rich Ruais 100%. I think 100% coverage is needed on boats that are going to take tonnage – not day boats. Herring is a clean fishery, but if you take that trawl and you rig it for the bottom, it's not a clean fishery.

A closed area is a closed area. If you close down 95, you are not going to just let the big trucks through. It's closed, no question.

The thing that worries me is when I was on a mooring, and was being asked to move. The boat went around me, and then I saw miles and miles of cod floating everywhere, dead. After seeing that, I followed the boat and was amazed at the destruction. I have seen it in small boats. Once the fish come up, they will go back dead, whether you look at it or not. The better solution is to put the bag on the boat, land it on the deck, and count it. You better be able to use the technology to read what you got. If you make the trawl, you are responsible for it, and it counts against you regardless of what it is. If you have to terminate your trip, that will teach people to be more accountable. Accountability is the big thing.

Pete Douvarjo, VP Maine Charterboat Captain's Association: I am about the furthest north charter boat captain in the State of ME. I support 100% observer coverage on A and B boats, and I believe they should stay out of the closed areas. Closed is closed, and I too have seen evidence of bycatch. Everyone needs herring, so I think fairness is something that we should think about. This is something that shouldn't be taken by a few big boats.

Mike Brewer, purse seine captain: We hold a Category A permit, but I am a small purse seine boat – the smallest purse seiner in the fleet, 50 foot. I am all for the observers, but on my boat, it's very small and confined and almost dangerous to take the extra person on the boat. I already have four guys on there, and he has so much equipment – I am for the observers, but it is very hard to take him every trip.

Kim Libby, Port Clyde ME: I also agree with 100% observer coverage. I think it is a misnomer to call midwater trawl vessels midwater trawl because there are documented instances where they run into groundfish. Also, a remark was made about bottom sensors not being good because they would keep breaking. If you are towing midwater, how do you break bottom sensors?

I have an observation, or a rhetorical question. Midwater and pair trawlers are banned pretty much everywhere else in the United States. Why is it okay to have them here in the Northeast, where fishermen have struggled and sacrificed, when they are capable of localized depletion and impacting the ecosystem because herring is a forage fish. Everything feeds on herring. It almost makes you wonder sometimes if there is insider stuff going on. We all know how corrupt Washington is, and palms are greased on a daily basis.

Chris Weiner, ABTA and CHOIR: I am speaking for myself. I am a commercial harpooner for bluefin tuna, third generation.

The reason we got involved is because I don't think any fishery other than ours had spent more time around the midwater trawl fleet. Everywhere they went, they were there. We were impacted greatly by this. Most people I have talked to about this amendment just wants the gear banned. Most people I talk to want this. This amendment is a compromise.

Some people are fighting against 100% observer coverage when there are 12-14 or so boats catching almost the whole herring quota. They caught 20,000 metric tons in a month and a half. I would like to know where all that went because there aren't that many lobstermen around right now. It would be smart for that part of the industry to realize that everyone is out to get rid of this gear. We have been looking for a way to make this work – herring and tuna keep me up at night. Herring is half the battle when it comes to tuna. I fully respect Jimmy, but I disagree that there is more herring around than I have ever seen. We had some herring in one area this summer, and then the fleet came in October 1 and caught 20,000 mt right off Cape Elizabeth. The whole fleet was there. The point is that things are not looking good, and we wouldn't be at these meetings if we thought they were looking good. I support 100% coverage. I don't think that is too much to ask for 150 foot boats using pair trawls.

The dumping rules are important too. We aren't making these things up. I have been around the fleet, and we know guys that work on these boats. Dumping has been a problem in the past. Closed Area I rules showed that the gear can be used cleaner. The problem now is that you have prioritized coverage offshore which is why the coverage level has gone up. I would like to know the coverage in the other areas, but 30% coverage and 90% offshore trips covered, what does that leave for the rest of the areas? It's less than 30%. I got involved in this not because of what's happening five miles from the Canadian line. I worry about the inshore. I think that you need to go with 100% to get the whole picture. I don't think it's crazy to ask that, and it's better than what a lot of people are asking for. We hear all the time that it is a clean fishery. If someone were saying this about my fishery, I would want 100% coverage right now.

Sean Mahoney, Conservation Law Foundation (CLF): We support 100% at-sea monitoring and not having midwater trawls in groundfish closed areas, and also the weighing provisions, Section 3.1.5 Option 2. Two things I would like to focus on:

The first is that we think it's very important to have an effective accountability system to discourage dumping. To that end, we support Alternative 4D in Section 3.2.3.4, which would be trip termination after five slippage events for the herring management areas.

The second is the catch limit or cap on the total amount of river herring. We support 3.3.5 but we think that it should be modified to require immediate implementation of a river herring catch cap. This has been a five-year process, and it's important that this be ready to be implemented for 2013.

Peter Speech, tuna fisherman: I am a commercial bluefin tuna fisherman, and I agree with Rich Ruais that we should 100% observer coverage on A and B vessels, and that closed areas should stay closed, especially to pair trawl and midwater trawl boats.

Jim Ruhle, F/V Darren R, Wanchese NC: A couple suggestions as this plan goes forward.

First, regarding the bycatch levels for river herring in the southern New England small mesh fishery – I think that prior to 2008, there was some confusion with species misidentification. But more importantly, the threshold utilized was 1000 pounds, and that is not a directed herring trip. That is a mixed trawl trip where the guy is trying to catch a lot of everything. If the threshold to identify directed trips was moved to at least 10,000, that would be helpful, just get it away from the lower numbers.

There has been a lot of talk about slippage and dumping. I think it would be a very good idea for the observer program to implement protocol changes so that observers ask when they board a vessel if they have any fish on the boat. I have done this several times this winter. I have come in with three trucks of fish, and only two show up. Then, I go back out and catch more and bring three trucks next time. To eliminate concern that some fish are being pumped overboard and not sold, the simple solution is ask the observer to record that information so that concerns about dumping can be eliminated.

There have been some issues regarding an ecosystem approach. It's a great idea, but until the Magnuson-Stevens Act is reauthorized and it is clear that all species don't have to be at historical levels at the same time, ecosystem management can't work. You would need to fish down stocks at high abundance levels and stay off stocks that are not. Magnuson does not allow the Councils that liberty. My concerns with this approach have to do with predator prey relations. I don't disagree that the herring are not where they have traditionally been, but Area 2 closed, and last year, Area 3 closed for one of the first times. This suggests to me that the fish have moved further offshore east and north. Look at the whole picture. The number of herring that are out there now is going to negatively affect the potential for mackerel to increase. They all eat the same thing. Butterfish, river herring, sea herring, and mackerel are all plankton feeders, and there is not enough out there to sustain everything at high levels.

Everyone says you need 100% observer coverage. I do believe that if it was analyzed, the fleet that fished Area 3 would have about 70-80% range of coverage. Look at the performance of the fleet since the implementation of Amendment 4. 100% may be required for some fleets, but the data should indicate that it may not be necessary across the board. Lastly, the seiners need to recognize that this applies to them too. It's not a gear type. If the seine fleet doesn't have bycatch issues, why should they be subject to 100% coverage. This should be determined by the performance of the fleet over the last few years.

342-6270	Winchester ME	Mr & Mrs
7294810	Harpers Mill	Harold & Mrs
	Bar Harbor	Mrs Warr
	Portland	Barry Gibson
633-5929	South Bay	Arnold Kirkman
985 2145	Leucobrookport	Andy Wray
3778422	Port Clyde	John Corby
	"	Ed Ann
367-2708	STEWINGTON	Cap Hillis Brewer
691-5615	BLIT	Liz-Kusauer
3380030	Beekmantown ME	Mary Beth Tolson
	Rockport ME	Frank O'Hara
380-5305	Bristol ME	Robert Gogley
380-9169	Bristol ME	Dave Hammond II
338-5631	P.O. Box 53	KARIM SPHERE
780-3322	Rockport ME	Scott Manning
978-946602	Rockport ME	Ken Robbins
588-990-907	Rockport ME	Roger Cummings
609 439 1502	Dover, NH	Karen Lohr
	Dover, NH	Trevor Lohr

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Massachusetts Division of Marine Fisheries Annisquam River Station
Gloucester, Massachusetts
March 14, 2012, 7 p.m.

Hearing Officer: Doug Grout

Other Council Members in Attendance: David Pierce

Council Staff: Lori Steele

Attendance: see attached (approximately 60 people)

Mr. Grout introduced Council members and staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the NEFMC Amendment 5 public hearing document. After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5.

Public Comments

Richard Prammis, commercial tuna and recreational groundfish fisherman: I would be in favor of 100% coverage in Area 1A and 1B, and to stop the fishing in the groundfish closed areas.

Austin Doher: I am practically retired from fishing. I am here for the observer program. It is a very simple problem if you want to observe. I am talking about the big boats. They go as far as New Jersey and back up. You have million capacity boats working up and down the beach. I think that is great. But if you are talking about management, there is a way to manage, and that is to put people on the boats if you want observers. They don't have to be fishing related, no conflict of interest if you want to do it. I have been fishing 55 years. It's very simple.

I don't understand half of what is in this document. But I know that if you are talking about herring, I wouldn't know the difference between river herring and sea herring, but on my machine, I have seen bunches of herring totally cover my machine. Now in the last years, a little spike here and there. Then I watch them come and put them on shore in Gloucester – 5 inches, 6 inches, 3 inches.

You have an answer for every question but not mine. If you want to manage, it's a compromise between the fishing people and the government people. First, get rid of half the government people. I will never understand this. But I do know the answer for what I have seen. It will probably be another 83 years before I understand where this comes from and why. Management is a compromise between fishermen and managers. It is a livelihood, but that takes two groups to do it. The government, enforcement, and observers. It requires two observers on each big boat, not one. We don't have the money, but we do have the money to put out thousands of pages in these documents.

Steve Weiner, Atlantic Bluefin Tuna Association, Chair of CHOIR: CHOIR is a collation that started in the late 1990s when the midwater trawl and pair trawl vessels showed up in the Gulf of Maine. I harpoon tuna fish. We have to hunt the fish down and look for signs of life. We are looking for where the feed is. It's primarily herring in the Gulf of Maine. These boats went everywhere we went. It felt like they were following us, and to this day, I'm not sure they weren't. Two big boats towing a big net catching a lot of herring. They catch a lot of other fish too. Groundfish, tuna fish, mammals – everything is looking for that herring when we are hunting fish. We started to see tuna disappearing from our waters. At the same time, there was a discussion about the health of the tuna stock. The tuna stock was always very healthy in the western Atlantic. When they swim into an area like the Gulf of Maine, and if there isn't anything to eat, they leave. Right up the road, Canada has had the best year of fishing in the last ten years. I can't say if it's because they banned midwater trawling of herring, but you wonder.

I have been fighting this thing since the late 1990s. I know how the industry thinks, and they know how we think. The reality is that there is a total distrust from the public – our coalition with lobster fishermen, tuna fishermen, groundfish fishermen, whale watchers – there is a total distrust with this gear. When they make a mistake with this gear, it's a big mistake. They say they don't dump much, we don't believe it. I don't believe it. There is not enough observer coverage. 30% trips observed means that 70% trips that are not observed. My experience is that monitoring fishermen is different than allowing them to self-regulate. Observers create change in behavior on boats. The reality is there is about 20-30 boats catching 90% or more of the fish. These are the A and B boats. CHOIR recommends that A and B boats be the focus of the monitoring. CHOIR is asking for 100% observer coverage on A and B vessels.

We are also concerned about dumping. This gear type pretty much pumps the fish aboard. If they have a mechanical failure, safety issue, or dogfish in the net – they are allowed to dump the net. A small or big dragger in New England brings the net aboard as I understand it. You see what's in the bag, you count the fish, and the observer gets to see what's in the catch. There is a concern with the public that as long as the net doesn't come aboard, it's hard to tell what's in the net. Who determines mechanical failure? It might be a legitimate issue, it might not. Same with safety. We have to take this off the table. 100% observer coverage. And we are asking for the provision that after ten dumping events, they have to go home. The problem is that if you don't have an observer on the boats, you don't know if they dumped. So you need 100% observers on the boats.

To me, the most unbelievable thing in the fishery is that these boats have been allowed to tow their nets in the permanent groundfish closed areas. Now we have a real groundfish crisis. Whether that problem is related to this gear, I don't know but the boats shouldn't be towing in those areas. That's the third thing that CHOIR is asking for.

The fourth thing we want is that they weigh the fish. That doesn't mean every fish goes on a scale, but there has to be a formula to allow you to reasonably know the weight that came on the boat is what goes off the boat.

To me, the real concern is the health of this stock. There is a stock assessment is going on now. If anyone has faith in science anymore, we will find out what that assessment says. I can tell you from the fishermen's perspective, and the harpoon fleet – 20-30 guys fishing all summer long, we are all skilled fishermen and we have technology now to look at our machines. And we know there is nowhere near the herring around that there used to be. People that say there is a lot of

herring around must be new to this area. The herring that are around are on the bottom, which is weird. These are older, smaller fish. Why are the fish smaller? They are spawning at a smaller size. Is that fishing pressure?

Underlying this with me and most of the members of CHOIR, we are small fishermen, we want coastal communities survive. This is the worst decision to allow this gear type in the Gulf of Maine and Georges Bank.

Roger Bryson, commercial handgear fisherman, recreational fisherman: I have been fishing for over 30 years. For a lot of years, we would watch the herring come in during October and November, inside Boston and Salem. You used to be able to just look around for bait and jig it up. It was a regular routine. We rebuilt the cod fishery before. It took a long time, and it worked. The fish came back. Then, we had a big meeting to allow the beginning of the midwater trawling. So I asked if now, we are going to let the foreign boats come in and get all the bait. Now, we are in the crisis again because of that. Too many herring are being caught. I don't see the fish anymore in October and November like I used to see. You get a handful of guys that are going to make decent money, and it is going to wipe out the whole fishery. It has a big effect, and it's hard to control. It was a problem from the beginning, and now we are trying to regulate it.

When you are trying to recover a fishery, bait plays a big part. The cod, haddock, pollock – you can't separate it. If you remove a lot of bait, you disturb the whole thing that is going on. I don't want to stop people from fishing, but especially in closed areas, it was problematic from the beginning.

Regarding the tuna – we used to go on Jeffreys year after year. The bait would show up, and then the tuna would show up. Depending on how much bait was in the area would determine how much tuna would reside in the area for the summer. We get a few fish, and now when the midwater trawls come in, they would take a bunch of fish out. Then, there is not enough bait, and the fish leave. We hardly have a fishery at all. It changed the whole fishery. Do whatever you can do to make it better for everyone, not a handful of guys making money, but all of the fisheries from Maine to the Cape.

JJ Johnson, engineer on midwater trawl vessel: I have been a fisherman in Alaska and Russia as well. I was up at the Gulf of Maine Aquarium, and we were watching a size-at-age study saying the herring are getting smaller not from fish pressure, but they are going hungry.

Most evidence with herring that I have seen speaks to a lack of plankton. That's the new science that is coming out. People are wondering why fish are getting smaller. Perhaps some science would help rather than guessing. I have been listening to the same accusations for years without proving any of them. There is a mountain of observer data, and it all says the same thing. Herring fishing with midwater is a clean fishery. We have proven we can fish cleanly in the closed areas. We can stay away from most groundfish except haddock. I have worked with the observers. They all say the same thing. They don't know where these accusations are coming from. This document is the result of a lot of unproven accusations. There is a mountain of evidence refuting those accusations. I would appreciate it if some of that evidence would be published.

Looking at the observer data, you can see that the elimination of midwater trawl fishery leaves the bottom trawl fishery. The environmental impact would be more marine mammals killed, more protected groundfish being killed. The alternative to midwater trawling is not seining. If we would be fishing with bottom trawls, we would be killing more groundfish and marine mammals. That is documented.

As far as the document is concerned, I favor the status quo for most of it. I sat in on the Herring Advisory Panel. And I have seen that this is the result of an agenda and ten-year campaign to ban or severely restrict trawling. My number one concern is those Council members who have taken money from campaigns to ban or restrict trawling and promoting bottom trawling and leasing quota to bottom trawlers. I would like to see them recuse themselves. If you have taken money to ban or restrict a fishery, then your input to that fishery can only be seen as designed to fail management.

Steve Pearlman, Coordinator Watershed Action Alliance of SE Mass: We represent 11 watershed associations from Dorchester Bay to Narragansett Bay. These rivers have historically been herring runs and there is very little left of those runs. A number of our organizations are trying to remove dams and other barriers to fish passage, but we are still not seeing a large return of herring.

We would like (1) the strongest monitoring possible, which includes 100% monitoring of A and B vessels and a system that discourages dumping so that everything is counted. (2) We would also like to see immediate caps on herring catches and eliminating fishing in the groundfish areas.

Mark Godfried, Gloucester MA: I am going to raise something that NMFS should have addressed in this document. There would be more herring available to all user groups if NMFS would stop thinking about the National Standard that requires them to consider competitive predators with our fish stocks. We have an uncontrollable population of pinnipeds. Seals are removing about 40 million pounds of herring per day out of the biomass in the Gulf of Maine. Somewhere in these plans, there has to be a way to reduce this population. We went from 0 seals at Monomoy to over 3300. We have a case of worm infestations. Every cod we catch is loaded with worms. Someone needs to address the fact that we have about 7 million of these things now, and they are like rats with fur.

Tommy Scanlon, charter boat operator Boston MA: I charter for stripers, bluefish, and groundfish. The sight of mile upon mile of striped bass floating dead behind the pair trawlers a couple years ago got my Irish up. The striped bass fishing community is very concerned about the lack of stripers, although they had a good breeding season this year. As a striped bass fisherman, I am concerned that these clean pair trawl vessels are indiscriminate in some areas where they have no business fishing. I don't know why you cannot distinguish between a school of striped bass and a school of herring.

This year, you say haddock is overfished and you want to reduce my charter parties' haddock catch. You know that the pair trawlers are always picking up haddock as a bycatch. They either dump them, or the small ones get mixed in with bait. I am also familiar with a community on the Saugus River, which used to have over 100 boats lobster fishing. Now, there are maybe 18 boats in that fleet. A lot of factors have caused it, but primarily it has been lack of bait. Bait in

the lobster fishery has been herring and pogies. Pogies disappeared so they went with herring. The herring prices get higher, fuel prices get higher, and the fleet goes away. I am also a member of the Stellwagen Bank Charter Boat Association. We want 100% observers on board any and all of the pair trawlers. I don't believe that this is a clean fishing industry. If you are purse seining, you can bring up the purse, you can see the fish, drop it, and 99% will swim away. I don't see that in the pair trawl industry. They have not made any friends in the other fisheries since they started here.

Carmen Lee, Gloucester: I am a concerned citizen from Gloucester. I have been following the issue of industrial trawling and the impact on herring populations. The more I learn, the more alarmed I get. What's happening now with inadequate monitoring, unmanaged river herring catch, dumping catch at sea – these don't make sense to me. I am in favor of greater accountability, greater transparency, and greater oversight. I don't think it is too much to ask for 100% at-sea monitoring, for an immediate catch cap for river herring, and for a requirement to accurately weigh all catch. I feel that this is one of those silent issues that don't make the headlines but will impact all of us in Massachusetts.

Shane Yellin, recreational fisherman: I think we need 100% observer coverage. There is way too much change when people know they are being watched. We also need a cap on the bycatch. It is unacceptable for big midwater trawl and bottom trawl boats to be catching all this river herring when they are in need of recovery. Net slippage is uncontrolled. Captains can dump whenever they want, and it is easy loophole for them. They should only dump when it's an emergency, and they should have to report them.

I have seen videos with what looks like 3 miles of dead stripers floating on the surface behind the midwater trawl vessels. It is terrible. If you are going to fish a giant net that covers most of the water column, and you are fishing for the bait, the predator fish follow the bait. It is way too large of a fishery, too efficient, and it doesn't give the fish a chance.

Also in the last few years, there has been a decline in the health of the striper fishery. Most of it is due to malnutrition, and I know most relates to menhaden. But river herring used to be a major forage food for them. The herring runs near where I fish have dramatically been depleted and we need to do whatever we can to help them rebound.

I would like to see midwater trawlers banned from closed areas. If we are trying to protect a fishery, we shouldn't make exceptions for one type of fishing versus another.

Brian Kelder, Ipswich River Watershed Association: We are a non-profit to restore the natural resources on the Ipswich River. One of our focuses is restoring diadromous fish runs, especially river herring, to sustainable levels. I work on a river that once supported millions of river herring, and now we have a couple hundred to a couple thousand fish coming back each year. We are working to restore the river's capacity by reconnecting habitat and improving water quality and quantity. We are working to remove dams and open up habitat in the freshwater portion of their life cycle.

As we continue to address this, we ask the Council to support our efforts by approving stronger protection for river herring when they are at sea. We support 100% monitoring on all midwater trawl trips and measures to discourage wasteful dumping, slippage. We would support an immediate cap on river herring catch.

Jay Shields, Beverly charter boat captain: I think that anything we can do to enhance the health of the ecosystem is a good thing. When we are dealing with a bait fish like herring, I understand that your job is to ensure viability and yield simultaneously. The best way to do this is by retaining robust populations of a nutrient-dense prey like herring.

From my experience on the water, these vessels are the most indiscriminate that I have ever observed. You can visualize it. There is always predator-prey interactions going on out there. There is very rarely unmolested schools of herring. To think that these boats could operate without tremendous levels of bycatch is absurd. I view these proposals as beneficial for gathering better data. Ultimately, this will create a better ecosystem.

I am in favor of 100% observer coverage and close the restricted area for these vessels. They say they are a clean fishery. The only thing they do is clean out the ocean. Anything we can do to make it more difficult for them to destroy the basis of our ecosystem will benefit everyone.

Fred Jennings, MA State Co-Chair Stripers Forever: We have 5,000 members in MA who are recreational anglers and about 17,000 along the coast. I feel that I speak for what was five or ten years ago 500,000 recreational anglers in Massachusetts alone. In five years, the striped bass recreational catch is down 84%. We are very concerned about the health of the fishery. The economy is threatened. I strongly urge you to place restrictions to protect river herring, which is important forage for striped bass, and 100% monitoring of bycatch, which is also a problem for striped bass.

Nat Moody, First Light Anglers: I run a charter business and tackle shop out of Rowley, MA and Gloucester. I think that the line between operational discards and slippage needs to be very clearly defined. If there are restrictions put on slippage, it will often slide in to operational discards. I don't know how you can deal with this but this is important issue that needs to be addressed.

I am concerned that fish from 1A migrate to Area 2 in the winter time. We have seen the huge recent landings out of Area 2 late in the season. I am afraid that Area 1A fish are being double taken.

I would also like to support 100% observer coverage A and B vessels. I would also like to support closed areas remaining closed to all of these vessels.

Joe Jancewicz, Kensington NH, BOD American Bluefin Tuna Association: Today, I will address the pink section – catch monitoring at sea. I don't believe that there should be any net slippage. If there is net slippage, those dead fish get counted against no one's quota, none whatsoever. If you catch it, you land it.

As far as weighing these fish, it is a hard TAC fishery. How do you manage a hard TAC for fish that are not weighed? It's all estimates. Maybe we should start estimating the groundfish fishery.

Midwater trawl access to groundfish closed areas – the purple section. I have been a scalloper, a dragger, a groundfish fisherman. It bothers me, when you see the boats haul back, that the ground gear is shiny. There are no abrasives in the midwater column. That ground gear gets shiny by dragging on the bottom of the ocean, whether it's sand or gravel. I don't know if they

have rockhopper gear, but I am sure they probably do. I have seen these guys haul back, and I have seen the shiny gear. They should stay completely out of the closed areas. Other people can't go there, so these boats shouldn't. They are called midwater boats, but I beg to differ.

As far as observer coverage – 200% coverage – one man awake at all times.

Mark Vona, charter fisherman, Beverly MA: If there is 30% observer coverage, that means there is no one on the boats 7 out of 10 times the boat leaves the dock. Maybe people behave better if there is someone on there. But if there is nothing to hide, let's get more observer coverage.

Regarding the weight of the fish, if we are three fish over the limit, we face a fine. And these boats come in and estimate the tonnage. Just put everything out in the open. They can make the argument and say there isn't enough coverage, there isn't enough data, give us more and delay things. We need to get more observer coverage, and we need to actually count what comes off the boat.

Tyler McGlaughlin, commercial fisherman, Rye NH: I think it's completely absurd that we don't have 100% observer coverage on these vessels. The destruction and their size, due to the fish that they are chasing, are not compatible. We are talking about boats that tow nets between the two of them and fish between 8 and 14 inches. How is that fair to the species? I have seen it myself since I was 16 years old, and now I am 24 years old. I have seen the ocean go from red out with tons of herring to me having to go miles and miles to find bait.

They should not be able to fish in the closed areas. Other boats can't do it, so why should they?

Peter Mullen, Gloucester MA: I own two midwater trawl vessels and a purse seiner.

It makes me sad to hear the amount of lies spoken here this evening. We had 75% coverage in the groundfish closed areas. How much more do we have to have before people start to believe us? I hate when people get up and lie that there was three miles of stripers that a midwater boat dumped. Show us the proof.

A few years ago, 90,000-100,000 tons taken out of Area 1A in the Gulf of Maine. Now it's down to 26,000 tons. Of that, somewhere between 15 and 20% is taken by midwater boats at the end of the summer. There is plenty of herring in 1A. We went 20 miles out the other day and there was tons of herring.

Down in the MudHole, in the upper reaches of Hudson Canyon, right now, there is 40 miles of herring 20 fathom deep. If you made a set with a purse seine right now, you are talking about probably 2-3 millions of tons of fish.

As you know, there is a groundfish problem now. A lot of it was bad management. Boats went out catching codfish and dumped it over the side because of trip limits. Then, something happened with the sectors, but I can tell you that there were millions of pounds of cod dumped over the side. Nobody said a word about it. All the codfish, haddock, and flatfish are going to spawn soon. That's the same time that you will have 2 million metric tons or more herring come through. When they come through, and they are starving, if you think that they are not going to eat all the cod, haddock, shrimp and other spawn that is in the water column, you are making a mistake. You will never rebuild the cod or other stocks if you don't balance the ecosystem.

Everyone is firing at midwater trawlers. Midwater trawl vessels take about 15-20% of the available herring out of the GOM in about six weeks at the end of the summer. We have spread the wealth around, taking fish from Georges Bank, south of the Cape, all the way down to New Jersey. It isn't all concentrated coming from Area 1A.

We have no problem at all taking 100% observer coverage once we figure out a way to pay for it. We can't pay east coast prices. We can probably afford west coast prices, and that's about \$320 a day. And I think the government should help us out with it. We will do it to clear our names.

Chris Weiner, bluefin fisherman, ABTA, CHOIR: I disagree about the amount of herring. I am at these meetings because I don't think that there are enough herring out there.

This year, you could drive to the shore and watch the whole fleet catching way more than 15-20% of the 1A quota in the one area we had herring all summer long. Every tuna caught off Maine, almost, this year, was caught within 20 miles of Portland. The second that fishery opened up on October 1 – the same thing happens every year. This year, we had one area of herring, maybe two. The boats came into the area that we fished all summer long and took about 20,000 metric tons in about three weeks. That's not healthy. I agree that the government should put more money into this because this is really important. I support what I said at the last meeting.

Dave Ellenton, Cape Seafoods, Western Sea Fishing Company, Gloucester MA: Western Sea Fishing Co. operating three midwater trawl vessels in Gloucester. I am going to send in written comments.

But I do want to confirm that we have a consensus with a large percentage of vessel owners in Categories A/B/C. We will totally support 100% observer coverage, and we will support paying for those observers at a reasonable rate in comparison to the reasonable rates on the west coast. \$325 a day is the rate that we are talking about at the moment with Category A/B/C vessels.

(Audience member asked a question about federal funding for observer coverage.)

JJ Johnson: Publish the observer data in an understandable format for the general public, and then we wouldn't have to listen to the ignorance. If you are going to have 100% coverage, stall the tax payer out and publish the data, help the tax payers out. They are paying for it.

Vito Calomo, Gloucester MA: I heard some interesting comments from the public tonight, something about foreign fishing on herring. I want to clarify that there haven't been foreign vessels for twenty years. I was instrumental in getting rid of foreign vessels in this fishery.

What other fishery on the eastern seaboard or just in the Gulf of Maine has as much coverage as these vessels have?

When we have observers and we are observing the herring industry, why aren't there observers on purse seine vessels? They are catching herring and have bycatch. It should be fair and equal throughout the range, whatever the percentage is.

Peter Mullen: Most countries in Europe measure the tanks. Then, the observer comes down and dips the tank, put a weight down and the weight sits on top of the fish, and then write the measurements down. That goes to a database and they know exactly what comes off the boat. It's about 98% accurate. A lot of boats already have their tanks measured. It's a simple way to do it. The observer on the trip could drop the weight when the boats hit the dock, write the numbers down, and someone else could analyze it. The observer doesn't have to say how much is on the boat.

I'm not sure if NMFS can ever figure it out. We call in every morning and tell them how much fish we have, and yet we still went 1,500 mt over in Area 1B this year east of the Cape. I don't understand how that happens.

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

ATTENDANCE SHEET
Travel Authorization # 12-45

ATTENDANCE AT: Herring Amendment 5 Public Hearing

DATE: Wednesday, March 14, 2012 LOCATION: MA DMF, Annisquam, Gloucester, MA

CERTIFIED BY: _____

IMPORTANT... Any information provided on this form is subject to Freedom of Information Act (FOIA) disclosure and may be made available to anyone requesting such.

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>TELEPHONE</u>
RAY O'LEARY	4 HIGH KOPPLES GLOW	978 539 1344
Frank Conlon	15 New Way Lane GLOW	978-325-9940
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Tom Scudron	15 Locust St LYNN	785 955-1131
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Peter Bratchie	79 Pleasant St Wenham MA	978. 532 6608
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MID WATERS SUCK

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NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Sheraton Harborside Hotel
Portsmouth, New Hampshire
March 15, 2012, 7 p.m.

Hearing Officer: Doug Grout

Council Staff: Lori Steele; Talia Bigelow

Attendance: see attached (approximately 60 people)

Mr. Grout introduced Council staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the NEFMC Amendment 5 public hearing document. After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5.

Public Comments

Michael Blanchard, groundfish fisherman, bluefin harpooner, Gloucester MA: I will submit comments in writing. I am speaking tonight as a member of CHOIR and ABTA and a number of other organizations. It's been a long five years. There has been a lot of rocky road, and five years later, it's not any smoother now than when we started. If anything, it's gotten worse. The four points most important points to us are:

1. Require 100% observer coverage – Just having 100% observer coverage in and of itself will alleviate a lot of questions for obvious reasons. If you have someone on the boat all the time, everything will be observed and we'll know what's going on. It is a very valuable fishery monetarily to the industry, as well as the other people and the whole ocean that relies on herring.
2. Second is to prohibit midwater trawlers fishing in groundfish closed areas. It doesn't make sense to have a midwater trawl boat fishing in a groundfish closed area. We now know that they are quite capable of catching groundfish. We have had massive interaction with haddock so much that the Council had to up the TAC that was allowed for the take of juvenile haddock. We would like to see the elimination of midwater trawlers in the groundfish closed areas.
3. Third is accurately weighing the catch. It's hard to believe we can put a man on the moon, but we're going to assume or take someone's word for how much weight of fish they think they caught. We have scales, and in other areas, we have accurately measures and weighed total catches for fishes much like herring. If you look at the Pacific Northwest, the fish are accurately weighed, and that is an important thing to us.
4. The last issue is slippage – it's the termination after 10 events in a given management area. I personally like five events and disincentive of 100,000 deducted from the catch. I think 10 events is too much. But it will at least dis-incentivize the boats and give them a reason to

stay away from a potential dirty set. Or if they are having trouble with the pump, get in and get the pump fixed. We do know for a fact that with midwater trawling, there is no opening the net up and letting the fish swim away like there is with a purse seine, for the most part. If the fish are feedy, if they are small, if they are not herring, they open the net up and the fish swim away.

It has been a long five years. We would like to move forward, and these are the most important points for CHOIR.

Don Swanson, Coastal Conservation Association of NH: Mr. Swanson read a written statement into the record (see attached).

Dave Goethel, Hampton NH: I am a Council member, but I am speaking as an individual who has fished for herring for 28 years. I have a Category C herring permit. This is my only chance to speak on behalf of my own business.

First, I think the entire document should be split between A/B boats, which is the directed fishery, and C/D boats, which are basically incidental catch in other fisheries. Some of my comments may be confounded because I have to assume that the document may stay as written, which a lot of times includes C and D vessels. But I will try to make delineations.

Regarding observers, I don't think you need 100% coverage. I think that you will find the same results with less than 100%. There is a penny exercise we do in the Marine Resource Education Program, which shows that you don't need a census. You can get the same result with less coverage. I think you should consider that because of cost. If you do have 100% coverage, you should have a sunset clause – 100% for a couple of years. Get a baseline, and if you find that you don't have issues that a lot of people think you have, then it goes away. This is incredibly costly no matter who pays. If the goal of having 100% coverage is to get rid of the herring fishery, then let's just have an option to get rid of the fishery. Because requiring 100% coverage on C and D boats will get rid of the herring fishery.

On the trip notification requirements, I think it should be changed to something less than 72 hours. For groundfish, it's 48 hours, and I think that's too long. I don't understand why observers can't be deployed in 24 hours or less. 72 hours is three days. For someone like me who goes every day, that means I am on the phone constantly. That's just unnecessary.

I don't think that there should be any change to the transfer at sea rules – status quo, no change. Option 3 transfers only herring permitted vessels is unenforceable. The Enforcement Committee already said that. Option 2 A and B vessels only is discriminatory. Are they better at reporting than C and D vessels? Or is this an attempt to zero out the people that do most of the transferring?

It is easy to say you should weigh the fish. I think you should come up with volumetric measurements and convert them to weight. For example, a standard tote weighs 100 pounds or 110, just pick a number and that's what we will report. The same can go with grey tubs – 1,000 pounds, whatever it is. It's a perishable product, and we can't be sitting around all day weighing it in the hot sun. It rots. I don't see what the issue is here. Another issue is how you are going to weigh when you pump them into trucks. When the fish get pumped, there is a lot of water in them. You need to consider this from a logical point of view and get to a number everyone can agree on.

River Herring – this is the one that I have a real problem with. Overall, I think you should split it between A/B and C/D. If you don't split it, most of these options will basically close the fishery to people who cannot leave an area. When you close an area to the A/B boats, they will move because they can go anywhere. The C and D boats are mostly day boats and are limited geographically. A lot of them are limited by the rules in other fisheries. For example, I operate in the whiting fishery. We have area 1, a small area in Ipswich bay. If any of these measures to reduce herring bycatch are triggered, the event could occur off central Maine, but the area that would close would be off Ipswich Bay. It doesn't make sense. The people who pay the price are the people who have the least impact on the resource. If you close Ipswich Bay September, October and November, we can't fish. That's the only place we are allowed to go. I don't think that we are responsible for creating the river herring problems since we have been fishing there for over 100 years, and this problem seemed to just pop up over the last ten years. Whiting boats are limited to time and area. We catch herring in the whiting fishery.

I also hope that the Council will consider exempting the shrimp and groundfish fishery. It is the height of irony to me that we would close fisheries with mesh bigger than 5.5 inches. And the shrimp fishery uses a grate and doesn't have much impact on river herring. The river herring has largely left that area by the time the shrimp fishery is open.

On the groundfish closed areas, I understand the sentiments, but I remind people the law of unintended consequences could apply. If you move them out of a groundfish closed area, you could put them into areas with higher concentrations of groundfish. The groundfish areas will change with time. A lot of the closures we have now are combination groundfish /habitat closures. The habitat closures are likely to change, and the groundfish closures may too. If the Council does vote to keep them out of the groundfish closed areas, make sure that it is constructed in a way that you can move the areas in the way that you can move the areas based on how the groundfish actions move those areas around so that there isn't a mismatch.

I would support, as a logical way of dealing with this issue, 100% observer coverage in the closed areas. That would be a more logical way to approach this. I think you would find out if the problem is real or perceived. Since these boats fish inside and outside of the areas on a given trip, if you require 100% coverage, they will either not go into the areas, or they will have an observer for the whole trip.

I think there are a lot of modifications that need to be made to what's finally done here. I think most of these measures would be considered the most restrictive alternatives, but the Council can, and I hope would modify some of these to make them less costly and get the results you would desire, which is accurate monitoring.

Keper Connell, Rye NH: I am a participant in lobstering, tuna fishing, and charters. Herring is fundamental. Regarding observer coverage, I believe it that for the A and B boats.

Also, regarding Closed Area Access, I would disapprove of that and I question how they got access to the closed areas.

Regarding the slippage – how are the slippage numbers set?

The ecology of the Gulf of Maine is fundamental with herring. If we don't have herring, we don't have anything else.

Chris Weiner, ABTA, CHOIR, bluefin fisherman: From the get-go, this was never about C and D boats. Somehow they got figured into this, but it was always just about the A boats in my opinion, and only about half of the A boats. Through a number of ways, certain lobbyists were able to figure the C and D boats into the process. And now, we have this situation that we worried about, where small draggers and small boats that were never intended for this are being brought into the process. This is about the 20 big pair trawlers. That's what this is about. I really hope the Council will focus on those. You need to split them off. There is no reason for a boat like Dave Goethel's to be included with a 160-foot pair trawler.

With the big A and B boats, you have to have 100%, and that's not too much to ask. Show me another fishery in this country like those boats that doesn't have 100% coverage on boats. It would be great to have 200%. That's the only way you will really get it. We are not asking for that, but when you are on a four-day trip, when is the observer supposed to sleep. In other areas, that's what they have. I don't see how it's too much to ask to put observers on big boats like this. Yesterday, we heard that there is some support for 100% coverage from the industry, and that has us wondering what that is all about. My concern is that there is some support for that, but there will be a big fight on the dumping issue, which is critical. Everyone knows that dumping is going on. If you get a big bag – on the northern end of Jeffreys once, one of the boats we know dumped a mile log of herring with cod and seals mixed in, and the observer report afterwards said “mechanical failure” – that's pretty convenient. You need to fix that problem. You need 100% coverage, and don't even think about putting it on C and D boats. What will end up happening is that you will get nothing out of it. There is a room full of people here that show you that something needs to be done. So focus on the boats that people are worried about.

Tyler McLaughlin, tuna fisherman, Rye NH: I agree with Chris said. When you talk about a clean fishery, midwater trawling is not a clean fishery, midwater trawlers just clean out the ocean. I support 100% observer coverage. 200% would be better because what are you going to do when a guy is sleeping.

We need better oversight. There are interactions with mammals and tuna fish on a common basis. That's not right for any boat. The small boats and the C and D boats don't have those interactions with mammals.

We need to weigh the catch. In the tuna fishery, we get hit hard with dead discards from the offshore swordfish boats. Why does that not apply to the herring fishery.

We need to ban them from closed areas. If other boats can't access those areas, why is it that they can?

It's not too much to ask for boats those size to have 100% observer coverage It's the right way to do it and it's only fair. If they are having interactions with fish they shouldn't be, why isn't it recorded?

Michael Blanchard: I want to clarify my previous comments. I wasn't specific about 100% observer coverage. That would be for Category A and B, not C and D boats. Also for the Category A and B boats was the 10 slippage event provision.

Patrick Paquette, RFA New England: (asked a question about 100% observer coverage – defined as one person per trip or every haul observed?)

My understanding is that pacific pollock refers to 100% observers, and that means everything needs to be watched. That makes 100% mean that everything taken out of the water is watched, that's what we are supporting.

(asked a question about monitoring quotas and in-season quota adjustments)

The overage this year in 1B was a significant amount of bait, and it cost us a lot this year. It's a lot of natural resource to be missing.

Mark Poirier, Stratham NH: I have been involved in fisheries management for over 40 years now. What I find interesting is the addition of the C and D boats into the A and B boats. We know that the problems do not lie with the small day boat fishery.

The euphemism "slippage" troubles me. I used the word "fraud" earlier. Without 200% observer coverage or perhaps even 300% on a four-day trip, we are not seeing everything that is happening 24 hours a day seven days a week. There are cameras on the nets. They know. As a spotter pilot for bluefin tuna industry, I have seen massive shoals of herring disappear when these boats come into an area. Yet they are allowed to do a 50% overage. There seems to be no discipline. In every other fishery, you go over, and you get dinged. These guys don't seem to get dinged. It doesn't make sense. You touched on a measure that is going to happen. We hear "going to," and "might," it happens a lot in fisheries management. Those of us, these guys here, everyone is tired of it might, it may, we hope. It gets old, and that's where the frustration lies.

From a 10,000 foot view, I see these fish are the foundation of every fish that's out there – codfish, haddock, tuna, striped bass, whatever. We are undercutting the foundation. You can't build a house without a good foundation. We aren't watching what happens. Apex predators are moving elsewhere. Fish have tails. There is a reason we are fishing tuna on Georges Bank July-November. These boats shouldn't be there. We have destroyed the inshore fisheries for every apex predator because we are killing the bait. Until we look at how are supposed to build well-run ecosystem-based fisheries management, we are wasting time. This is something people ignore. It needs to be put into the record that we aren't going anywhere until we address this issue. I hope that you will do something about that.

Jim Dufresne, commercial tuna fisherman, Hampton NH: If you take A/B boats and C/D boats, you are comparing apples to oranges. I am not concerned about C and D boats at all. I have fished amongst them. They do their own thing. Having been anchored up and seen A boats come through to drag the ocean, it's clearly a different game they are fishing. A lot of the provisions that have been supported by people in this room are not too much to ask for operations at such a level. Look at the smaller day boats, they have tight budgets, they are gentlemen putting food on the tables for their families. We are talking about large corporations that have astronomical fuel bills to run boats of that size. To ask for some extra oversight is not too much. It's a different game they are in. It's not too much to ask for something as helpless as the herring.

Steve Weiner, ABTA, CHOIR, harpoon tuna fisherman, Ogunquit ME: It's important to understand that there is a room full of people here. We have come to meetings for years saying we represent hundreds of fishermen. The fact that they are in the room here – they are filling the rooms. Not all will speak because it's tough to do.

I grew up harpooning the Gulf of Maine. We had purse seine vessels around forever and never had a problem with bait. When the foreign boats were offshore, they drove our herring fishery into the bucket. And it came back. And this is the first time we have had that same kind of effort. They caught more then, but it's the same type of gear, the same type of efficiency, and it's the same type of risk. There isn't a person in the room that wants a fisherman out of business. This is different. These boats have a capability that none of the other boats have. The only boats that have this type of capability are boats on the west coast and in Alaska in this country. And they all 100% or 200% observers, and most pay for their observer coverage. But that's a tricky thing because there are on-the-water costs, off-the-water costs, overhead costs.

One of the things we have to do is find a way to make the observer costs less. We spent some time looking into those west coast operations, and we have gone out and gotten some pricing, and the reality is that I think you can do it for less. One of the reasons we need 100% observer coverage to address the potential for a big event. If you stand up high and look at what's going on, you have a major forage fish in the Gulf of Maine. Everyone is chasing the herring, and to think that these boats are going to tow around through the forage and not get other fish doesn't make sense, whether the observer coverage shows it or not. That's what makes me the most suspicious – when I hear that the observer coverage says that there is no proof that these guys catch codfish. It's crazy. These nets can tow right on the bottom, right to the bottom, and right almost to the surface. To think that these guys are going to tow a net to chase herring around and not catch codfish, haddock, striped bass, not catch bluefin tuna. I would think that bluefin tuna would be one of the hardest things to catch in pair trawl, but they do it, consistently. They did it in Rhode Island numerous times this winter, in January.

I am also worried they fish differently when there are no observers on the boats. I think that the coverage is about 30%, which means that 70% of the time, there is nobody on the boats. I think they will fish differently when there is nobody on the boats. When there are people on the boats, like Closed Area 1, the industry says look, we have proven with 100% or 80% coverage offshore, we are not catching any other fish. I think it proves what we are trying to say, which is when you put people on the boats, these guys know how to fish cleaner. They are fishing cleaner today than when they first came in here, but I believe they do it when there are observers on the boat. A and B boats is all we care about. All I care about is the midwater trawlers – pair trawlers and single trawlers. The A and B boats catch about 97% or 98% of the quota. We need to control the boats that catch about 97% of the quota, which I think may be 20 or 25 boats, no more than 20 or 30 boats catching that 97%. Personally, I am disappointed that we have to put it on the purse seiners, because I don't think that these hearings would be happening and the people would be in this room if it was a purse seine fishery.

I want to reiterate that I support 100% observer coverage, and I do believe they should not be able to fish in the groundfish closed areas. If those groundfish closed areas change, then it should change. They should not be allowed in those areas. The groundfish fishermen have been suffering for a long time, and now they are suffering more. If you can't catch groundfish in an area, shouldn't tow these nets through it.

There needs to be some way to dis-incentivize dumping. The dumping is what drove most of us in this room. A lot was localized depletion, but we are very concerned about dumping. CHOIR came up with a lot of ideas that were shot down, maybe rightfully so. The first one was maximized retention – whatever you catch, you bring in. I think that it may be the best thing in theory, but difficult and I guess impractical. I'm still not convinced that's not the right thing, but it's gone now. The reality is that there needs to be something that keeps these guys from dumping. I am sure there is true mechanical failures, and true safety issues, and times you catch dogfish, but a lot of times, that's just a loophole. We started with one dump means trip termination, and the Council shot that down. So we tried to adapt and got to the five and ten trips so there is some penalty and disincentive.

As far as the weighing goes, I agree that you don't have to weigh every pound of fish but if there are 20 totes on a flatbed truck, and they are all the same tote and weigh 2,000 pounds apiece, then you have 40,000 pounds on that truck. There needs to be a simple way to get to a weight. The idea is to monitor the fishery, don't let the fishermen report to us. There needs to be a method of monitoring the fishery.

I am impressed with all of the people who are here today, but if you really want to make a point about why you are here, then stand up and make a comment.

Tim Virgin, tuna fisherman, Ogunquit ME: I support 100% observer coverage on A and B boats. I agree that the A and B boats are the biggest issues here. The small boats supply local bait needs, and it's a good fishery.

I think we'll be surprised if we really look into how many river herring they catch. I think it's a lot more than has been reported.

I think you have to address slippage I support five incidents of slippage for trip termination.

Jeremy Loomis, Portsmouth NH: I agree with 100% observer coverage of the larger boats. I think there are other ways to get to 200%. I don't think it will be effective if we don't have overnight coverage. There is technology out there – cameras, time lapses, all kinds of different ways we can try to capture that other side when someone is sleeping.

The A and B boats need to be separated from C and D boats in this legislation.

The big boat waste is very alarming and needs to be accounted for. I understand it's a sticky situation, but it's a waste, and it's sad to see it happen.

Chris Adamaitis, lobsterman and part-time tuna fisherman, Portsmouth NH: I agree with 100% observer coverage. I know smaller C and D boats that go groundfishing. I see an observer on the boat every few days. Those guys are out just trying to make a living. The A and B boats are out there cleaning up the whole bottom. I have seen first-hand what goes over the side, and I totally agree with 100% coverage on the A and B boats.

Bill Neelon, whale watch industry: I agree about the damage being done by the big boats. I run charter boats and commercial fished for 30 or 35 years. As a whole, the herring are the lifeline of all the fish – tuna fish, big fish, and the whales. We see it first-hand when those boats come in. We are not here to put any fishery out of business, but we did live with purse seiners. There was never an issue. We never had shortages of anything, and whales were all over Mass Bay and Ipswich Bay.

For the past 10 or 15 years, we have fought this hard. We can tell the whales apart. When they go, we know where they are going, and they are going over to the Bay of Fundy. They are going to Nova Scotia. We get reports back on a daily basis. It's not that far. It's 200 something miles, and they will be there in 24 hours. If there is no food for them here, that's where they end up. Once the boats come in and fish it hard, it's a month before we see whales again. Any whales we see are just transit whales.

I think we need 100% coverage. We have seen what happens. When you walk the docks when the midwater boats are tied up in Gloucester, you see shiny chains. I don't know midwater fishery that comes up with shiny chains. I don't know what's abrasive in the water.

There should be 100% coverage. It will hopefully keep everyone honest. I think it has to be with the big boats. It's not the little day boats, so there has to be a definition in there somewhere.

Erik Anderson, Portsmouth NH: I would like to expand on the consistent comments that have been made here. I believe that this document should split Category A/B versus C/D vessels. I agree with a lot of Dave Goethel's comments. I also support higher percentage of monitoring on A and B vessels.

For some historical perspective, when I spent nine years on the Council, we dealt with allowing these vessels into this area. They explained themselves, and the Council wasn't clear on what the fishery was at that time, but they sold it to the Council. They said they wouldn't have a problem with groundfish. Now a few years later, they have an allocation of groundfish. These are the things that have developed since the fishery has arrived, and they are well-established. The size of the vessels do not mix well with the historical fisheries that were here prior to when they arrived. They describe themselves as midwater boats, and the midwater nets are in the water column. The fishery can take place in the whole water column, right down very close to the bottom.

They haven't blended well with the other traditional fisheries in the area. When these vessels show up, there is always a problem, whether it's gear conflict, or a variety of other things. I can remember when the fishery arrived, they said they would take observers. It never transpired, and now we are finally getting to that issue to see what's really going on in the fishery. The comments have been relatively consistent here tonight.

Don Swanson, recreational fisherman: I have been a recreational fisherman for almost 50 years. Most of my fishing knowledge is south of Boston. We are concerned down there about the river herring. There has been a moratorium on river herring in Massachusetts for over six years now. There are lots of hotspots recorded in the document. We know where the river herring are during certain times of the year. I would like to see these areas closed down or if they fish for herring, to have 100% coverage on the boats in those areas. It's very tough, especially for the guys I fish with – the problem is that it is illegal for anyone to possess river

herring in Massachusetts, yet they are caught and sold as lobster bait constantly. You should really do something to address river herring in Amendment 5.

Dave Linney, Cape Neddick ME, tuna fisherman: There isn't a fisherman that doesn't understand that herring is the most important thing in the food chain. Everyone understands ecosystems and what the herring do to that system. We are here to try to prevent the useless killing of herring. We understand lobstermen need bait. Some of these herring have to be taken, but there is no sense in wasting them. We need to accurately observe what comes aboard or doesn't come aboard.

We need to accurately get weights. I agree with Dave Goethel that weighing each fish will spoil a lot of herring, but there should be a tote weight, and there should be better methods than having a captain call a weight when he has a vested interest in it. That's like the fox guarding the henhouse.

As far as observer coverage goes, yes only the big boats. If 97% of the herring come from about 20 boats in the A and B category, that's where you put your money. If you can control 97% of it, you've got it licked.

I have seen the herring come and go, mostly go recently. We did live with purse seiners. They seemed to have a clean fishery. You do need 100% coverage – it may take two or three people but it's 100% coverage. You need to monitor every tow on the big boats and control 97% of what comes aboard to make sure there is no waste. I have heard from the boats, the owners and captains, that they fish clean so they have no problem having 100% observation on board because they have nothing to lose. It would make life a lot easier for them because we won't have these hearings if we are all satisfied that things are clean out there and that the quota is set properly. If that gets all that off their back, they should be willing to pay for a share of it, and I think they should. I don't pretend they are getting rich, but certainly the small boats aren't. They could help out with paying for it.

Jenn Kennedy, Blue Ocean Society for Marine Conservation: We are based in Portsmouth. I would like to provide a second voice for whale watch industry. We have seen the difference from when the big midwater boats come into the whale watching in the Gulf of Maine. All the whales disappear. When they weren't allowed to come in during the summer, the whale watching just expanded. Not only is it great for the whales, it is great for tourism and gets more people to come to the area, which is great for everybody.

We also echo CHOIR comments on 100% observer coverage and reducing dumping, and everything they recommend.

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

ATTENDANCE SHEET
Travel Authorization # 12-46

ATTENDANCE AT: Herring Amendment 5 Public Hearing

DATE: Thursday, March 15, 2012 LOCATION: Sheraton Harborside, Portsmouth, NH

CERTIFIED BY: _____

IMPORTANT... Any information provided on this form is subject to Freedom of Information Act (FOIA) disclosure and may be made available to anyone requesting such.

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March 15, 2012

Comments on Draft Amendment 5
Paul J. Howard, Executive Dir.
NEFMC
50 Water St. Mill 2
Newburyport, MA. 01950


Dear Sir

The Coastal Conservation Association of New Hampshire (CCANH) is very concerned regarding upcoming measures being considered regarding the herring fishery. Measures bringing greater accountability are desperately needed. CCANH supports the following alternatives to Amendment 5 as applied to category A and B vessels. We do not feel that the measures sighted below need be applied to the smaller category C and D vessels.

We feel that honest reporting of by catch would be supported by Section 3.2.1.2, alternative 2, calling for 100% at-sea monitoring on all midwater trawl fishing trips. We also support Section 3.2.3.4 alternative 4D, allowing only five fleet wide slippage events per herring management area. Section 3.4.4 alternative 5, eliminating mid water trawling from areas established to promote rebuilding of ground fish stocks, should also be approved. We also would support Section 3.3.5 if it were modified to require immediate implementation of a river herring catch limit on the total amount of river herring caught in the Atlantic herring fishery. Finally, CCANH supports Section 3.1.5 option 2, which would require accurate weighing and reporting of all catch.

We understand that some of these measures could be difficult to institute and enforce, however, due to the critical role that herring play in the ecosystem and economy, instituting these measures is critical if a sustainable herring fishery is to be maintained. Thank you for your consideration of our comments.

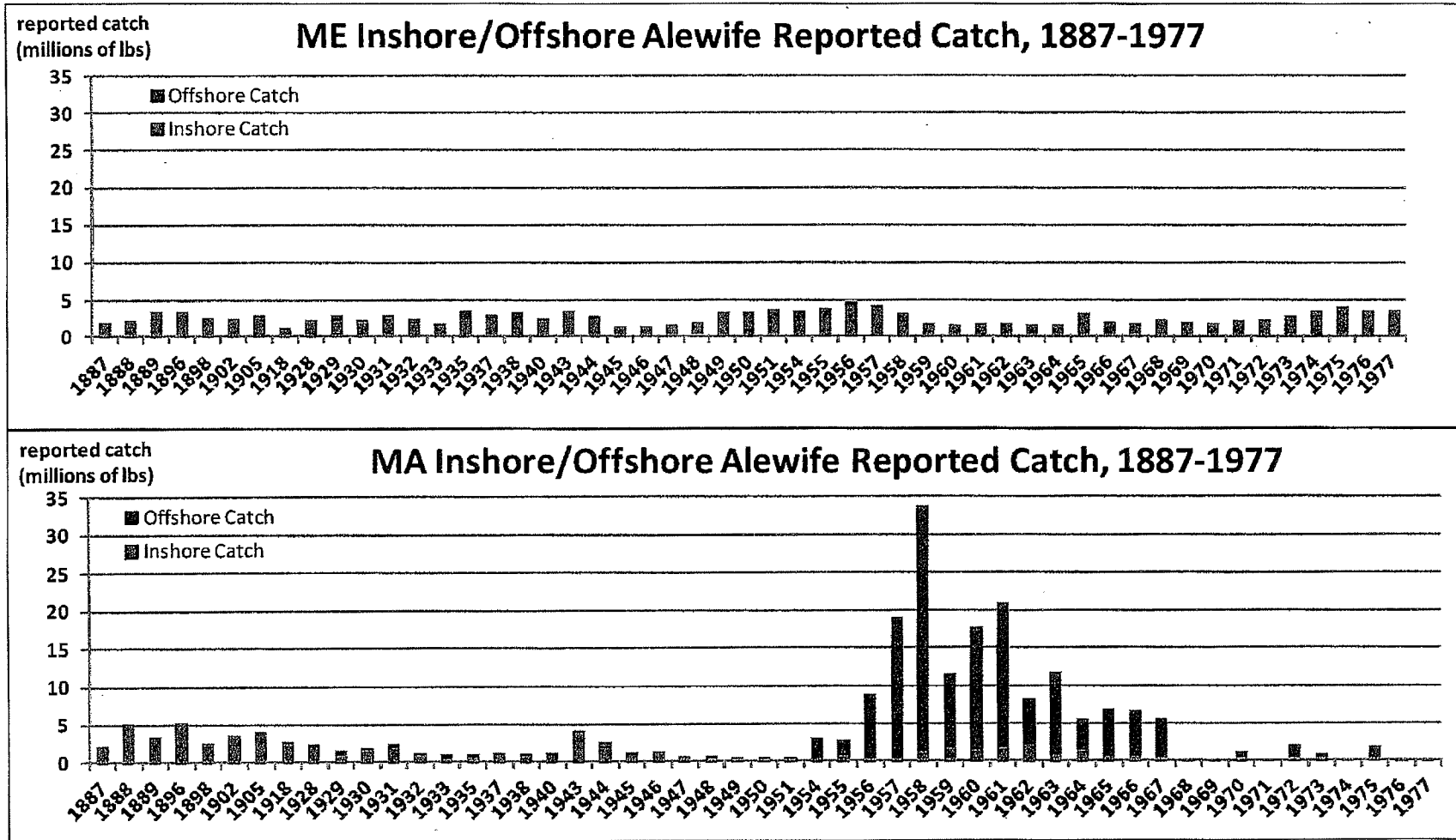
Sincerely,



Donald L. Swanson
President, CCANH

DEDICATED TO CONSERVING NEW HAMPSHIRE'S MARINE RESOURCES

*The Coastal Conservation Association of NH ("CCA NH") is an unincorporated state chapter of the Coastal Conservation Association ("CCA"), which currently has over 96,000 members in seventeen states. CCA is a nonprofit, public charity corporation that is qualified under IRC §501(c)(3).
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Alewife reported catch by home port of Maine (top) or Massachusetts (bottom) from 1887-1977. Catch was aggregated by offshore fishing gears (otter trawls, mid-water trawls, gill nets and purse seines) and inshore fishing gears (pound nets, weirs, trap nets, bag and dip nets, cunner traps, haul or inshore purse seines, and anchor or stake gill nets). Data sources: US Fish Commission Reports, Reports of the Commissioners of Fisheries (under the Department of Commerce), and The Fishery Statistics of the United States (under the Bureau of Commercial Fisheries) USGPO, Washington, D.C. All years listed had explicit data; missing years yielded no data.

Historical data suggests that offshore fishing significantly impacted alewife populations.

- During the period 1887-1977, there were no uniform restrictions on offshore or inshore alewife catch. All alewife that were caught could be sold.
- Red columns are reported catch weight of alewives landed by vessels fishing offshore, primarily seiners targeting mackerel and herring, with some otter trawl catch.
- Blue columns are reported catch weight of alewives landed inshore, primarily by static estuarine and riparian gears targeting alewives.
- The increase in offshore catch precipitated a sharp decline in inshore catch in Massachusetts.
- The relatively low offshore catch in Maine had little impact on Maine's inshore catch, and the difference in the demonstrated impact suggests separate spawning groups of Massachusetts and Maine alewives.

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NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Seaport Inn
Fairhaven, Massachusetts
March 19, 2012, 7 p.m.

Hearing Officer: David Pierce

Council Staff: Lori Steele

Attendance: See attached (approximately 100 people)

Dr. Pierce introduced Council staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the NEFMC Amendment 5 public hearing document. After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5.

Public Comments

Jocelyn Kerry, proxy for Sarah Peake, ASMFC legislative commissioner for MA: I am here to testify on her behalf in support of more comprehensive accountability measures in Amendment 5. Her support of these measures is grounded in the belief that the current system is not working and that the herring fishery must have an effective monitoring system in order to ensure its future viability. To accomplish this, it is important that:

1. Vessels report complete and accurate catch weights for all trips.
2. Category A and B midwater trawl vessels shall submit to 100% observer coverage.
3. Everything in the net must come on to the deck and be observed and reported.

Thank you for consideration of her comments. Adopting these regulations in Amendment 5 would go a long way to ensuring the stability of one of the most important resources of the New England fishing industry.

Raymond Kane, Chatham MA: Nine years ago this coming October, was our first formal meeting in Saugus. I am Vice Chair of CHOIR. I will submit written comments.

In 1999, the New England Fishery Management Council unknowingly approved the most gear efficient fisheries to fish in the Northwest Atlantic. At that time, the industry welcomed 100% observer coverage and convinced the Council they didn't catch groundfish. Throughout the history of the fishery, they do in fact catch groundfish and have never welcomed 100% unless stipulated by the judicial system.

We want 100% observer coverage on Category A and B vessels in the herring fishery. It has been stated that there are 43 permitted vessels, but a more realistic number of active vessels is 12-15 vessels that account for 97% of the landings. They are a very efficient gear type, and one

tow could be a catastrophic event. Both management and scientists need to know of these events.

Second, we want no more than 10 dumping events in a management area, and these events include safety, mechanical, and dogfish. These vessels must learn to fish within a management plan and be accountable for every species they catch.

In every fishery across the United States, the fish are weighed. The herring fishery should be mandated to weigh their catch. As of today, it is an estimate between captain and fish dealer. We are often reminded of what a high volume fishery this is, so catch must be weighed. We are talking about millions of pounds of fish. The west coast whiting fishery and Alaskan pollock fishery both weigh their catch and have 100% observer coverage.

We know for a fact that river herring are caught in the sea herring fishery, and therefore we want a river herring cap.

These vessels should not fish in the groundfish closed areas, especially with the latest groundfish assessments on Georges Bank and the Gulf of Maine. One bad tow could be catastrophic to the groundfish stocks.

I ask that the New England Fishery Management Council establish a herring management plan that is amenable to thousands of stakeholders and the entire marine ecosystem.

Robert Decosta, selectman Nantucket MA: I am representing the town of Nantucket. We ask that you adopt Amendment 5 with emphasis on:

100% observer coverage for A and B vessels

100% no dumping policy. We feel that the entire catch needs to be counted and that whatever is in the back of the net be observed.

All landings be accurately weighed and reported, not estimated

Prohibit midwater trawling in groundfish closed areas. With the drastic numbers in the groundfish reports lately, we should give juveniles need as much time as possible to mature and spawn.

Improve river herring protection. Our river herring in Nantucket have all but disappeared. We have no commercial fishery. The waters are pristine and clean, so the herring are dying before they get there to spawn.

Fishing is very important to the economy in Nantucket, not only commercially but recreationally. Our fall striped bass fishery, which was once considered one of the best in the world, has all but disappeared because the migration of herring that comes down the east side of the island doesn't come through anymore. These herring are sucked up by midwater trawlers during the summer months, and when it's time for the fish to come through, they are gone. We urge you to support Amendment 5 with emphasis on those points.

Alex Freedman, Martha's Vineyard MA: Thank you for the long effort into the plan. I represent the Dukes County Fishermen's Association. On behalf of them and for myself, I want to strongly urge the Council to adopt Amendment 5. Speaking to objective 4 about the ecosystem and herring as a forage – that's why I am here. That's why my fate and my community's fate depend on the Council's actions.

Not so long ago, a very efficient, lethal system of fishing was introduced to the east coast, not to a random species or an apex predator, but to the key forage species for many of the fish our communities depend on – striped bass, tuna, codfish, all sorts of groundfish, even marine mammals.

I have all the respect in the world for trying to manage species individually, but playing “whack a mole” is not the way we should look at our ecosystems. And in that ecosystem, the tree of life, herring the trunk. Herring are a very important species. And I speak of sea herring because everything in Amendment 5 will help river herring populations. I echo the comments from the Vineyard and Nantucket. We have pristine runs, and the river herring are not returning. They are disappearing somewhere.

I want to strongly urge for Category A and B boats, to have anything less than 100% coverage doesn't allow the Council or NMFS to make informed decisions. It may be an inconvenience for the industry. Yet so many other industries, species, and fisheries depend on accurate catch information. That includes weighing of the catch and as little dumping as possible. From the meta-view, this is too lethal and too effective a method of fishing.

I would like to close by echoing the words of my mentor, the late Tom Osmer from the Vineyard – fishing needs more intentional inefficiencies. Pair trawling and midwater trawling is far too effective. Now is an opportunity that the Council has to make corrections that will benefit all of the ecosystem and all small-base fisheries.

I strongly urge you to adopt the amendment with as strong as possible – 200% observer coverage – as they do in other countries. It is impossible to ask the observer to observe every tow on a multi-day trip. There are technological possibilities. This is an opportunity to correct wrongs in the past and to preserve fishing communities into the future.

Darren Saletta, Chatham MA, MA Commercial Striped Bass Association: Our organization is over 125 commercial striped bass fishermen from the State of Massachusetts. Today, we strongly urge you to approve comprehensive monitoring and management reform with greater accountability and oversight to the industrial trawl fleet. At minimum, we request 100% at-sea monitoring on all midwater trawl fishing trips; an accountability system to discourage wasteful dumping of catch, including a fleet-wide allowance of 5 slippage events for each management area, after which each event would require a return to port; no herring midwater trawlers in established areas to promote rebuilding groundfish populations; an immediate cap on river herring; a requirement to accurately weigh and report all catch. We understand the importance of this forage species not only to our striped bass fishery, but to all fisheries in New England. We encourage you to take these steps.

Andy Baler, fish dealer, Chatham MA: I represent the fishing industry. We are at a point right now where it is vitally important for the health of all our fisheries – groundfish, tuna, herring, striped bass, all the coastwide migratory species – that we make some serious decisions so that the health of those fisheries continue and the stocks can be rebuilt. We have tried for years and have been unsuccessful with groundfish fisheries. We have manipulated the rules and had highly restrictive regulations for the groundfish fishery, yet the herring fishery is highly unregulated. This may be the fix we are looking for since we have tried everything else. What I am asking for is:

1. 100% observer coverage – we know that in all our other fisheries, it doesn't work unless you have 100%. We know what we have to do the day we have an observer. Things are different. The only way to quantify/qualify anything properly is 100%. I believe that NMFS should fully fund that program for one year. We will have to work the bugs out after. Having 100% addresses a number of issues. You address the river herring issue. You will know more effectively where abundances of river herring are, if there are areas that need avoidance. It is very hard to make decisions right now. Without 100% coverage, you are missing most of the information to make a good judgment call.
2. Closed Area fishing – These areas are closed for mobile gear finfishing except the herring fleet. The only vessels that are fishing in there are the hook fleet, which spent years of 100% coverage to determine bycatch and mortality. There is no mobile finfish gear in there, and that should apply to the herring fleet.

From one industry to the other, We all want to stay in business and it's important that we can fish in the future. That includes the herring fleet. They have to think for the future too. Our future is tied to them.

When you have observer coverage, I think it's very important to sample the bag. I think it is necessary to have a minimum number of events for dumping. There are certain circumstances where you need to dump the bag. But if you can't find out what's in the rest of the load, it doesn't help the observer coverage. It always comes down to funding, and I think that NMFS needs to find a way to fund this 100%.

It is not one industry against the other. We are all in this together. We have been missing this one piece of the puzzle. We haven't seen a groundfish fishery fully rebuilt it's down. There are reasons the fish are down. I don't see the herring in the fish I unload anymore. We have had an unusual span of sand eels. We have never seen anything like sand lance this long. When the sand eels come to an end, what else do the fish have to eat inshore if there are no herring around? Things have to change, and I think that this is the most important thing. You will find out in June when you make your assessment.

Paula Lofgren, Chatham MA: I am a resident in Chatham. I urge you to vote in favor of Amendment 5, not as a commercial or recreational fisherman watching the public resources depleted by the industrial midwater trawl fleet, or ecologist or environmentalist concerned about the collateral damage to our coastal communities by depleted herring populations, and not as a lover of seafood who will no longer be able to buy local fish. I am a citizen and taxpayer of Massachusetts who has put my faith in you to defend our public resources which we have entrusted to you. As a new resident of a coastal town, I am furious to discover what has happened to the fisheries and the fishing industry along our coasts due to the presence of the midwater trawl fleet. Most importantly, I speak as a parent and educator. We teach our children to be good citizens, which means be fair and equitable, work for the good of everyone, follow the rules which are the same for everyone. Know that your actions have consequences. Do the right thing and if you are not part of the solution, you are part of the problem. In learning about the struggles facing our local fishing communities and the future of our marine resources, I am enraged that these principles do not apply in the world regarding the actions of and the management of the midwater trawl fleet.

As stated on the website, the MA DMF strategic plan has as its number one goal (quoted) to improve fisheries sustainability, promote responsible harvest, and optimize production of living marine resources. The first sub strategy is to collect precise, accurate data to enhance fisheries management. Provisions in Amendment 5 will provide this data and help you reach this goal.

The Strategic Plan also states as its vision sustainable fisheries and a healthy marine ecosystem achieved through innovation, collaboration, and leadership. I urge you to show leadership and put in place these important provisions:

100% observer coverage of met vessels, no midwater trawling in closed areas, no dumping of unsampled catch, accurate weighing of all herring landed, and protection of river herring bycatch by the herring fleet.

Set an example for the next generation of environmental policy makers by doing the right thing to protect the resources. As an aside, I have heard that one of the reasons for not having 100% or 200% at-sea coverage is the prohibitive cost. When I received my teaching certificate in 1974, it was supposed to be for life. As times changed and accountability increased in the teaching profession, now I have to pay for the education required by the State, I have to keep reams of data saying I have fulfilled the requirements, and I pay to recertify every five years. I find it appalling that that is required of me as an educator but not of the midwater fleet.

Mike Abdow, Chatham MA: The observer coverage is a joke. They get 50,000 pounds of haddock, the observer told them, but where did the information go? To 50% over on the catch, the observer is there, yet where does the info go? I don't see any penalties, I don't see anyone stop fishing.

They don't weigh the fish how can you have a TAC without knowing the weight? You cannot guess what they are going to catch. They are going to lie, everybody does. There is no one there to watch them. You stop all of us from taking herring out of a brook because we want to catch a striped bass with it, but those bastards take plenty of them out there. I know because I have gotten herring from them, and alewives were in the mix. I have watched them pump out, and I have seen dead herring, alewives, laying in the water, along with cod and haddock. I even got in a fight with the guy. He threatened to run my boat over. I went the next day with a gun because no one is going to tell me you are not fishing on my property, especially some guy who comes from Ireland. Why are they even allowed in this country? It's frustrating. They came here back in the 90s, and I could go for 10 miles in the spring and see loads of herring on the surface everywhere. The minute they showed up, we started losing herring. I know the guys who own the trap businesses. Now, if they catch three mackerel, they get excited that the mackerel have come in, when they used to catch 20,000 a day. These guys used to catch boat loads of mackerel, and they don't catch any anymore. 1,000 used to be 20,000 30,000 a day. As soon as those boats showed up, everything started to go downhill – tuna fishing, bass, groundfish. I went to Washington with some of the people in this room. We told Congress, if you want the fish in the ocean, you have got to feed them. The poor guys fishing the traps are done. Those guys catch the fish offshore. Our fishery for squid is done. Those boats have done the damage, they made the money, and it's time to kick them out of here. This is America, and this is our place.

As for estimates of what is coming out in June, we have had a couple of real boo-boo estimates on the groundfish, so I can't trust the assessment anymore. Oops, we were over by 90%. The fishermen pay for that. As for the assessment in June, I hold no faith in that anymore. This is

wrong. I have been doing this for a very long time. I have seen the downhill trend. I have seen fish not replenish themselves.

Observer coverage 10,000 percent. Whatever they do, by the time it gets reported, the damage is already done.

Bruce Peters, charter boat fisherman, Chatham MA: I am also a commercial fisherman. Why do we have boy scout troops taking the weekends off and cleaning up the herring runs if we have the midwater trawl vessels scooping up the fish taking them all?

100% observer coverage

No fishing in groundfish closed areas

More protection of river herring

Accurate weighing of all herring landings

No dumping of un-sampled tows

Eoin Rochford, NORPEL: We process herring and mackerel. What amazes me is the anecdotal information I have heard here. I have been involved in herring fishing for over 30 years. It is actually a clean fishery with very little bycatch, as the observer data shows if they take the time to go online and look at the observer data.

100% observer coverage would be welcome as long as the industry doesn't have to pay for it. The problem I see is that the industry will have to pay for it. When Amendment 1 came in 2006, we lost about 30% of the boats in the directed fishery that landed over 100 tons, the boats that kept the plants going. If the burden of observer coverage is put on the boats, we will lose at least another 50% of the boats that are there. That means the boats left will have more resource to themselves. With the herring resource or for any fishery, it is important to spread it out and have more people have access, not less. I would welcome 100% coverage if people would look at the data and see how clean the fishery is and how little groundfish and river herring are being landed by the herring boats.

When it comes to weighing the catch, the burden of who pays for this is the problem. Herring is not a high cost fish, it is primarily used as lobster bait. So the burden of cost will go back on the lobster fishermen to pay for the scales because the bait will be more expensive. When Amendment 1 was introduced, they said there would be no effect on the lobster guys. Unfortunately, they are paying about twice the amount for bait now since 2006 as a direct result of these amendments because the cost will always be absorbed by the end user. We have to look at the cost and what effect it will have on the end user, who is most impacted. That will be the lobster fishermen, whether Massachusetts, Maine, Rhode Island, or New Hampshire, all will pay a higher price for bait. If the government is not going to pay the bill, I would be very slow in recommending 100% observer coverage.

When it comes to slippage, nobody wants to go through the effort of catching all this fish and dumping then. We are not recreational fishermen, and we never were. It's anecdotal information. I have a big problem with the term slippage. I know where the term is coming from.

Willy Hatch, fisherman: I support observer coverage, maybe 200% so if someone is asleep

maybe the other observer can be present during the haul backs.

River herring there should be strict closed areas in the areas to protect them. There are definitely areas with big interactions. They should be closed, just like the runs are closed for us.

There should also be inshore closed areas for the midwater trawl fleet because of the interactions they have with the other boats – groundfish, tuna, charter, and striper boats.

There should be no dumping. They need to be accountable for what they catch. That's why we have observers.

I heard talk about how much herring to take out of the ecosystem. What needs to be taken into account for health of all the other stocks Gulf of Maine cod, next year when the Georges Bank assessment cod comes out, that could be even worse next year

I just heard about impact to the end user, the lobstermen. How about the end users like groundfishermen, tuna fishermen. Fish on the herring schools. These guys come in and wipe them out.

Net slippage, self-reporting, guesstimate between the buyer and captain. I wish I could be accountable like that.

Accurately weigh the fish and be held to the same standards as a guy like me with a rod and reel.

Patrick Paquette, XXX: testimony on my own citizen my own opinion

100% monitoring and am not necessarily strong opinion about who pays for it. We had to pay for all of our monitoring...through excise taxes or licenses, we pay completely. If the industry has to pay for monitoring, they should. If the government should help them, that would be good. Decision should be tied to what the fleet needs

Evidence fishing differently with monitors...catch swung over 1 million pounds in a week

Vito testified that things are different

Dumping regulations big loophole – Sean Gehan said his job was to find loopholes...cannot be allowed to only count dumping events when there was an observer on the boat. We got 80% offshore but dumping happens in all areas, all times of the year. To only count when there is a monitor on the boat is not acceptable. The public wants to slow the needless waste of natural resources

Groundfish industry has taken a hit

Same standard in this fishery

River herring – 2011 fishing season and SMAST program with industry – their website reported three large river herring bycatch events on the backside of cape cod in 2011 in the winter. This is why millions of dollars spent shoreside have us concerned. With millions of dollars in shoreside improvement, we still see things going down. ASMFC Matt Cieri – 2010 he believed that this fishery may catch more than directed harvest of river herring coastwide. RH hotspot closures are a beginning... the alts could be combined. Any hotspot closure is fine but there is concern if the fleet runs into RH elsewhere. Try to address where we know it's happening as a beginning. If they run into it elsewhere, let's cap what else they are allowed to catch. This fleet has turned haddock into lobster bait...our money fish is now lobster bait...criminal. It's capped so let's cap river herring because it's a species of concern. NMFS has listed it as a species of concern. We should close the areas where we know/predict bycatch

SMAST scallop YT program lives and dies on a catch cap... should cap this bycatch amount

Groundfish closed areas – herring comm. Moved to cons but rejected the ability to put bottom sensors on the net. Industry said they would break bottom sensors

Should not be allowed in closed areas period

GOM haddock are in the toilet. GB cod in the toilet. Why is it that every species that interacts with herring are in trouble

This gear has no business in groundfish closed areas

The impact analysis in the document almost completely ignores the recreational , charter fleet, and the groundfish fleet when haddock are being shifted into a new fishery...the whole resource is now being spread to more people and the long term impact of that is that there is going to be less fish for all of us

We will be submitting our trip log and our cancellations with names body of fish off Chatham in summer boats were done working about 10-12 days after there was nothing left. The bass were gone...middle of august...that was the result of small concentrated localized depletion. We had to fish off Nantucket difference of over \$100 a day and some of the smaller boats couldn't go fish that far that's an economic impact

Fleet is suspect because it changes behavior every time it's monitored

Thousands of jobs at stake here

Dr. Peter Escherich, XXX: fish and wildlife biologist for 30 years.

Very clear that there is a major flaw in the NEPA analysis...economic review...fishery-related businesses and communities only refers to the herring fishery. I have heard testimony from tons of people affected tonight and this is not from the herring industry

Major failure of the EIS

Speaking for myself on this issue...should consider

Ted Ligenza, Chatham MA: 100% coverage

No dumping, bring it all home and use it and count it

Fault that not everything comes home

Accurate weighing of catch...someone other than a buyer

I take a lot of observers cannot expect a kid to get on a 200 foot boat to do a good job. Need four people on the boat and one person who is a senior advisor. I have talked to two observers on herring boats...one guy told me that he had no idea what was going on. Another guy said he didn't know what was in the net. Just because we have 100% observers doesn't mean it's not going to work. At least three or four people on a boat

8-9 guys on the boat bullying the observer

Fishing for cod in Nausett when the water gets cold, the herring and mackerel go down to the bottom, about six feet off the bottom. They were towing right beside me and I know they were catching codfish...

Can't do this. Can't fish this way and expect any cod left in the ocean. I am speaking for the cod.

Can't expect them to survive a pair seiner fishing on the bottom

The other thing I see in the document there is no cap on cod, pollock strict cap. With observers.

They won't be able to tow on the bottom because they would go over the cap

Trying to avoid the codfish and pollock issue

Tom Smith, XXX: commercial fisherman agree with most of what has said. Cannot do 100% observer coverage with one guy...need two guys on each boat. I have been fishing next to these boats since the early 1990s on Jeffreys. Now we are fishing 130 miles offshore for tuna
Need to reign them in

Need accurate weights

Hard TACs. Every fish is weighed. There is no margin for error. I couldn't believe that the herring fishermen don't weigh the catch. And they keep going over on the quotas.

Done reading a book menhaden the most important fish in the sea. I believe that herring is the most important.

Buddy Vanderhoop, Martha's Vineyard, Dukes County Fishermen's Association: Decline of probably 85-90% in the herring run eight years ago. We are about 65-75% off now...not the small guys that are doing damage... herring boats should not be allowed to fish inshore during the spawning months, early March – June no inshore fishing at all because herring are coming in to spawn

In favor of Am 5 – 100% or 200% coverage and I would like to see them stop fishing in the closed areas

Very important to everybody

Everything depends on herring

Eric Braser, Georges Bank Cod Fixed Gear Sector Manager: If you don't know what's being caught, you can't manage the fishery. Council will implement the recommendations of nearly every one of the stakeholders here if it wants to manage the fishery. If not, then it won't

Stew Tolley, Georges Bank Fixed Gear Sector: Agree with what has been said. My big thing is that you cannot have 100% coverage with one person should be minimum of 2-3 observers on the boat

Self-reporting would trend towards lower weights, which would result in larger overages for the weights

Area 1B 50% overage with that, you don't even know what's being caught. Self-reporting needs to go. I know that if I had a 50% overage, I would get a large fine and lose my permit for a number of years, maybe even a jail term. What's going on needs to change

Eric Stewart, charter boat operator, Chatham MA: Biggest problem is 80 pages of a document to try to understand the problem. You need two pages the goals and objectives. The fishery is too good at what they do. They are effective, they catch everything. Small mesh they see the same thing on their fish finders that I see. I see herring mixed with groundfish, dogs, stripers, tuna I can't tell you anything but what my fish finder is telling me, which is you cannot put a net down there and have a clean fishery

Objectives – need observers

Experimental fishery because you need data have a fleet out there and you need their data 100%.

Cannot have one person on the boat 24 hours a day.

Have to hold the boats to their quotas hard TAC and hold them to it. Hold them accountable.

No slippage, no dumping – whatever is in the net should come on board, should be accountable.

Herring as forage redundant objective if you address 1, 2, and 3

100000% coverage

No slippage

Weigh all of the catch

No fishing in groundfish closed areas

Stop overfishing...hold them to a hard TAC

Ryan Mann, Marstons Mills MA: Volunteer herring count in Harwich with Harwich Conservation Trust

Over the last three years, we have engaged over 120 people to come out to the run and help us gather data

Over three years, disheartened millions of herring last year, the total amount of fish was 10,466 fish. From millions and millions of fish

Pollution, water quality the amount of sampling over the last 15 years show improvements trying to remediate water quality

Dams removal has been a major effort across the state lots of effort in the communities

But there is not 100% observer coverage at sea

I was an observer on the groundfish fleet it is important to have the observers there, we don't know what is going on. The little bit of money that we have put into the run there needs to be something to show that all of the effort from our town this is a need and we need to know what is going on, full picture of river herring population

Without 100% coverage, have a variable and won't be able to solve the problem

Pete Kaiser, F/V Althea K, Nantucket MA: you have your job cut out for you

Fishing Nantucket in early 70s, herring were everywhere.

Since the two inch fishery started in the 90s, hard-pressed to find a herring anywhere within 20 miles of the islands. Doesn't exist anymore south.

River herring hotspots all the areas between the hotspots are full of river herring...they are basically a coastal fish. One of the objectives should be to stop RH bycatch should set up a ten mile barrier up and down the coast

Pair trawlers whales on the coast anyone with any common sense on the water would say it is a direct result of the nets. If there is a lot of interaction with whales, shut the area down

The burden is on the scientists can't possibly do their job with the existence of the two inch mesh fishery as close to three miles off the beach.

Area 1B coverage reason for the quotas coverage should be taken immediately off the adjacent area fish go across the line

A lot of us have been trying to make a living when this fishery came through the system...

We are frustrated that protocols were not taken...

100% observer coverage A and B boats, big boats

Along with no dumping provisions

Other large volume fisheries on west coast have 100% coverage...and no dumping, have to bring everything on board

Data from the observer coverage right now I would rather have no observer coverage, it's totally anecdotal if they can't bring the net up large bycatch is clogging the grate and the twos are getting dumped. Dirty little secrets of the fishery

No fishing in the groundfish closed areas. Cod are at an all-time low. Cannot fathom that these boats can The fish comingle.

Weigh the fish

If they can't fish correctly, then tough. Don't trash these other fisheries

Find the herring and you will find the other fish... you can't just catch herring

JJ Johnson, engineer, F/V Western Venture: Midwater trawl vessels you don't need two observers because there isn't a lot of time spent on deck. Industry supports 100% coverage at \$325 a day, that's the west coast rate, and that's a fair rate. Industry consensus on that. We will pay that. If you can't do that here, get the west coast observers here
In the event that there is a problem on the boat, we don't want to put them in harm's way. We side pump, not a stern pump operation. There have been situations where I didn't want the observers on deck

Safe sampling station needs to be implemented

People don't get it that's where a lot of confusion is. We spend a lot of time looking for fish and we are extremely selective. We may fish in the morning and sit there all night because the fish are mixed during the day and they come off the bottom at night. You can judge our effectiveness by our numbers lowest bycatch ratio fishery in the northeast

I was a bottom trawler and I know how dirty that fishery is

We have got to take care of the river herring and fix the overages...we are reporting daily and the areas remain open. When we say we are done, shut it off 12 hours. You don't need several days to shut down the area

We feed the world all fishermen do we sell our fish for nine cents a pound to the poorest people on the planet. In Nigeria, two out of five people are starving. I can find another job. But I think it's important to remember that people are buying this fish. In New Bedford people come to the docks to get fish to eat.

Be careful about the political stuff and don't forget about what is important

Leo Maher, Chatham MA: Don't punish us here for the rest of the world...fighting to keep my livelihood alive

100% observer coverage.one observer isn't enough...because of wide variation

No met vessels in groundfish closed areas...herring fishery demanded increase in haddock quota wouldn't ask that if it was a clean fishery

No dumping of unsampled catch

I didn't realize they self-reported till tonight. Fishermen are not the most honest people

Protection for river herring is also very important

Joel Boyce, Yarmouth MA: little zones for river herring should be the whole coast. Every river used to have herring in it. Should be a coastwide exclusion of these vessels. The inshore areas are for the small boats

Monitoring – really talking about 15-20 vessels...maybe 40 observers....not hundreds of boats.

John Pappalardo, Cape Cod Commercial Hook Fishermen's Association: support 100% coverage on A and B vessels. Would like to see council take an honest stab at quantifying slippage and try to eliminate or reduce slippage. Continue to be concerned about access to groundfish closed areas, although Council is reviewing as we speak. If an area is to be closed for groundfish, should remain closed for all fisheries

Not sure about how the recent Am 4 lawsuit plays into Am m5 but something that should be taken seriously

Weighing of catch – how can we have a fishery that sets quota in pounds but no consistent way to weigh the catch. No standardized volumetric unit... should move forward with that one

I am like you tired of talking about this. I wish the offer to go to 100% coverage was accepted back in 2005 and 2006 when I started talking about it on the council.

I watched the resource decline from 2 million to 1 million to now 600 thousand. I am not very hopeful for the number that is going to come out of the new assessment, no bright signs on the horizon.

Universally not much hope for a robust herring resource that's why I got asking the questions I did back in those years. I got concerned about the herring resource, dumping of feedy fish or spawned fish in 1A, inability of timing for spawning closures Herring PDT member comment Steve Correia spoke after the last assessment and said he is very concerned about the repeating of what happened to the herring when the foreign fleets were here. He said that when the fleet turned its effort on to the NS spawning component, saw a quick decline and ultimate collapse of the resource. We don't have any spawning protection for that NS area.. flag that for the Council. If we get 100% coverage, can try to get observers to note the spawning condition of the fish when they are offshore

Frustration since I have asked for accountability...ping pong between the council and ASMFC. Can't help but wonder where we would be today if we had put the observers on and weighed the fish. Very real concern, to the herring industry as well

The industry should be shitting bricks

Need to also redefine the management boundaries. Area 3 should not come to the backside of Cape Cod and be considered part of the offshore fishery

Burden of proof has been on me and others to prove that there is a problem because everyone said the data is clean. Now we are hearing that the industry is willing to take 100% coverage at the rate the west coast pays. I hope that rate can be made available to them. Part of the accountability

Lack of data leads to poor decisions or decisions that are too slow, and the people who get hurt are the people who depend on the resource. Burden of proof needs to shift to all industries if the government can't stand up and pay for what we need to continue our professions.

Long time coming for this decision

Dr. Arthur Costonis, Chatham MA: What I would like to recommend is to get the trawling banned totally. Here is your data right here... I have heard enough good info tonight and we ought to listen to them. Thank you for your transparency...allowing everyone to speak. I have seen the herring decline in my time...why don't you stop these guys? Make them clean it up...it's not fishing, it's killing. I am against it. Do we need a Rachel Carson to write another Silent Spring again? Listen to these guys.

Winston Churchill story

Rather commit adultery than take any liquor in my body... come on back lassie, I didn't know I had a choice. Ban them.

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

ATTENDANCE SHEET
Travel Authorization # 12-47

ATTENDANCE AT: Herring Amendment 5 Public Hearing

DATE: Monday, March 19, 2012 LOCATION: Seaport Inn, Fairhaven, MA

CERTIFIED BY: Lori Steele

IMPORTANT... Any information provided on this form is subject to Freedom of Information Act (FOIA) disclosure and may be made available to anyone requesting such.

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>TELEPHONE</u>
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Chris Kellogg	Abs	
Lori Steele		
Talia Bigelow	Abs	
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Willy Hatch	145 Old Main Rd North Falmouth MA 02556	360-4613
Tim Silvia	11 Howes Rd Brewster MA	860-836-7844
Capt. Buddy Vandenberg	12 Old South Rd Aquinnah MA	508 645 3201
Capt. Bob Allen	51 GRISTMILL PATH M.M. MA	508 420-0399
James	33 Robinson Rd Fair. Vt.	508 524 3356
Andy Baler	P.O. Box 760 South Dennis, Ma	508 385 9094
BILL CHAPRALES	99 STONE BRIDGE LANE ⁰²⁶⁶⁰ MARSTONS MILLS MA	508 367-9658
BILLY MAHER	77 EDGEWATER DR. WAREHAM MA	508-271-0293
DAVID MAHER	2 JOYCE DR PLYMOUTH MA.	
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Darren Saletta	69 Mills Rd Chatham MA	508 274 8805
Barbara Brennessel	St Chris Dr. Wellfleet MA	508 479 6553
Paula Winkler Hofgren	69 Horizon Dr. Chatham MA	508-348-1658
Michael DAROZA	14 RIVER ST. Fairhaven MA 02719	508-999-7378

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Laura Ludwig	Provincetown MA	207-263-5300
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James Young	Fall River MA	508-6741547
Don Curry		Don Curry@ST.com
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Roger Whittan	Martine's Mills MA	508-438-8203
Mark Baker	MA	508 474 1399
John	FAIRMOUTH MA	508 548 7674
Leo Maher	Chatham MA	508 945 4849
Mike Woods	CHATHAM MA	509-237-3393
Tom Rochford	NOVEL MA	
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Kevin O'Neill	Plymouth MA	508-747-0211
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David Bellamy	Fairhaven, MA	509-94-6386
Craig Goodricke	OLCANS, MD.	509-240-2745
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Michael Buck	Falmouth MA	508-274 5161
Emie Alchaga	Chatham Ma.	508-958-0180
Steve DeLong	Chatham MA	504 945-4603
Peter Kaiser	NANTUCKET MA	508 325 2167
Dave Kinsky	CHATHAM	508-945-5382
Ronald W Sack	Chatham MA	508-380-5835
Tom Smith	Orleans MA	508-255-0771

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

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JOE HUCKEMEYER	137 Pleasant St Hyannis MA 02601	
PAUL PARKER	23 Sam Ryder Rd Chatham MA 02633	

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The text notes that without reliable records, it would be difficult to track the flow of funds and to identify any irregularities.

2. The second part of the document focuses on the role of internal controls. It states that internal controls are designed to ensure that transactions are recorded accurately and that assets are protected. The document highlights the need for a strong internal control system to minimize the risk of errors and to provide a reasonable assurance of the reliability of financial information.

3. The third part of the document addresses the issue of transparency. It argues that transparency is a key principle of good governance and that it is essential for building trust in the financial system. The text suggests that greater transparency can be achieved through the use of standardized reporting requirements and through the disclosure of relevant information to the public.

4. The fourth part of the document discusses the importance of oversight. It notes that oversight is necessary to ensure that the financial system is operating in accordance with the law and that it is free from undue influence. The document calls for a robust oversight mechanism that is independent and effective in monitoring the activities of the financial system.

5. The fifth part of the document concludes by emphasizing the need for a comprehensive approach to financial reform. It states that successful reform requires a combination of measures, including improved record-keeping, strengthened internal controls, increased transparency, and enhanced oversight. The document concludes that these measures are essential for creating a more efficient and trustworthy financial system.

MIKE HANNEY 200 N. MAIN ST. S. KENNEDY 508-737-0363

RICK MISZKA 27 UNCLE ALBERT'S CHATHAM 508-945-2691

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JOHN FERRARO 1500 MAIN ST. CHATHAM 508-945-2432

DOUG AMORALDO 67 STAMFORD ST. BURLINGTON 774-766-8781



NANTUCKET ANGLERS' CLUB, INC.

1 NEW WHALE STREET
NANTUCKET, MASS. 02554

(508) 228-2299

March 15, 2012

Paul J. Howard, Executive Director
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, Ma 01950

Re: Comments of Draft Herring Amendment 5

Dear Mr. Howard:

The Nantucket Anglers Club was established in 1969. Our 500 members are recreational fishermen that fish from both the beach and boat. Over the years we have watched the number of herring decline which has had a devastating effect on the inshore fishery. Codfish that were once plentiful close to shore have disappeared. Now the fall Striped Bass run once considered one of the best in the world is in jeopardy. The schools of herring that once migrated past the island in the fall are gone, swept up by the giant nets of the midwater trawlers. With the lost of herring the Stripers no longer hang around the island. The few fish that we do catch are small and skinny. There is nothing for them to eat. Our tuna fishermen have to run over 100 miles offshore to find any amount of herring and tuna. We urge you to adopt Amendment 5 with the following policies.

100% at-sea observer coverage of A&B vessels.

No Dumping Policy.

All landing be accurately weighted and reported.

Prohibit midwater trawling in closed groundfish areas.

Improve river herring Protections.

If the midwater trawl fleet is allowed to continue at its current effort or local fishery will all but disappear. Please act now.

Sincerely,

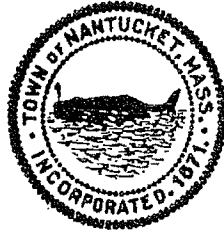
A handwritten signature in black ink, appearing to read "R. DeCosta", with a horizontal line extending to the left.

Robert R. DeCosta
Nantucket Anglers Club
Vice President

.....

Town and County of Nantucket
Board of Selectmen • County Commissioners

Rick Atherton, Chairman
Robert R. DeCosta
Michael Kopko
Patricia Roggeveen
Whiting Willauer



16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255
Facsimile (508) 228-7272
www.nantucket-ma.gov

C. Elizabeth Gibson
Town & County Manager

March 15, 2012

Paul J. Howard, Executive Director
New England Fishery Management Council
50 Water Street, Mill # 2
Newburyport, MA 01950

Re: Comments of Draft Amendment 5

Dear Mr. Howard:

Nantucket has a long history of fishing and it is an important part of our local economy. Herring are the major forage for Striped Bass, Bluefish, Cod and Tuna in the waters around Nantucket. The fact that the mid-water trawl fleet has been allowed to fish the inshore waters off the Cape and Islands has had a devastating effect on our local fishery. Herring have all but disappeared around the Island. We urge you to adopt Amendment 5 with emphasis on the following points.

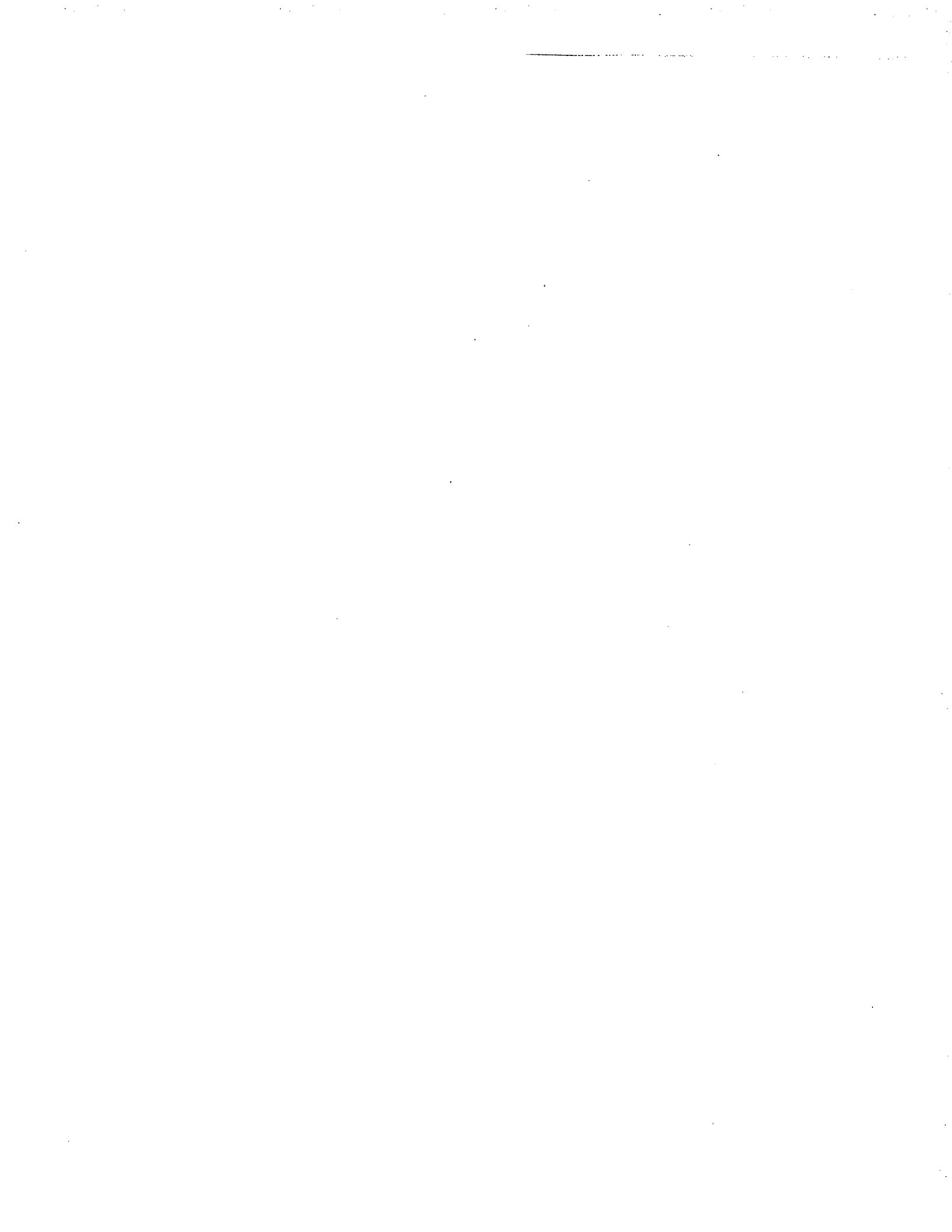
- 100% at-sea observer coverage of A&B vessels
- No Dumping policy
- All landing be accurately weighted and reported
- Prohibit mid-water trawling in closed groundfish areas
- Improve river herring protections

If the mid-water trawl fleet is allowed to continue at its current effort our local fishery will all but disappear. Please act now. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Rick Atherton". The signature is written in a cursive, slightly slanted style.

Rick Atherton
Chairman



16 Mar 2012

TO: Doug Grout, Chair NEFMC Herring Oversight Committee

From: Roger Whitten, Marstons Mills, MA.

Subject: Herring Amendment 5

I am writing today to urge the council to support section 3.2.1 alternative 2 for the implementation of 100% observer coverage on category A and B herring vessels. This is essential to provide the best science available, and to insure the best fishing practices are followed on every trip.

Second the council should support section 3.2.3.4 option 4c or 4d. in order to discourage the wasteful dumping of catch and account for every fish caught.

Third I urge the council to ban mid water trawling in areas established to promote rebuilding of ground fish populations. (section 3.4.4 alternative 5)

Finally I would support section 3.3.5 requiring an immediate implementation of a river herring catch cap. It is telling to me that the taking an possession of river herring was banned 5 years ago for the citizens of this state and they are the "owners" of these fish, and yet no action to protect them as a by catch has been taken.

A handwritten signature in black ink that reads "Roger A. Whitten". The signature is written in a cursive style with a large, stylized initial 'R'.



NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Holiday Inn by the Bay
Portland, Maine
March 21, 2012, 7 p.m.

Hearing Officer: Doug Grout

Council Staff: Lori Steele

Attendance: see attached (approximately 120 people)

Mr. Grout introduced Council staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the NEFMC Amendment 5 public hearing document. After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5.

Public Comments

Rich Ruais, American Bluefin Tuna Association (ABTA): Thanks for the amount of work these documents represent. I would like to try to provide a little background to some people who may not have been involved with the history as we have. ABTA represents giant bluefin tuna. Historically, we have gotten along well with the herring purse seine industry, which we have always considered to be vital in the Gulf of Maine to provide bait for lobster fishermen. Earlier than the 80s, the herring resource was overfished, particularly on Georges Bank before the Magnuson Act. In the 80s, the stocks actually came back even though the stock was labeled extirpated on Georges Bank. I am told that it was recolonized by Gulf of Maine fish at some point in time. There was exuberance on the part of managers that there was a rebuilt resource. I was still working for Council staff at the time, and I recall it very distinctly. A lot of noise was made, and the Northeast Fisheries Science Center was a big part of it. The resource was said to be so big that you could take a million metric tons for several years without impacting the spawning stock biomass, and we were looking for an MSY of about 400,000 tons. I think that was combined for all three major areas.

The resource recovery obviously had the intended impact of urging the herring industry and possibly people outside of the fishery to put capital into the fishery expecting that, for the long term, that we have a herring resource to support an industrialized herring fishery for multiple purposes, including continuation of the lobster bait fishery, but also export markets and whatever other markets come along. In hindsight, most of the managers that I have talked to recognize the mistake. The first mistake that was made was clearly the scientific one. We have seen these large numbers go away. I remember talking about 175,000 yield, I remember when it was going to be 400,000 metric tons for MSY. I don't even know what the numbers are today, but I know they are a shadow of what they once were.

We encouraged all the effort to come into the fishery, the boats from the Pacific, the Irish fishermen looking to apply their expertise from their fishery to our fishing area to get on with

industrialization – in hindsight that was a mistake. In the 90s, as the conversion started to take place from a traditional purse seine fishery to a midwater trawl fishery, our tuna fishery began to suffer. We noticed it in the general category particularly – that after June 1, when the herring midwater trawlers worked the popular areas for our troll and harpoon fishery, we saw declining catch rates. We came to the Council in 1994/1995 and said we are having a conflict. We said we think these vessels are so efficient that they are causing localized resource depletion.

The first effort we made – there was no CHOIR – it was a handful of tuna fishermen that met with Mary Beth, and Frank O’Hara, and Peter Moore and tried to work out a voluntary compromise so we didn’t have to get into this rule making. That didn’t work. And ever since that time we have been at this battle, trying to fix this so that both fisheries can be accommodated. The fear that I have beyond this document, which has a tremendous amount of time invested in it, is that it might not be addressing the most critical issue – you can’t now, but at some point you need to address the issue of overcapitalization that you have right now in the fishery. There is no way to share that small pie among the capacity you have to harvest this resource. That’s the backdrop.

When ABTA looks at the current amendment, we have developed some specific points that we would like to see taken care of. We have always complained from day 1 that with industrialized, fleet size vessels new type of gear being introduced to New England, maybe the Gulf of Maine fisheries, but they were new in New England. We heard from the industry that they fish clean. Now we know for a fact that the midwater trawl boats not only touch the bottom, but also at times, can catch demersal finfish. If the demersal finfish decide to get 6 or 7 feet above the bottom, or even 20 or 40 feet above the bottom, they are going to get caught in midwater trawl gear.

We now need to put 100% observer coverage on these vessels to identify precisely what that impact is about, how extensive is it? Every groundfish fisherman in New England has a right to demand that the Council focus on that as a priority. Groundfish fishermen are sacrificing tremendously. Many are out of business. They are closed out of these areas completely, some of them permanently, and yet they are watching midwater trawl vessels steam through those areas, supposedly fishing for herring but we all know they can catch groundfish. We – ABTA – want to see A and B vessels required to carry 100% observer coverage to have the database that we need.

The second measure that ABTA supports CHOIR on is the implementation of Closed Area provisions with trip termination after 10 dumping events in order to reduce dumping on Category A and B vessels. You have heard the comments from Zack Klyver. The whale watch boats have noticed in Downeast Maine, substantial events where whiting was caught and dumped. We heard from herring purse seiners that when the fish is feedy, they typically have to let them go because the product Well, the midwater trawl don’t have the option of letting them go, they are all dead. Again, that is something that has to be controlled. First, you need information on exactly how common this process is and what probability of trips this is taking place on, and then you have measures in here that we see could be very useful to reign that process in.

We want to see measures that prohibit midwater trawling in the groundfish closed areas. We think it’s both a resource and equitability issue. Both are very legitimate concerns. There is plenty of ocean for them to be fishing outside of these particularly sensitive groundfish areas.

I know there will be a lot of comments. I do hope that people come up even just to say they support CHOIR and ABTA, so you will get the message of how important it is to us. It does come as a surprise for those of us who have been involved in fisheries for a long time, to see this one fishery not have a direct weighing of the catch. The majority of fisheries – I find it hard to see any other fisheries in our area that don't require weighing by totes, weighing by individuals, whatever it happens to be so that you know what you are taking out of the fishery. For a fishery that the industry likes to taut as a TAC-driven fishery, and that being the major conservation measure, and at the same time, maintain a provision where you are not actually weighing the catch, but you are simply hailing based on marks in the fish hold. That's not quite convincing information. As Patrick Paquette pointed out, you have vertical integration in the fishery. No one is accusing anyone of being anything but honest, but the temptation is there, and the suspicion can be there. The public has to have confidence that you have that control in order to justify restrictions on some of the fishermen in other fisheries.

(Clarified support for CHOIR's position that Category A and B vessels should have 100% observer coverage on all gear types.)

John Pappas, South Portland ME: I run a charter boat out of south Portland. I want to reiterate what Rich said. We have to get 100% observer coverage on these. There is really no way to know what's going on out there without it. We have all been out there, and you guys have heard about it after these boats come through. We have seen before and after, and we see what they say they are catching. It just doesn't add up. It's the only way to take care of the bycatch issues. The other one is the dumping. It's pretty much exactly what Rich was saying. The dumping has to end. It's dead fish going back in the water that is unaccounted for. These are mostly for the A and B vessels, they are big boats doing most of the catching, about 98%.

The groundfish closed areas – I spent my whole life out there. I have run a charter boat since I was old enough to have a captain's license. I grew up fishing on Jeffreys. I watched what happened in the 1990s when these boats would come through in the evening and go back to the same spot in the morning. It's a whole different place, and the fish are just not there. We really do need to keep them outta there. It's unbelievable the change. I have had buddies or clients come up and fish with me, they were here before and here after, and they were just dumbfounded at the difference after these boats come through. The last thing is weigh the catch. Estimated catch doesn't seem to make a lot of sense. I don't know how accurate it can be.

Peter Speeches, Scarborough ME: I'm a 25-year commercial tuna fisherman and proud member of ABTA. I think we have to have 100% observer coverage on all permitted A and B vessels. It's 90-plus percent of the catch, and we don't have reliable data from them. We don't have reliable weighing data. We have estimated data on a TAC fishery. I think that has to end, it's ridiculous. And I think it's absurd to allow these vessels into a closed groundfish area. That can't be allowed. Let's get control of this fishery.

Shawn Tibbett, charter and commercial tuna fisherman: I own and operate a family-run fishing business, primarily charter fishing, and we do some commercial tuna fishing. As a Charterboat captain and tuna fisherman, I have spent a significant amount of time offshore, primarily in the Jeffreys Ledge closure area. I have seen what happens when the bait disappears overnight because these large vessels wipe them out. We are here one day, there's bait, the

midwater vessels are sitting 4 or 5 miles off, we come back out in the morning and there is nothing.

I have seen the boats haul gear. We have seen gear come up and stuff float off the back of the boat at 3, 4, 5 in the morning, there are birds everywhere. They are dumping nets, and it's got to stop. These vessels cannot be allowed to continue the way they are fishing. As a member of the ABTA, I agree with everything Rich said. At a minimum, the following actions must be approved:

- Implement 100% observer coverage on Category A and B herring vessels for reliable estimates of all catch, including bycatch of river herring, cod, haddock, bluefin tuna, and other marine life.
- Implement Closed Area I provisions with trip termination after 10 dumping events to reduce dumping on Category A and B vessels. The key to dumping accountability rules is to have real disincentives so that legitimate expectations are not abused and turn into loopholes. These measures will do just that since they don't rely just on self-reporting and the use of affidavits.
- Implement measures to prevent midwater trawl vessels in the herring fishery from access to the groundfish closed areas. These boats were allowed to fish in the closed areas under the assumption that they could and would not catch groundfish. This assumption has been proven false. Any lobsterman can tell you that in a 55 gallon drum of bait, there is codfish and haddock, it's not just herring. There is no reason these boats should be towing small mesh gear in areas off limits to groundfish boats.
- Implement measures to require the weighing of catches across the fishery. It is difficult to understand how an important fishery, in this day and age, cannot be weighing its catch. It is completely unacceptable to be basing totals on unverifiable estimates from captains and dealers.

I feel, as well as many of my fellow fishermen, that these recommendations must be met to ensure the future for all fisheries.

Tom Rudolph, Pew Environment Group: We have been working on this amendment since the beginning. It's been a long road, and it's nice to get to public hearings. We are looking forward to finishing it up. I would like to take a few minutes to talk about how we got where we are today. It was during the summer/fall 2007, even though Amendment 1 had been completed, people continued to raise concerns about the fishery. I remember when the Council initiated Amendment 4 at the time, in the fall of 2007, they got more comments on it than any other issue in the past. The Council responded to public concern about bycatch in the fishery, loopholes in the monitoring program, concerns about groundfish and river herring bycatch, and got the amendment initiated. It's been a long 4 and a half years, and these concerns remain as valid today as they were four and a half years ago. If anything, some of these concerns are heightened by what we have learned in the course of the analyses that have been a part of this amendment. I just want to go through a list of what has changed in the fishery?

Now, we are starting to get decent data on the extent of the dumping. When we first started this, there was a lot of denial that this dumping was a problem, and then the data began to come out. First, it showed a lot of tows. For the first couple years we had data, I think it was 8 or 10% or

11% of tows being dumped with fish that the observer couldn't access, depending on how you define dumping versus slippage versus released catch. But then the data came out for 2009 that showed over 1/3 of the tows in the fishery, the observers couldn't properly work up the entire catch because some of the fish are being dumped straight out of the net. So, the first thing that changed is we began to get data on the extent of the dumping, and we found that it is widespread. We found that it's unnecessary based on the reasons being cited. Safety and mechanical failure are not being cited as the reasons for the dumping all that often. The boat is full was the most common example. It's totally unnecessary and the dumping was frequent.

What else have we learned in the last four and a half years? We have learned through the pilot program in groundfish Closed Area I that we have a really good model, a proven tool that can start to reduce this practice and eventually probably put an end to it. It's been proven on the water to be safe and operationally feasible. We have proven that there are solutions – the Closed Area I rules as they exist now. You put a disincentive or accountability system over the use of these exceptions when dumping is allowed, and the fishermen figure out a way to get the fish on the boat, and let the observers work it up. We are not seeing these terrible problems of safety and boats having to leave the closed areas. It turns out that for most of this, they can get it on board. They can do it. We need to expand that to the entire fishery.

The haddock problem has continued and apparently gotten worse. Since we initiated Amendment 5, the herring fishery petitioned for and received a five-fold increase in their haddock bycatch allowance. We also learned that the problem of catching groundfish in closed areas goes beyond Closed Area I. We learned in 2010 that there was significant haddock bycatch inside Closed Area II. The data was sparse, but it showed that the catch rate of haddock was higher inside Closed Area II than outside. That is an area where we didn't think we had a haddock bycatch problem when we started Amendment 5, and now we do. It really highlights the need to get these boats out of the closed areas.

We learned some revealing things about the extent of bottom contact in the fishery. When herring fishermen expressed concern about putting some innovative bottom contact sensors on their gear, they were afraid, they are expensive, and they would lose them on almost every tow. That was revealing in terms of the extent of bottom contact in the fishery. It drives home the need for better monitoring.

River herring – since we initiated this amendment, ASMFC didn't take action in federal waters. They took aggressive strong actions in state waters, but said they would not go there in federal waters. This really highlights the need for this council to do something. The states, in response to ASMFC, have really cranked down on river herring restrictions for the general public and anglers and people fishing in state waters, but federal waters remains totally unaddressed. Also, since Amendment 5, the agency made a finding that the ESA petition warrants investigation, and they are doing an ESA inquiry. And just last week, there was a ruling in a lawsuit in federal court. The judge found that the council should have considered whether river herring is a stock in this fishery, which we believe it is. It is caught, landed, and sold by this fishery in numbers. That lawsuit points to the need for the Council to take a careful look at what it can do about river herring in federal waters.

Finally, the most basic tool of fisheries management – holding the fishery accountable to total allowable catch limits in the management areas – is failing. Again and again, the herring fleet is blowing past the sub ACLs in the management areas, causing great harm to the inshore resource

and small boats and fishing communities that depend on a healthy inshore herring resource. Since Amendment 5, we have had an overage in Area 1A and a series cascading overages on the backside of the Cape in Area 1B, with no end in sight to these overages. They keep piling up.

I will quickly run through the list of options we support:

We support 100% observer coverage on the Category A and B herring fleet that catches the majority of the fish. We believe that this is necessary so that there is consistency with other US fisheries of this size, gear, and scale. In addition to supporting Alternative 2, we support Funding Option 2 – Federal and Industry funds. We support service provider Option 1, the status quo. I believe that was initially put in the document so that the states wouldn't have to go through burdensome requirements that corporations have to go through. But we want to make sure that states should have to go through NMFS certification so that we know the protocols are consistent and we get data sharing agreements that service providers have to meet. No problem if the states don't want to submit the financials and go through the audit process, but in terms of the observer protocols, they should have to do what the other providers have to do.

100% observer coverage is necessary to support enforcement of the herring quotas and catch limits and the dumping controls we support. In Section 3.2.3, we support slippage Option 4D – a hybrid with a fleet-wide allowance of dumping events, after which subsequent dumping would be subject to trip termination. I want to clarify that we believe that Option 4D was inserted into the document with the understanding that operational discards would be prohibited, and operational discards would be subject to the accountability framework. With the caveat that we get that clarified, we support Option 4D. Only a solution based as closely as possible the rules that are working in Closed Area I will work for us.

We support weighing of catch – Option 2 – and we support all three sub-options. Option 1 is necessary and is almost like a scaled down version of the catch monitoring and control plans that we originally promoted. Sub-option 2 is necessary for timely submission of landings reports with the dealers' weighing of the catch. The third option seems critical for linking to VTR for cross-examinations between vessel and dealer reporting.

We support a river herring catch cap. We always have and will continue to do so. We believe that Section 3.3.5 could and should be modified to implement a river herring catch cap as quickly as possible. We don't really understand Section 3.3.5. It's clear to us that the Council was granted the authority to do this under Amendment 1. The Council was given broad latitude to address bycatch problems, including catch caps, in Amendment 1 to the Herring FMP. Section 3.3.5 isn't really necessary. We support a catch cap now. The Council has ability to set a catch cap based on catch history until the ASMFC stock assessment is done. We also support hotspots as a methodology to hold the catch of river herring down. Alternative 3, Option 1 river herring closures. We support this for Category A and B vessels only. I remain concerned that Category D vessels would be lumped into any river herring closures at this time. It certainly is not appropriate for Category D vessels fishing with gear not capable of catching herring. Right now, if a Category D vessel has large mesh on board, it may be exempt. But what if it only has a hook, harpoon, or a lobster pot? Nobody wants them sucked into a river herring closure, and right now the document is a little confusing that they might be.

For groundfish closed areas, we support Alternative 5 – rescind midwater trawl access unless/until the fleet decides they want to do a rigorous experimental fishery under an exempted fishing permit. This is the process any groundfish fisherman who wants to access the closed

areas needs to go through. I can tell you from personal experience with closed area access experiments that we had to jump through tremendous loopholes. We had to test the gear in all times and areas. It took months, in some cases years, and cost hundreds of thousands of dollars to figure out whether we could take the groundfish gears into the groundfish closed areas. Small mesh pair trawls don't belong in there until there is solid data. We now know we have a problem in Closed Area II. I would urge you to implement Alternative 5.

Jesse Field, commercial tuna fisherman, Portland ME: I want to speak in support of what Rich said for ABTA. I think that observer coverage will resolve many of these issues we are thinking about here. Proper weighing only seems like common sense. And closed areas are closed for a reason.

Steve Weiner, CHOIR and ABTA: This has been a long process, and it's eventually going to land in the Council's lap. There have been 60 or 70 people at these meetings so far. People are busy, and the weather doesn't help. A lot of people who come to the meetings don't feel like getting up and speaking. This isn't where we want to spend out nights. But this is an important issue that has been going on for five years – 10 or 12 years for some of us.

I want to repeat that I believe we should have 100% coverage, and it's critical that it is only on the Category A and B vessels. One of the things that has bothered me a lot is that the industry has spent a lot of time throwing road blocks in front of constructive suggestions and real concerns. We never intended for this to be for C and D vessels. There are probably 20-plus boats that catch 98% of the fish, and those are the boats we are working on.

(Mr. Weiner asked questions regarding the possibility for excluding purse seiners from requirements for observer coverage)

I want to point out that there is an average 30% observer coverage on this fleet. So 70% are still not being observed. I spoke with Paul Rago, who is a scientist in Woods Hole and very involved in the SBRM, which I guess is a mechanism to determine how much observer coverage you need. I asked him if the boats fish differently on the other 70% of the trips when the observer isn't on the boat, how does that affect the SBRM coverage? He said that SBRM goes out the door because it really does assume – when you take the data and extrapolate it out - if that data isn't realistic, then you are extrapolating junk. That's what we believe in this room. Unless you get 100% observer coverage, and that may not even be enough. You are never going to be able to know what this fleet is really catching. CHOIR opposes the affidavit proposed in the document. It basically says the captain can look at the net that doesn't come aboard, guesstimate, and report that as reported catch for what he dumped. So the captain signs an affidavit and he tells you what he dumps. We oppose that. That is not independent monitoring. A lot of us in this room are captains, and we can probably tell you not to let the captain be his own monitor.

(Mr. Weiner asked an additional question about taking fish back out to discard after being landed.)

I hope you do the right thing. You have been listening to it for five years. It's from the heart, it's from experienced fishermen. We have been consistently at these meetings and consistently concerned. If the Council doesn't do the right thing here, they are part of the problem.

Tyler McGlaughlin, Rye NH, commercial fishermen: I agree with everything that has been said by – Rich Ruais, Pete Speeches, Steve Weiner, Robert Fitzpatrick. They have had knowledge of this fishery for 30 years or more. It's herring – it's an ecosystem. Without herring, there is no ecosystem. In the Gulf of Maine, if you don't have the ecosystem, you don't have any other fish, you don't have mammals, tuna, dolphins, anything. The method about midwater trawling bothers me. If you are purse seining, you can take the purse, see what you catch, and then you can release fish. When you catch in a midwater trawl, you tow, and everything gets mixed into the net. When fish lose their scales, they die. You can have slippage or shrinkage or whatever you want, but what is that going to do for those fish? They are probably going to die. Just this year in Rhode Island, we had "x" number of bluefin tuna caught by midwater trawlers. It's public knowledge, it's all over the internet. Rumors don't come from nowhere. It's people on these vessels spreading these rumors. It comes from a justifiable source. It had to have happened. For years and years, we have seen them tow off Chatham. We have seen them interact with large female striped bass. They dump the net and there are striped bass everywhere floating – dead. And there is no accountability. How is that fair? It's the same thing if they interact with tuna and whales. They can cut the stomach out of the whales so they can sink and doesn't wash up on the beaches and disturb the public. It's not fair. The boats are just too powerful and too big. It's not an ethical fishery. They are moving. It's like clearing hay. Whatever is in their path is gone.

I support 100% observer coverage. These guys go out to Georges, they go all over the place. One guy can't cover everything. It should be two men, 12 hour shifts. Make sure that ethical fisheries happen. In the fishery I participate in, ethics is everything. We have to obey laws. Our quotas are super strict. We get affected by dead discards from offshore longline vessels. It's ridiculous. We are an inshore rod and reel fishery. Why should we be subjected to regulations? When midwater trawlers can just tow in closed areas that small groundfish boats can't get into? It's not fair to the fish. I have seen it. The midwater trawl vessels have their sonars, so they come right inside three miles, take some bait, and then go right outside the line and there is no penalty. I have seen this. When I was 18 years old, I can remember sleeping on the anchor at night, and a midwater trawl vessel came through and towed the anchor for four miles. Being a young kid, I was pretty scared. These fishermen don't have any regard for anyone – fish, humans, mammals, anything. It's just not fair.

Why should any big vessel be allowed to fish in a closed area? When a small gillnet vessel with a precision net setting maybe three nets – how is that going to be more destructive than a huge midwater trawler coming through and plowing the ocean? It doesn't make any sense. To say that midwater trawling is a clean fishery, that the small C and D boats interact with less river herring than the big boats, is complete bogus. There is no way to determine – river herring don't migrate out and come back inshore – these small boats with a net that opens maybe 50 or 60 feet, that a midwater trawl isn't going to catch more? They tow the net between two boats. They should be excluded from all of this.

If they do pull a cord on the net, every fish should be counted against the quota. We get fish counted against us in the fishery as dead discards. They should have dead discards count against them as midwater trawlers. It's only fair. These are big powerful boats chasing after small fish. Why do we need such big boats taking small fish? I don't know what the numbers are, but most of the fish they catch is being shipped to other countries. It's not even used to the lobster bait fishery. And the prices just keep going up. It would be one thing if the midwater trawlers were

contributing like 80% of what they catch to the lobster bait fishery, but it's not that at all. How is that fair? They are taking our resource and shipping it to other countries, and now other fishermen in the United States who catch other species in the Gulf of Maine cannot target their catch.

Ben Martens, ME Coast Fishermen's Association: I work with the small boat inshore groundfish fleet in ME. I'm going to be brief because I know there are a lot of people who want to comment, but I think it's important to provide a different perspective here at this point. I want to focus on one issue here that our guys are concerned about, and that's access to the groundfish closed areas. We have heard a lot of bad news out of the Gulf of Maine about what's happening to our groundfish stocks. We are starting to hear some really bad news about haddock and other groundfish species as well, which have been shown to be caught in midwater trawl nets. If we are going to use these closed areas to try to rebuild the stock, we really need to treat them as closed areas at this point. What we are doing right now is not working. The groundfish industry is under a hard TAC. We are really trying to control all of different inputs there. We are trying to bring back Gulf of Maine ecosystem. We have set aside these areas as important to that process, so we really need to treat them as such. We have had a lot of guys who have brought this up, especially over the news that has been coming out about some of these resources. We will be submitting written comments.

Additionally, always going back to the Gulf of Maine ecosystem and what we are seeing out there, we are focusing on trying to rebuild the stocks, and making sure that we have enough forage base in the Gulf of Maine is crucial to that effort. To do that, we need to know what is actually happening out on the water with these boats. So 100% observer coverage on the A and B vessels is really important. They need to be held accountable. It's too big not to be held accountable. We need to expand the groundfish closed areas. The biggest part of the accountability isn't what is coming on the boat and going to the dock because we have great records. I do trust what is coming on board and going to the dock, but I do think that any time there is dumping, you need to take care of that. You need to account for what is dumped. We work with a lot of guys who need the herring, and we don't want these guys to go out of business. But we need to have accountability in place and make sure what is coming out of the water is correct and they are being treated on the same level as the groundfish guys.

Mike Faulkingham, ME Association of Charterboat Captains: Based on the evidence we have seen of impact of slippage on groundfish and other bycatch, herring stocks at depth and wherever they school, the true impact is that species are being negatively affected and we need to document that further.

To that end, the ME Association of Charterboat Captains supports 100% observer coverage on Category A and B boats, as well as observers watching for net slippage through completion of the trawl.

Dean Gower, commercial fisherman: We need 100% viewing on the boats. From a lobstering standpoint, they are hammering us on the gear. Every trap we lose, that's money coming out of my pockets. It's killing us.

If the captain fills out a report as to what he brings in, and his fish buyer fills out a report, there is no one really monitoring what is going on? Those two will always come together to make

money. Where is the government watching out for what is going on? They can audit this stuff till they are blue in the face. If you are the buyer and I am the fisherman, and we are making money, why are we going to stop? Our slips are always going to match. And they are going to match. Why don't we have people monitoring this from the government and tallying the weights? It's a central concern. Why don't we have this? This is such a big issue and there is such grey area. My father was a commercial scalloper for years and said fishermen are their own worst enemy. They are greedy. I'm more into the lobstering side of it, and I believe not fishing out what we want to do, but there are a lot of guys out there who don't care, and they will slip through whatever to make more money. Also, with a lot of the regulations involved, a lot of guys have to do that just to survive. If we are going to pass these laws, when is the government going to step up and actually oversee them? Make sure they are being done.

Joel Strunk, tuna fisherman, ABTA: I support everything that Rich outlined. I have been engaged in groundfish fishery. I am a tuna fisherman, but I have done a lot of work gillnetting over the years. I have friends that are still gillnetting, and there is a great polarity between success now when they go out and when I did it.

On the grounds I used to fish with gillnets, in the day we would do 10-12-14 thousand pounds of codfish. I can't jig on there now. There is a lot of work to be done in the groundfishery. To invade some of the few sanctuaries that are out there with huge boats that deal with great volumes of biomass is pretty unreasonable. I don't think we are taking those sanctuaries serious. Speaking of the huge volumes of biomass that those vessels engage in, it would only be reasonable to have 100% coverage on those vessels, considering the biomass they engage in.

Roger Fleming: We will file detailed comments. Our comments will be consistent with virtually everything you have heard in terms of the alternatives we encourage you to adopt in your final decision-making. I want to note two or three points. As you know, we have worked with Midcoast Fishermen's Association for years on the groundfish closed area issue. We know now that the original rule that allowed midwater trawl vessels to access closed areas was based on a false premise. We strongly encourage you to adopt Alternative 5 – treat them the same as you would treat groundfish vessels. Make them go through the exempted fishing permit process before giving them access to the groundfish closed areas.

Second, I want to agree with the point that Tom Rudolph made earlier about the river herring catch cap alternative in the document. I was a little surprised that this became an alternative in the document. When you passed Amendment 1, it included a list of measures in the document to reduce bycatch. Bycatch caps is clearly one of those measures. I can see how it got overlooked because the regulations do not go through and list every specific measure in the Amendment 1 document, but it's clear that it is incorporated by reference. The alternative in Section 3.3.5 should be stricken, it's not really an alternative for adoption in this amendment. Alternatively, we would encourage you at the very least to remand or modify that alternative to adopt now a river herring catch cap. There is adequate data to establish a cap. It's done in other fisheries with comparable amounts of data.

Finally, in view of the decision of the Flaherty v. Bryson case, I would speak specifically on behalf of the plaintiffs, the most significant holding in that case is the error of not including river herring and shad as stocks in this fishery. I would submit that at this point in time, you could modify this catch cap alternative to include river herring and shad as stocks in the fishery. It

might require either going back out to public comment for a few days, or alternatively, a subsequent framework action to fill in some of the details in terms of the full suite of conservation measures that would be required. I would strongly encourage you now to adopt river herring and shad as stocks in the fishery, not just because the court found that legally it's required, but because it's really the right thing to do. There is no question that river herring and shad are in need of conservation and management, and that's a trigger for attention – that it should be included in the fishery. We encourage you to take that step now. The precise remedy coming out of the court is currently being worked out by the parties, so you may hear something on that before you make your final decision, but you can do it now and take the steps necessary to fix this problem.

Peter Mourmouras, Biddeford ME: Steve Weiner made excellent points. I would like to endorse implementing 100% coverage on Category A and B herring vessels. Also to prohibit midwater trawlers going in groundfish closed areas. Those are the two most important areas for our future.

98% people here are giving you first-hand knowledge and information, and I don't think that anyone is exaggerating as a fisherman in terms of what they are seeing. We are trying to protect the future. Every industry – computer, recreational, fishing – is trying to invest in their future. We probably won't see it in the next ten years, but we all would like to try to see this continue. It's a heritage, it's an activity, and it's commercial. It's a right to have to be able to fish in your own waters. Other people taking your catch is absolutely appalling. I have spoken to lobstermen who have seen it. They think that it's an adequate amount of catch they are getting now, but they don't see any of this herring coming off these trawlers. It's going out of the country. We really need to protect our future. That's what everybody in the industry is trying to do. I hope you have some consideration.

Mike Lorusso, recreational and commercial fisherman: I agree with everything said in the room about 100% observer coverage. There should be at least two people on the boat observing it so that they get 24 hours coverage. Keep the A and B boats out of the closed areas. I have seen some of the fishing methods they do and how much fish they can wipe out in a day. It's pretty appalling. If we want to keep the fisheries alive and keep the herring fishery going, they A and B boats – we don't want to put them out of business, but they are going to put everyone out of business if it keeps going this way. I agree with what has been said here today, and I hope that you do the right thing to keep the fisheries alive.

Garon Mailman, tuna fisherman: I support 100% coverage on A and B vessels. The more herring around out here, the better off we will be. Keep them out of here. Trawlers and draggers bad, herring good.

Keith Jordan, commercial lobsterman: As a lobsterman, we need herring for bait. I am here to stick up for zone 1A where I lobster fish. I have had plenty of gear conflicts with midwater boats. I have never had a gear conflict with a seiner. The seiners could probably catch the quota in 1A. I believe they could have last year, if you give them enough time. For your document, 100% coverage might help with gear conflicts as long as they are looking out the front window when they are towing, and the back window when they haul back.

Patrick Paquette, recreational fishing advocate: I have spoken at other hearings, but we continue to find loopholes that I want to get on the record.

Option 3.2.2 measures for catch monitoring at-sea – Option 2 sub-option 2D – requirements for trips with multiple vessels. I know it's been a strong feeling of ours that if one body on a boat is considered 100% observer coverage, which I don't agree, but even more dramatic is the loophole that even if this option is to go forward, which I haven't heard a lot of controversy about, it leaves this statement at the end wherever and whenever possible. If the Council approves sub-option 2D, requiring a body on both vessels in a pair, or it says in the larger document when fish come aboard, that it's not an observed trip if fish is pumped aboard the second vessel and there is no observer on it. It's the only way to clean it up, and there is a giant loophole. We have heard testimony from maybe the PDT, or maybe the observers, that there are occasions where the fish are pumped away from the observer. The public assumes that would mean 100% observer coverage, if fish are coming on the vessel, that's a big loophole.

Also 3.2.2 Sub-Option 2F – visual access to the codend. This is in that suite of measures to help the observer. There appears to be another loophole in this. “On trawl vessels, the codend and any remaining contents...if this is not possible...the observer will document the process...”

I'm sort of tying this big giant hole with the language earlier that addressed operational discards. This seems to be saying that they are going to do all this work to make sure the observer is going to see the codend, but it describes it as the codend and its remaining contents. Later in the document, there is a section that would allow for what remains in the net not to be seen. Bycatch and operational discards, which I believe is the exact same thing. Operational discard is potentially bycatch, and without an observer seeing it, those terms seem to not meld together. I get the nuances, but this option as a standalone sounds good but it has a hole in it, saying we are going to do the best we can to let them see the codend, and then you have a loophole in the slippage measures. It sounds like there are two holes stuff can fall out of, but three different ways that good things can happen. I am very concerned about the Council meeting coming up, and Council members making some common sense assumptions about what something means, but then we get into the details, especially when we have heard industry lawyers at the microphone saying they look for loopholes.

Also, back to the affidavits – the affidavits are only required when there is an observer on board. The two slippage options that we are reading – one with five events and ten events before the accountability – but I have recently learned that only counts if there is an observer on the boat. So anything less than 100% coverage means that we are not counting the dumping events in those areas. That's beautiful if you are lucky enough to live or be affected by the conservation measure in an area with a lot of coverage, but if we have anything less than 100% coverage, there is going to be a big giant place where they can dump. The data has shown that dumping is happening in all management areas. The only data we have is that the Closed Area I rules work. The affidavit is really concerning. It sounds to me that we are only looking to minimize slippage when there is an observer on the boat. That's not why the constituents I work with are upset. We are upset because we believe that the boats fish differently when they are watched and not watched. Anything less than 100% for the measures to reduce slippage really won't work. It's very important that that is clearly understood before you vote. We will submit comments, but I will find it hard that you can read the number of comments that you will get. I want to point this out because there seems to be a giant number of loopholes that make good measures sound bad.

Brian Currier, Standish Maine: I agree with my fellow fishermen, I 100% agree that we need to implement the observer coverage on A and B vessels. We need to look out for our future, it's not just us as fishermen, but it is also going to carry into the next generation. At the rate we are going, it's looking like there won't be anything there.

Donald Simmons, tuna and lobster fisherman: I agree with Rich and Steve Weiner. As a kid, when I was five years old, I used to go to Cashes Ledge all the time with my dad. I would haul the fish and lobsters. We would see herring on the surface all day long. Herring is supposed to be on the bottom during the day. On Cashes Ledge, we would see them all day long. In the 90s, I went tuna fishing also. There would be so many herring on the surface for miles. Once the midwater trawlers got there, it took seven days to wipe the herring out on Cashes. That was in the 90s. I have been back every year, and I have still yet to come across a school of herring big enough for a seiner to even set on. It took seven days for years of herring to disappear. To me, that's ludicrous.

We definitely need observers on these vessels 100%. I am not a big seal lover because I am a fisherman. And I know for a fact these boats are not just catching herring. They are catching seals and whales. I know a friend who went out on one of these boats on an overnight trip. They caught 400-500 seals. They couldn't pump the herring because seals were clogging the pump. I dislike seals, but that's still a brutal way to go. There's so many things that these observers – If I had an observer on the boat, and I was going to catch herring, the last thing I would do is fish if I knew there was more herring where the seals were. When the observer is off the boat, who cares about the seals as long as I make my million dollars. There are so many factors that you guys don't know about, that science hasn't seen, but the fisherman have. I totally agree on the observer situation. These guys fish night and day around the clock. I haven't bought herring to go lobstering with for years because of this. I buy frozen bait. I don't believe in it. It's too bad too, because the seiners are nothing like that. They only fish at night. Years ago, on Cashes, they could fish during the day because there was that amount of herring there. I haven't seen that type of herring fishing like that for years and it's too bad. I definitely support the observers. And if we let the boats go into the groundfish areas, if they are closed for groundfishing, that should be a herring sanctuary also.

New England Fishery Management Council
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Holiday Inn by the Bay 3.21.12

ATTENDANCE SHEET
Travel Authorization # 12-48

ATTENDANCE AT: Herring Amendment 5 Public Hearing

DATE: Wednesday, March 21, 2012 LOCATION: Holiday Inn by the Bay, Portland, ME

CERTIFIED BY:

IMPORTANT... Any information provided on this form is subject to Freedom of Information Act (FOIA) disclosure and may be made available to anyone requesting such.

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New England Fishery Mgt Council

Attendance Sheet

Attendance: #12-48

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New England Fishery Council

Herring Amendment 5 Public Hearing

Attendees 3/21/12

Held by the Bay

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3/21/12

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Radisson Hotel Plymouth Harbor
Plymouth, Massachusetts
March 27, 2012, 7 p.m.

Hearing Officer: David Pierce

Council Staff: Lori Steele

Attendance: see attached (approximately 90 people)

Dr. Pierce introduced Council members and staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the NEFMC Amendment 5 public hearing document. After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5.

Public Comments

Gib Brogan, Oceana: I have been a herring advisor for the Council since 2003. It's great to see that we are finally getting around to answering the questions about what is necessary to monitor this fishery. I think everybody knows that need reliable, timely data on catch – landings and discards in this fishery – to effectively administer annual catch limits. We have seen two areas this year with rapid catch, and lags in data and reporting isn't acceptable in this fishery. We need timely information that is both accurate and precise, and those are two very different concepts. Precision gets most of the attention as we talk about the standardized bycatch reporting methodology and CV levels, but accuracy is the name of the game when we talk about quota monitoring and looking at bycatch. This is something that the Fisheries Service has advised. We need accurate monitoring for ACL enforcement, and SBRM is inadequate for this purpose. The SBRM itself, when it came up with the 30% CV, said for quota monitoring, it is insufficient for the cause. We sent this out and asked questions about what does a 30% CV mean for catch levels? The simulation model came back and said we could be looking at plus or minus 100% of the true value. Bumping it down to a 20% CV, we are still looking at plus or minus a 50% level. So when we talk about quota monitoring, we could be shutting down the fishery way too late or way too early, which has serious implications. So we need to have strong, accurate information about this fishery to make the ACL process work.

In looking at the current range of alternatives, it seems that the only one that meets this and provides the accuracy that everyone needs is the 100% alternative in the document now. Short of development of something else that meets performance standards for accuracy and demonstrates that you can collect accurate information, 100% observer coverage is the strong and the only acceptable alternative in the document right now.

In terms of the funding, I believe that mixed industry and agency funding is the way to go, but we need to put in safe guards. The Agency, in the past, has put in flexibility and latitude and discretion on how it deploys observer coverage. When we go into a partnership between the

Agency and industry, that flexibility can be manipulated, and the standard of coverage will be compromised. Something the Agency has referred to in the past is “external operational constraint,” meaning that a shortfall of money in their federal budget has let them put in an insufficient number of observers. That is now acceptable. We need to have the standards and an understanding that if the Agency doesn’t have the money, the industry will pick up the shortfall. That should be clearly spelled out in the document, in terms of how it will work every year and the constraints in the federal budgeting process. Those should be ironed out. There can’t be wiggle room in there.

In terms of the ESA listing for river herring, we are anticipating more information on that in November before this is implemented. After being involved in both ESA and fisheries for a while, I think it would be in the best interest of the Council, Agency, and the industry to put their best foot forward as we go into potentially a Section 7 consultation. We have been advised by the Agency in the scallop fishery that if you are going into a new consultation, any actions taken leading up to a new consultation, like the strong actions in this amendment, can be considered in that consultation. So to keep the remedy under ESA as reasonable as possible, taking strong action now is in the best interest of the fishery. To that end, we support a bycatch cap, either regionally or coastwide. Then, let the industry sort it out, very much like the scallop industry has done. The hard backstop is the way to go.

Rich Antonino, Plymouth MA: I own a charter fishing business out of Green Harbor, MA. I support CHOIR and all their recommendations to the Council tonight. I am 100% behind them.

Michael Pierdinock, Green Harbor MA: I am a charter boat captain and officer of the Stellwagen Bank Charter Boat Association. I support the items set forth in the letter presented to the Council from the CHOIR Coalition.

Carol Carson, Marine Biologist, President of New England Coastal Wildlife Alliance: We need to ensure the continued existence of important forage species like river herring and shad and ensure their consumption by other marine wildlife. Forage species in New England waters directly support various commercial and recreational industries like whale watching and recreational fishing. The loss of these species will have lasting negative impacts on the industry, both large and small, and the revenues they generate the jobs they create in our New England area. Therefore, we feel it is important to:

- Set an annual catch limit or cap on the total amount of river herring caught in the Atlantic herring fishery
- Ensure there is 100% at-sea monitoring on all midwater trawl fishing trips, with one observer and better yet, two
- Enforce that there is no herring midwater trawling in areas established for groundfish rebuilding
- No release or dumping of un-sampled catch except under exceptional circumstances such as mechanical failure or when safety is a concern, and an accountability system to ensure that exceptions are not abused.

Steve James, Green Harbor: I am a Charterboat captain for Green Harbor, President of the Boston Big Game Fishing Club, and I run the Monster Shark Tournament. I sell herring oil. I was the largest distributor herring chum in the State some time ago. I switched over to menhaden. I am involved in the distribution of bait and chum. I am here to represent interests of Green Harbor Tuna Club and the Stellwagen Bank Charter Boat Association and the 130 members we represent, which are charter boats from the South Shore predominantly.

I would like to suggest that we need to improve observer coverage and put effort controls in place for bycatch that we are seeing out there. None of my organizations want to see commercial midwater trawlers put out of business but need to see efforts to clean up fishery. It's an antiquated process in relation to where we should be at. It's by no means an artisanal fishery at all, it's a very mechanized process at the industrial sweep level. With that said, I drafted a letter, and I will run through the options quickly:

Section 3.1.5 Option 2 – dealers have 100% accountability for all fish

Section 3.2.1.2 Alternative 2 – require 100% observer coverage. This is a very important step to cleaning the fishery up.

Section 3.2.3.4 Alternative 4D Closed Area I Provisions with trip termination – we suggest five events.

Section 3.3.5 Impose a cap on the total amount of river herring. One percent of the entire bycatch of the fleet is going to ruin herring, and it constitutes a tremendous volume in terms of gross tonnage.

I would like to ask for a quick vote – a show of hands of people here this evening that endorse the CHOIR letter that has been drafted. These people endorse the position not only by CHOIR, but also Honestbycatch.com, as there is virtually no difference.

(About 60-70 hands were raised, about 75% of audience)

I would conclude that of the 80 or so people here right now, the vast majority raised their hand supporting the CHOIR position.

Alex Mansfield, Jones River Watershed, Kingston: Just for the record, I didn't raise my hand because I hadn't read the letter, but that doesn't mean I don't support the suggestions.

For 25 years, our organization has been doing advocacy, stewardship, and restoration work in our watershed and on the South Shore of Massachusetts. That includes water quality work, flow advocacy, and habitat restoration. We consider that river herring are key indicator species. If river herring are doing well, then all the other things we have done is doing well too – water quality, flow, access, habitat. The work we are doing includes dam removal. We were just successful in removing the dam Jones River last fall. We are working on another one. Those projects take an enormous amount of effort on our part, and our funders, including DMF, the Towns of Plymouth, Kingston, NMFS. We are talking about help at the state and federal levels. We have a volunteer base of over 100 people that do herring counts in the river and keep track of river herring. It generates data used by the state and our organization.

Then, we look at offshore bycatch numbers that totally overwhelm the river herring population in the Jones River. We know we are doing our part in terms of inshore habitat and spawning

restoration, and we are asking the Council to support the adult and juvenile life cycle stages at sea.

I think that the catch limits proposed in this document are too high. Even to reach these catch limits would wipe out every herring run in Southeast Massachusetts. I know you are not looking for new suggestions, so we support your best proposed catch limits and 100% observer coverage.

Kurtis Maxon (sp?), Green Harbor Charterboat Captain: I am a charter boat captain out of Green Harbor. I am also a member of Stellwagen Bank Charter Boat Association. I am also here to represent the Northeast Tuna Club, 117 members strong. We are in favor of alternatives specified by the CHOIR letter. Everything else I had written down, Steve stole my thunder. Thank you for your time.

Robert Fitzpatrick, Maguro America, tuna dealer: I will “ditto” some of the CHOIR stuff: 100% observer coverage. Keep them the hell out of the groundfish closed areas, don’t let them in at all. Regarding enforcement, weigh the fish.

It seems like very few people ever say wow, there’s a lot of herring. Tuna fishermen throughout the Gulf of Maine and east of Chatham in the fall – there is no bait. When we continually check the herring dipstick and there’s nothing on it, I wonder if perhaps some retrospective analysis of what might have occurred to cause this problem. The purse seiners couldn’t catch half of the “Mickey Mouse 27,000” last summer, and they are state-of-the-art boats, not the mom and pop stuff that used to catch 40,000 a year. There were some fines handed down in Scotland this month to 20-some odd midwater trawlers, ironically. They had a good system of weighing the catch with government observers and auditing of the dealers. But these vessels in Scotland took \$75 million too much herring and mackerel in a three-year period. Bill Overholtz, who I would say is the “Godfather” of the herring disaster that we have, with his mega tonnage biomass that we used to think we had, he told me that if 20% of the catch is getting dumped under-reported, or not reported, you will lose the fishery. It appears that maybe that has actually happened, that we have lost the fishery. There are places where there were discrete spawning stocks in the Gulf of Maine that are just not there anymore.

I asked in Portland about the hailing from the vessels, if it always matches the offloading dealers numbers. I was told that it is close. I can imagine that is probably true. Does anybody ever think about perhaps auditing the sell side of the dealers, not to make criminal cases against people, but to see what has happened. 20% under-reported or un-reported, you are going to lose the fishery. And it is apparent that we have lost the fishery. Maybe we should look back at the sell side of the dealers, see what they sold. It would be interesting to see what’s really happened in the fishery.

John Richardson, Hingham: I am supporter of CHOIR for a number of years. I have read their February letter, and I am very much in support of the changes suggested in that letter.

I really feel that if the elephant in every hearing room in this program is the part that is least talked about, and that is the standard of success of maximum sustainable yield. I think that when a single fishery is managed, and the abundance of that fishery has so much impact on the abundance and location in the Gulf of Maine of so many important predator species, then the standard of single species sustainable management is inappropriate. If I am right, then with all this effort, if it becomes a perfect effort, it can be successful in achieving a successful fishery,

sustaining river herring, but it can also be horribly unsuccessful in achieving enough of these forage fish to make the predator species also successful and keep them where they are supposed to be. My suggestion would be not so much with the proposals that are here, although I do support the CHOIR changes. I would suggest to review your target, the maximum sustainable yield of a single species and its appropriateness for this kind of management.

Ralph Pratt, Marshfield: I am for 100% observer coverage. I think counting the fish is important, but observers also play an additional role. They are a deterrent in interactions with bycatch. That's why you need 100% observer coverage on all the boats. Any time you have a gear type that can interact substantially with non-target species, and observer might – if they are not there, it's going to be anything goes. But if they are there, there is some control on that, I believe.

Shane Yellin, fisherman: I would like to see 100% observer coverage. I agree with everything CHOIR has written. As far as the cap on the catch triggers, those numbers seem really high to me. I agree with the previous gentleman who spoke. We need to preserve river herring. They are in serious trouble and may be on the endangered species list soon. In that spirit, I would like to cite the case Flaherty vs. NOAA/NMFS and ask for expedited execution of these amendments as soon as possible, not waiting until 2013 when they are passed this year.

Dean Clark, Stripers Forever: I represent Stripers Forever, a coastal conservation association made up of over 17,000 members. We support the CHOIR proposals. I would recommend that instead of valuing the fishery based on maximum sustainable yield, do it based on maximum sustained value. Right now, you are under-valuing these fish. They are more valuable economically as a forage fish than they are as a commercial product. I would ask you to consider revaluing these fisheries, not just the herring fishery, for their long term and effective value to other fisheries, and how they inter-relate with one another. Instead of species management, eco management instead, or a full environmental management program.

We want 100% monitoring, and we believe in catch limits. We think that the triggers on river herring are set way too high. They ought to be much lower, they should be more conservative. Many people in Massachusetts will tell you that river herring are going the way of the anadromous white perch. In many of the streams, they have already been extirpated. We don't want to see that happen. This is a river herring fishery that is not only in decline, it's in desperate need of better attention and less harvesting.

(Shane Yellin seconded Mr. Clark's comments about maximum sustained value.)

Chris Weiner, bluefin tuna harpooner: This is my fifth or sixth hearing. I wasn't going to talk, but since so many people have supported the CHOIR thing, I wanted to get on record what exactly we are asking for. I don't think we have submitted the letter yet. The first thing we are asking for is 100% observer coverage. A lot of us got involved in this battle for a reason, and while we don't get into all the details of what has been seen, heard, and told to us by crew members, we are very sure that this is not too much to ask. It's a very important thing to have on boats like this. We often get told at these meetings that if we are going to do this, the C and D boats should do this too. You can fit 10-20 D boats into some of these boats. There is no comparison between these 15 boats and any other boat around. I don't think that 100% coverage is unreasonable.

The second monitoring aspect we are looking for is involving dumping or slippage. We prefer to call it dumping. We believe that after 10 events of dumping per area, there should be trip termination. So for the crowd, that means that if you have the four areas, and the boats go out to a given area, and ten different times, they dump. After that point, if a boat dumps again, they go to another area or they go home, bottom line. There are exceptions built into that. The reason for that is because everyone in this room that has ever been around these boats knows that dumping occurs. You might as well not have observer coverage if you are not going to address the dumping. It's important that you have both of those. This gear type is different than any other gear type. Where a groundfish boat brings the net on board, save for a few rare occurrences when a bag is too big and they have to find a way to get it out. The main reason we are fighting this is because if you look at how one of these boats operates, it pulls a 500 to 800 thousand pound net up alongside and pumps it in. If they don't like what's in there, they can easily let the catch go, dump it, slip it, whatever you want to call it. Both of those things should be on A and B boats. That's a critical part of our letter. Over the last four years, representatives from certain parts of the industry have tried to rope in every single little dragger, every tuna boat that has some kind of herring permit, and that was never the intention. We are hoping that those two rules apply to the 20 – well it's 40 boats – but it's really 12 to 15 boats that actually go out and catch it all. That's A and B boats only. We do not believe that C and D boats should be involved in those two points.

The third part of the letter is the boats should be removed from the groundfish closed areas. I don't see how that needs much explanation when you are talking about small mesh being towed at 5 or 6 knots by pair trawlers.

The last thing is find a way to weigh the catch. That doesn't necessarily mean you weigh every single fish. Just find a way to have some kind of verification, third party, whether it's the dip-sticking that Peter Mullen talks about or some way. Just looking at the net, as good as the captain may be, I don't look at a tuna and go 300 pounds, and that's the number that gets written down, even though that fish might often be 300 pounds, it could be 320 or it could be 280. When you are talking about hundreds of thousands or millions of pounds, small differences can add up a lot.

Those are the things we are asking for, and we hope that the Council will make the right decisions. When I tell people that we have a herring meeting, they say "are you going to ban them yet?" That is the natural reaction – let's get rid of the gear. I think most people don't see it to be very unreasonable for a fishery made up of 12-15 boats catching almost 100,000 tons, it isn't too much to ask to have rules similar to the rules that would be on them in any other part of the country. There is a reason for these packed rooms. In our fishery, we have been really impacted by the lack of herring. All of these things add up to how healthy the herring stock is. We don't think that this is unreasonable.

Steve Marr, Senate President Murray's office: I am here to listen to the concerns of people. She wants to make it clear that the fishing industry is very important to the Commonwealth, in her district and across. It's important to have hearings like this to hear from the fishermen themselves, the people with the most vested interest. Any concerns you have, anyone in the audience, feel free to talk to me afterwards.

John Rice, commercial fisherman, Cape Cod: I don't think that any of the proposals for river herring will do except the closed areas. I like Alternative 3. I don't like the idea of waiting until we have caught whatever we think we caught, and then let's see for another year if the river herring will come back. All of the sport fishermen, recreational guys, charter guys, and everyone who has suffered through the moratorium has suffered enough. Taking more chances with this species is one too many chances.

Dave Kraus, Charterboat Captain, Scituate: I would like to address some things that are not in the amendment but really need to be said. I don't think the amendment goes far enough. The catch cap on river herring is so high because we are dealing with an industrial fishery. The catches are so high that even observers observing thousands of fish going by a minute are not going to see river herring. The way the operation works doesn't allow adequate observance of what is going on on the boat.

I would like to see all the pair trawlers go out of business. Canada banned it 35 years ago, and they have a great fishery now.

Bill Henderson, Charterboat fisherman, Hull MA: I am part of Stellwagen Bank Charter Boat Association and Green Harbor Tuna Club. I support the CHOIR changes. I will speak from a fisherman and charterboat captain out there for the last few years.. When you talk about forage fish, I just don't see them. When we target tuna, when we target stripers – without these fish, the fish aren't there for me to target. Whatever the best way to get this fishery back in to a better stock would be great. I also ask – when we talk about stock assessments and about getting a good handle on what is there and what is not there – it would really be appreciated. How do we know what is there and what we might be doing to the fishery if we don't have the data to make the decisions on? I would love to see these fish come back.

Wendy Paquette, recreational angler, Cape Cod: Regarding Section 3.1.5 – reporting requirements for federally-permitted dealers. Currently, the captains estimate tonnage of their catch, as does dealer. I urge the Council to consider Option 2, which would require federally-permitted herring dealers to accurately weigh all fish.

Doug Brander, Charterboat captain, Hull MA: I am a member of Green Harbor Tuna Club, Stellwagen Bank Charter Boat Association, New England Charter Captains Association, and I support CHOIR recommendations. Over the past 30 years, I have seen a large decline in the amount of bait, and we rely on it. The business relies on it. Whatever bait seems to be left, the dogfish seem to be eating it. The river herring was also a family affair, and I would like to see it come back.

Alan Assbaka, Charterboat captain, Chatham: I am also a tackle manufacturer. I support CHOIR. I have a real problem with the vertical integration between the boats and dealers. I am in the tackle industry, and I can't be vertically integrated. I have to pay tax through sportfishing excise tax. With these guys, the left hand can sell it to the right hand, and there is no accountability at all in any level. As a tackle manufacturer, my company can't be integrated for sportfishing excise tax. A fishery is a fishery, and it's crazy that I have to be put one way, and someone else is allowed to be vertically integrated because they are a big business. I think it's complete bullshit.

Rich Buckley, recreational fisherman: I fish from shore. I am a member of the Mass. Striped Bass Association, and I support the Honest Bycatch recommendations. I just want to make a couple observations. I am retired now, and I fish from shore. I run into a lot of people. There aren't the forage fish around from shore that there were a while ago. I have heard about big feeds regarding river herring, but never seen it. I have run into "peanut bunker blitzes" from shore. It's a wonderful thing, but I didn't run into a single blitz last year. Also, a few years ago, there were a lot of tourists fishing from shore, people from New Jersey, New York, Canada, and you don't see them anymore. Finally, I would like to say that it's hard to get young people involved in fishing now because there is just not much opportunity to catch striped bass from shore as there was a few years ago.

Steve Gettle, tuna fisherman, Green Harbor: As a tuna fisherman, I have seen impact of these midwater boats in our traditional tuna areas. They come through, and after that, the tuna leave, it's pretty simple. I am happy to see that you are considering 100% observer coverage. These are high impact boats and can do a lot of damage if they are not watched. They are industrialized fishing, and they need it.

I don't think that boats should be allowed in groundfish areas. If you are trying to rebuild groundfish in these closed areas, why let a boat go in there and take the forage out? It doesn't make any sense to me.

I would like to see dumping limited to extreme cases where the crew safety or boat are in jeopardy. To willingly dump fish because you don't want them makes no sense to me.

Putnam McLean, tuna fisherman, Marshfield MA: I support the observer coverage. This past summer, I saw pair trawlers working west of Stellwagen ten miles east of Marshfield. I don't remember seeing them before so I don't know what sampling has come from that area, but they may have been there at times. I stopped and watched them pump out. I saw a significant amount of dogfish being discarded overboard. I didn't stick around and watch the whole pump out. I was looking for tuna. Other places off Chatham, I have seen significant discards of great big cow bass. There were some videos this summer of striped bass as well. I don't know what provisions there are for discards of these other species. Clearly, running big nets through some of these areas where you have other species besides groundfish would be problematic. I can't imagine running those big nets around Stellwagen Bank without running into lots of striped bass, bluefish, or who knows what else. There is no end of things that we don't want to see happen.

Patrick Paquette, Massachusetts Striped Bass Association: We are submitting lengthy comments, but I want to continue to bring up a couple of points.

We will oppose the SMAST option because we believe that it has now proven on its own website that it did not work. It is supposed to be a river herring prevention program, and there were three large river herring bycatch events this past winter that happened over five weeks in a relatively close area. My assumption is that the program failed to prevent multiple river herring bycatch events. (Dr. Pierce asked about the bycatch amounts.) You can't get the details. We called and were told the details would come out in the report. They are large events by their own definition.

We would urge the Council – in the beginning of the river herring section, it states clearly that the options in the document can be combined. We believe that whatever protection or monitoring options the Council chooses, the only way they will work is if the Council exercises its right to set a river herring cap. There is a cap in this document, and there was a cap in Amendment 1, so it can easily be done. Based on the way that other caps have been set by the Council, especially the haddock cap in this fishery, this does not have to be a cap based on biological effect on river herring. It will not be difficult for the Council to come up with a river herring cap in this fishery based on recent catch, in a similar methodology to what they did with haddock bycatch.

One other major loophole that we continue to get back to, and hopefully it will be addressed by our State representatives, is this loophole of allowing operational discards to not be counted as slippage events. Operational discards are what is left in the bag after pumping operations. However, I do not see in the document any limit to the size of what that is. Whether that is a test tow that comes up with a bag full of bycatch that is too large because maybe it has a mammal or a turtle or something that shows a shape on an expensive sonar machine that shows we don't want it seen by the observer. We decide that's an operational discard after a test tow, and we can release it subsurface where the observer cannot see. The color of a turtle or mammal in the water inside a net with a 15-minute tow of fish through a mixed species of herring during a predation event is easily hidden when you dump it. I believe you saw the video that we sued the Observer Program for under Freedom of Information. It showed the net from the side of the deck, in the video shown in 2010, and it was clear that the observer cannot see into the water to identify small or large amounts of bycatch. The way the rule is written now in the document, operational discards, amounts of fish left after pumping that cannot be shown to the observer, don't count as a slippage event. If the observer can't see it, it has to count as a slip or a dump, as a dead discard. As a recreational fisherman, I am being charged with every haddock I release as a dead fish. We are being charged with this. It's part of what is going to hang us this year with the haddock numbers. But this fishery can release what it doesn't want on deck. This is a clear loophole in the dumping proposal. If operational discards are not slippage, then what is? We have safety exemptions, dogfish that can't be pumped, and that should be. The Closed Area I rule is proving to work. The Council has the data that the Closed Area I rules are reducing dumping. And, there have been no more than 1 or 2 cases in Closed Area I where it was determined a safety issue. It is clear that the Closed Area I rule is not the safety hazard that was a big concern going into it. The big thing now is that the Council does not let the operational discard loophole happen. If the observer doesn't see it, it should be considered a slippage event. To call it monitoring and leave that loophole of the undetermined amount – it could be 100 or 10,000 pounds – we don't know how much it can be. I need to know where the striped bass that are floating around when these boats are around come from. We don't see the observer reports of lots of striped bass, but they fish the same areas, and we continue to see videos where it's mysteriously coming from. We know that there are big bodies of striped bass along the backside of the Cape. These boats arrive in August, and the bass are gone. But we don't see observer reports of striped bass, but we hear the stories of the slicks of all kinds of fish, including groundfish and pollock. On the water, people are seeing it over and over again. This is why these boats need the observers. To leave the operational discards loophole in the slippage rule, throw the whole thing out. What's the point if we are not going to capture it?

John Dewayne, Wellfleet MA: I am a fisherman and I volunteer for a herring count. We have been doing the herring count for three years, and the numbers have declined every year. That's a big concern. When I hear the numbers of bycatch of what can be caught by midwater trawlers, that exceeds what we see up our river any year, and that's alarming. I also don't hear too many people mentioning the status of the stock of Atlantic herring. I'm not educated about that, but my sense is that the midwater trawlers can take too much of them. And I would be concerned that the population of Atlantic herring could be going down too, just like it has with menhaden. Herring and river herring are both important as forage fish, and I think that should take precedence over the commercial needs for bait. They are important to the ecosystem too. There are three items in the amendment that I support:

-3.2.1 Alternative 2 100% observer coverage on every limited entry boat and ensure accurate accounting of bycatch and slippage

-Section 3.2.3 Option 4D, which deals with slippage

-No midwater trawling for herring in groundfish closed areas, which is 3.4.4 Alternative 5.

Doug Amorello, tuna fisherman, charter boat captain, lobsterman: The observer coverage is the biggest thing that needs to be addressed. I saw the video that was showed to the Council. The girl is down below trying to count herring as they fly by by the millions, and there are guys by the grate just picking haddock off the top and she doesn't see it. We have full accountability in the groundfish fishery. These guys need to bring their fish in too. Other than that, I agree with CHOIR statements.

David Mussina, Medford MA: I live in Medford, and that makes me part of the Mystic River Watershed. You have seen me taking pictures and coming to meetings, mostly to educate myself on this issue. I am doing a documentary project. I have come to discover that river herring is a key issue, as part of the ecology of the watershed and it also ties us in with the ocean. A couple of things haven't been mentioned that relate to the importance of monitoring and the importance of a catch cap.

The plankton that the river herring feed on is in serious decline in the oceans. There has been about 40% loss since the 1950s. This is the food that the river herring depend on. We are losing some population because of that. On the other end, the fish that come into the watershed have a high mortality rate. They are a forage fish. A number of the adults don't make it depending on the watershed and length of the run. And that's part of the bigger picture. They are a very important source of food for our fish and birds. And a lot of the young herring also don't make it. I have heard figures as low as 1 percent. So there is loss on both ends, and then put in the midwater trawling, and that hammers the whole picture.

I am grateful that you are looking at this. I was encouraged to hear in Gloucester that the midwater trawl industry wants coverage. They feel they are being called on about a lot of things they are not doing, and they would like to have some documentation as to what is really happening on the water. That is very encouraging.

I think we also need to have a record of what comes in. I think we need to have the weighing of the fish and a record of what comes in on shore. That's part of the monitoring. I am concerned that we need some kind of a cap. I understand that you need more data and we need a stock assessment. My one concern is that when the stock assessment comes in, it will postpone putting

a cap in place for another two or three years. I am hoping that within Section 5.3.3, that you can put in place a cap based on what you know now and then have that transition into the stock assessment. I do feel that based on the factors I mentioned earlier – loss of food by the plankton, the high mortality rate in our watershed – that we don't have a lot of time left to wait, and something needs to be done. I hope that does happen. Thank you for your work.

Putnam McLean, tuna fisherman, Marshfield MA: Just thinking about the process of observing, there were so many dogfish being sifted out through the pumping process, it almost seems like the observer would have to just count those and nothing else because the crew is just pitching them over the side and most of them are dead. There was other stuff mixed in, a few squid and other things like that.

The other thing about the component of the catch that struck me is that these weren't really what I would call larger herring. These were medium herring, smaller ones. I suppose there is a sampling process for that because if you are looking at gross tonnage of what they are catching, the mortality rate is probably double what it would be if you were catching a fully mature herring, versus these next size, whatever year class they are. Obviously, the mortality rate targeting those and catching umpteen million tons, you would have caught twice as many fish. I suppose the sampling would be really important to know what the component of the catch was if it was all made up of 7 or 8 or 9 inch herring, versus 12 inch herring. It really is a daunting task to observe them unless you bring all of them in. I don't know how they can all be counted.

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

ATTENDANCE SHEET
Travel Authorization # 12-49

ATTENDANCE AT: Herring Amendment 5 Public Hearing

DATE: Tuesday, March 27, 2012 LOCATION: Radisson Hotel, Plymouth, MA

CERTIFIED BY: _____

IMPORTANT... Any information provided on this form is subject to Freedom of Information Act (FOIA) disclosure and may be made available to anyone requesting such.

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NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Hilton Garden Inn
Warwick, Rhode Island
March 28, 2012, 7 p.m.

Hearing Officer: Doug Grout

Council Staff: Lori Steele

Attendance: see attached (approximately 35 people)

Mr. Grout introduced Council members and staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the NEFMC Amendment 5 public hearing document. After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5.

Public Comments

Ed Socala, commercial bluefin tuna fisherman: I support the CHOIR stance.

Paul Earnshaw, Buckeye Brook Coalition: The Buckeye Brook Coalition is a watershed organization in Warwick, trying to protect river herring spawn in our waters. I am providing a few brief comments to generalize where I am coming from and my utmost concerns. We will have further details and comments in writing, in addition to those I state here tonight.

Mr. Earnshaw read a written statement into the record (see attached).

Jim Ruhle, commercial fisherman, Wanchese NC: For the last five years, I have been in the herring fishery in Newport RI. I will submit written comments signed by a significant number of the local historical single bottom trawl vessels that have established the herring fleet over a long period of time. I understand people's concerns related to the river herring and predator prey issues. I think it's important to recognize that every time you do an analysis on any species, if you don't look at the current data, you don't get a representative sample of what the fishery actually behaves like. All my comments are backed up from observer reports, which make them the best. They quantify that I deal with less than a fraction of a percent of bycatch of everything with levels of fish from upwards of million and three quarter to two and a half million pounds. What I am going to prove through these documents is that if you fish responsibly, it's the second cleanest fishery in New England behind lobsters. There is no question.

I realize how emotional this issue is. But I also realize that the failure of river herring is not necessarily attributed to the bycatch of any fisheries. Our fishery in North Carolina collapsed 40 years ago runoff from farms and degradation of habitat. You can pollute a river with light and sound. That's all you need to run those fish away. Combine the demise of habitat in the southern areas with a significant regime shift north and east, you will find the alewives have moved north. Look holistically at this thing. You can't stop at the border between Canada and

the US. To get them back to the rivers where they once were won't happen in our lifetimes. Fish ladders don't work. There are a lot of issues associated with it, but the fault does not all lie in bycatch issues.

This document doesn't really talk about predator-prey per se. There aren't any options or alternatives, other than the river herring issue. It doesn't deal with how many herring should be left for prey or how many should be removed. My comment is that this needs to be analyzed not only to determine how many herring should be left for the tuna and whale watch industry, but what is the effect of too many herring in the ocean? We will never have a mackerel fishery back, and we will never have a significant butterfish fishery if we have an overpopulation of herring. They all eat the same food. When you have herring are wintering in the Gulf of Maine, there won't be a resumption of the levels of groundfish that were experienced when herring were at lower levels. Ecosystem management is a buzzword, it cannot happen in our lifetime, not realistically, and not if you are going to eliminate marine mammals from discussions. We can't get it right with single-species management, so how are you going to get it right when you are dealing with something as complex as the ecosystem. It has to be considered. So consider what the effects of an over population of a resource such as sea herring is across the board on other species. Use haddock as an example. The overpopulation of haddock stunted their growth where we as Council members had to reduce the fish size because the age of the fish was now to a point where they should have been 21 or 22 inches, but they were not growing because they lack food. When you have too much of anything, there is a problem. You have upset the balance of nature. In order to have an ecosystem approach, you need to be able to fish those levels down. When predator prey analysis is done, I am hoping that someone will look at it from both sides because there are two sides.

As far as the predator prey issues, when it comes to the southern New England herring fishery, it doesn't exist. There is no tuna in the area at that time, no significant amounts. There is no whale watching taking place that time of the year, and that's the time when I have my experience in the fishery, My comments are basically to that point. I will try to go through the document. I am only commenting on the measures that I feel are worth taking the time to comment on, or that I have an option or suggestion that I think merits consideration. I understand we are trying not to include anything new in the document, but the fact is I think it's time that you did do that. I am not trying to delay this. But I recognize the Agency can approve, disapprove, or partially approve an amendment. If there are four components to this amendment, and one or two of them need further analysis, you can pass the others and then at a time certain, once we have that information, we will revisit the issue. That's do-able. It won't delay the entire action. I think that is necessary because of the new data.

When you look at the Goals and Objectives in the document, on p. 4 (catch monitoring goals and objectives from public hearing document). 100% observer coverage, if an analysis is done that determines that 25% for the majority of the fleet is enough, is unrealistic and it's prohibitive. It's not necessary. My concern is not having the observers now, but what happens when it shifts when I have to pay for it. You can't afford it when you have a three-fold difference in cost per day for an observer from the east coast versus the west coast. It's unrealistic. It's a money-making scheme for everybody except for the poor observers and the fishermen.

Since Amendment 4, which has a lot of similarities to Amendment 5 (bycatch and the predator-prey issues), since 2008 until now, there is at least three years' worth of data with a very significant increase in observer coverage. You could analyze the data for those three years,

maybe four, and have a much clearer picture of how the fishery performs. To me, that is the best available data. Ten-year old data is useless. On top of the level of the observed trips and the dockside monitoring, you've got a much improved observer program that can identify species and they are not making the mistakes they were in 2003-2005 on what river herring were. It's still being worked on, but I have more confidence in the newer data.

For the observer coverage, I suggest that the Committee/Council request the PDT to do a technical analysis from 2008-2010 or 2011 on the performance of every vessel in the herring fishery individually, boat-by-boat. Establish three levels of criteria— low interactions, medium interactions, and high. It's my opinion that you will find the majority of the fleet in the low category and a few that have been unlucky and hit the mid category. But you will find a few in the top category, and you will find that they are the same boats year after year. They are either really unlucky or don't give a damn. They are the ones who deserve 100% observer coverage. If you have someone that is not fishing responsibly, they should pay the price. If the PDT does this correctly, there is no confidentiality issue here. The Agency can notify these boats through a permit holder letter and say like they did with the recent mackerel permit – you are in tier 1/2/3. They don't have to tell anyone else anything. If you want to create what you are asking for and foster the support of the herring industry and avoid prohibitive and unrealistic demands, you need the incentive. You need to reward the fishermen who have been doing this their entire lives. Give them credit for what they are doing. It's all right there in the observer data. I can't get anyone else's observed trips, and other boats can't get mine. But the PDT has access to this. If you want to know with a much bigger number of trips, both at-sea and shoreside monitoring, how the fishery performs, that's how you do it. Then, you are getting to where you want to be. The 100% observer coverage that everyone is pushing is not for A/B/C boats. It's for pair trawlers. Let's be honest. For whatever reason, that's not coming out in statements. If it was set by gear types, it may have been but it didn't come out that way. A/B/C catch the majority of the fish, but the pair trawlers are way up there with poundage. I'm not saying anything bad about them. I'm just saying if you want to know what they are doing, separate them out on an individual basis. It would take a little time and may not meet the timeline you are looking at now, but this is the way it needs to go. The boats get notified, and if they have this many more interactions of significance, they are alerted that if they don't do something different, they will end up with the 100% observer coverage. Those that fish responsibly get rewarded for it. This will be in the letter that I am creating that a lot of these smaller vessels support. It's not unrealistic.

Section 3.1.5, weighing the fish – 90% of herring are pumped out of the boats with vacuum pumps. It takes a certain amount of water to move those fish. The majority of them go into tanker trucks, which look like milk trucks, or vat trucks which is a truck with anywhere from 18 to 24 tubs on it. Those tubs traditionally hold 2,000 pounds, but you can't fill them to the top because create a problem for the trucks even with the lids on them. Simply weighing the truck empty and full, you are weighing water. You can't accurately do it, and it's something that is not necessary if you just apply this simple formula. When the fish get to the end user, whether it's a tanker truck or a vat truck, they are weighed – not all of them. They randomly weigh a number of tubs on each truck. The trucks I dealt with this winter carried 22, and we figured 1800 pounds per vat and the other 200 pounds was water. The plant would weigh whatever they want after they drained the water, calculate the poundage to dollars, and that was the weight of that truck. I guarantee you that it will be close to the weight of the fish, it should be accepted by the Agency just as that. The conversion from pounds to dollars should be adequate to determine the weight

of the fish. It doesn't matter what kind of truck it is. They drain the water out of the tanker trucks. Not every fish is weighed, but enough are weighed to get a realistic number to convert and pay the boat. They are not going to pay for more than what they are getting. If anything, they are going to pay for less, but it's not significant or we would question it. We have built a trust with our end users. I support using that formula to make the determination from pounds to dollars. The requirement to change the frequency of the VTRs and dealer reports is unnecessary at this time because the new regulations in the fall of 2011 requires every vessel to report electronically every day catch and discards by area. That is enough to report daily what is removed. The weekly VTRs and dealer reports are adequate in conjunction with that new requirement. If you come in in the middle of the afternoon or evening with two or three trucks of herring, you aren't going to be running to the post office every day to mail this VTR, it's not realistic, especially when you are doing electronic reporting.

Catch at sea – we have talked about that. The suggestion for the Herring PDT to do the analysis is the way to go.

River herring avoidance – this winter is unlike anything on record for temperature. I am in the study fleet and the SMAST bycatch avoidance program. I don't care what species you are dealing with. If you don't use a program in real time with daily reporting, and the areas are reported back to the fleet daily, it will fail. Every option and every single map in Amendment 5 would have missed the mark this year by 1000%. There was nothing but dogfish and butterfish in those closed areas last year. You would have redistributed the fleet and done more damage, and create a worse bycatch situation by moving the fleet out of that area. We had a few days where we would encounter some alewives and dogfish at very low levels, but we knew immediately when to move and how to move because the bycatch avoidance program with SMAST works so well and it's document. We are suggesting Alternative 2 Option 4, the Phased-in approach, which allows the program to be developed. This should apply across the board for any species. Any bycatch issue has to be addressed in real-time and has to be done with cooperation of the industry and outside academic partner. You have to have somebody besides the Agency collecting the information and re-distributing it back to the fleet so they can perform the way they need to. This works. It is demonstrated in the Nantucket closed area yellowtail

The study fleet – three small herring boats in the study fleet – that data is now being considered as good as observed trips, even though it is self-reported. Give us credit for that too. I am not enrolled in these programs to try to hide something. I am trying to prove a point that responsible fishermen can fish responsibly, in the herring fishery especially. I can get pushed out of the herring fishery. If it happens, it happens. But I will not be able to fish in any fishery anywhere on this coast as clean as I can in the herring fishery. I've done it all, and there is nothing cleaner than what we are doing now, if it's done correctly. Those that give us a bad name should pay the price.

I think the data is skewed if you go backwards from 2007. The threshold for a herring trip is 1,000 pounds. That should be raised to 10,000 pounds so that you separate the directed herring trips and small mesh inshore trips. Right now, it's all lumped together. If you change the threshold from 1,000 to 10,000, then you will identify the boats that were actually going out looking for herring, not mixed trips. That's why the data from 2007 back has very significant problems. It doesn't differentiate.

I have already talked to Amy van Atten about this. I think the observer protocols should change to ask the simple question of vessels in the herring fishery, do you have any fish aboard prior to sailing with an observer. We are hearing reports of boats coming in with fish that are not marketable. The fish are reported, but they are not being utilized. It adds to premature quota closures and removes opportunities for other boats in the fishery. There's nothing to prohibit that. But if the boat has 100,000 pounds on it going back to sea and catches 300,000, the boat ought to come in with 400,000. If he comes in with 300,000, I want to know where the other 100,000 went. The Observer Program could add a simple question and verify whether there are fish on board or not. It's not uncommon to go back out with fish. I've come in and not been able to line up trucks and then go back out the next day, and then come back in. At some time, they all get offloaded from the boats. It's not an uncommon practice. But we are hearing reports and we can't verify that it's happening. But if it is, it needs to end. That is not responsible fishing. The bycatch avoidance program – here are the charts sent out on a daily basis – it showed how effective it can be. It worked extremely well, it's the way you deal with the bycatch issue, and it's the only thing that will be successful.

As far as the river herring stock assessment goes, I told ASMFC, until the assessment separates bluebacks from alewife, you will have a failure of the stock assessment. It will not be successful because it's linked together. You need to identify each one individually. We need a retrospective analysis of mortality of river herring, fifty or forty years' worth. Find out what happened. Make a clear determination of where the failure is, if it's at all possible. You will find that bycatch by certain vessels or fisheries over time contributed to it at some point, but it is not the sole reason for this failure. The retrospective analysis would indicate to people where the problems are. I am worried about tomorrow. Use the best information available and make a determination that keeps the herring fleet alive and fishing in areas that it can prove to fish responsibly. That's what we are looking for.

John Redmond, recreational fisherman, Warwick RI: I am a recreational fisherman. I have watched what has happened with the local river herring, Buckeye Brook in particular. I also run a website with a lot of saltwater recreational anglers, from both boats and shore.

I am echoing Buckeye Brook, echoing Honest Bycatch, we are supporting 100% at-sea monitoring for all Category A/B midwater trawl fishing trips in order to provide reliable estimates of catch, including bycatch, and any impact on the depleted river herring and other marine life.

We want to discourage wasteful dumping of catch, Section 3.2.3.4 Alternative 4D, including a fleet-wide limit of five slippage events per management area. Operational discards, dumping valuable resources, and all that stuff must be included.

No herring midwater trawling in areas designed to promote rebuilding of groundfish populations, Section 3.3.4, Alternative 5. We cannot wait for the science. We have witnessed this coming to a significant crash, and entire year classes of fish are gone. We see that all the time down here at the local brooks. We can't wait to have all these studies and gradual implementation. There just isn't time, and we are seeing how this impacts us at the river herring level.

Christopher Hamblett, Save The Bay: Save the Bay has been around for 40 years protecting and restoring Narragansett Bay. We will submit written comments.

There has been a tremendous effort underway here to restore herring runs, both in Rhode Island and Massachusetts. Those efforts are beginning to bear fruit. It's true in Buckeye Brook, 10 Mile River, and other places. We are investing a lot of time and energy to do that. I think that management of the fishery needs to happen on all levels and all phases. We are doing our best with federal agencies to restore the historic fish spawning routes. All that will be for naught if the fishery at sea is not well-managed.

Things like 100% monitoring of Category A and B permitted vessels makes sense. How can we know what we are doing unless we thoroughly monitor? How can we really protect the fishery unless we set caps and accurately weigh and report on what's being caught? I don't have an response to the question about water and weighing, but I am sure that can be addressed. We will submit comments in the future, but we feel that there needs to be a holistic approach to protecting this resource. Monitoring and managing what is being caught at sea is an essential component of that.

Mike Flaherty, recreational fisherman, Wareham MA: I heard a gentleman earlier say he wanted to add something to the document. I don't think we should add anything. Anything that would delay this amendment is unacceptable to me. You may be aware of the recently settled case, Flaherty versus Bryson, where I was the plaintiff. The judge said that the Council has shirked its responsibility for certain bycatch, especially river herring measures, in Amendment 4, we don't want to do it in Amendment 5 as well. The second part is my opinion.

I support Section 3.2.1.2, Alternative 2 – 100% at-sea monitoring on all midwater trawl vessel trips Category A and B vessels, to provide reliable estimates of all catch, including bycatch, of depleted river herring and other marine life.

Section 3.2.3.4, Alternative 4D – an accountability system to discourage the wasteful dumping of catch, including a fleet-wide allowance of five slippage events per herring management area, after which a slippage event would require a return to port.

Section 3.4.4, Alternative 5 – I strongly support this. No herring midwater trawling in areas established to promote rebuilding of groundfish populations. I just heard the gentleman before tell me about how clean this fishery was. They were allowed into the haddock closed areas because we were told it was clean. We now know it's not because of all the haddock they have been catching – many metric tons. It's not acceptable. As a recreational fisherman interested in seeing haddock stay healthy, that is very important to me. I can't imagine if I was a commercial fisherman not allowed to fish in those areas with the largest mesh in the world, to allow the smallest mesh to get in there when I couldn't.

Section 3.3.5, if modified to require immediate implementation of a river herring catch cap, an immediate catch limit or cap on the total amount of river herring caught in the Atlantic herring fishery.

Section 3.1.5, Option 2 – a requirement to accurately weigh all catch is essential to any monitoring system. It is not clear to me in this document the use of operational discards. Is it true they are not being included in this. (Ms. Steele responded that operational discards are not included in the definition of net slippage.) I would like to see everything seen one way or another, even if that means bringing it on the deck and then pumping it back over so they don't have to hold it. I want to see everything.

Mike Laptew, RI: I am a Rhode Island resident, concerned citizen, filmmaker, and someone who has been on this issue for a lot of years. As a kid following the herring in the Buckeye Brooks, and then watching them every spring as a ritual, and then watching the depletion, looking for a smoking gun. Certainly, there were a lot of things brought to the table, but certainly this fishery, as a documentarian, I went out and spoke with people who worked on deck of pair trawlers and told me firsthand of what they witnessed in terms of bycatch with observer coverage on board. I showed the footage to my wife, and it literally brought her to tears.

I am 100% for 100% at-sea monitoring – 100% all Category A and B midwater trawl fishing trips to provide the reliable data that we need as far as bycatch and the depletion of river herring. The runs up and down the coast aren't what they used to be. I am never going to believe the smoking gun is too many seals and too many striped bass. We have always had a lot of seals and a lot of striped bass, but we have always had a lot of river herring, I'm talking about blueback herring.

The idea that dumping occurs is something that needs to be addressed. Section 3.2.3.4, Alternative 4D including the fleet-wide limit of five slippage events per management area, operational discards. The dumping of valuable resources in this day and age is not tolerable.

No herring midwater trawling in areas established to promote rebuilding groundfish populations, Section 3.4.4, Alternative 5. With the knowledge I have gained interviewing people that were players in this arena, I can see, as William Warner wrote, chronicling the offshore fleet that was pummeling our area prior to the Magnuson Act, it just seems like we have now done it to ourselves. We are not inviting offshore fleets to overfish, but we are actually encouraging overfishing by the sheer horsepower and over productivity and nature of pair trawling. This past winter, I watched pair trawling take place in areas where it could not be considered midwater trawling. I documented it in Narragansett Bay in areas where they just knew there had to be a bycatch situation.

We cannot wait for science to protect river herring. We support an immediate catch cap based on recent catch to limit what is currently being killed as bycatch. We support Section 3.3.5, only if modified to require immediate implementation of a catch cap.

Again, I would love to see the return of what used to make Buckeye Brook a teeming ritual every spring. I think that the need for 100% monitoring will give us the evidence we need to see that this fishery needs to be curtailed.

Russell Cleary, Commercial Anglers Association: We are an organization of hook and line and harpoon fishermen. We support better monitoring of the midwater trawler and pair trawler fishery under Amendment 5, such as observer coverage, dumping accountability, catch weighing, access to groundfish closed areas, river herring bycatch monitoring. The dramatic decline of the Gulf of Maine bluefin tuna fishery coincided with the development of the midwater trawler herring fishery. If a causal relationship cannot be proved, there is enough evidence that warrants observer coverage as is called for by these proposals in Amendment 5.

(Mr. Ruhle emphasized that many of the comments at this hearing supported observer coverage for Category A and B midwater trawl vessels, not all gear types with these permits.)

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

ATTENDANCE SHEET
 Travel Authorization # 12-50

ATTENDANCE AT: Herring Amendment 5 Public Hearing

DATE: Wednesday, March 28, 2012 LOCATION: Hilton Garden Inn, Warwick, RI

CERTIFIED BY: _____

IMPORTANT... Any information provided on this form is subject to Freedom of Information Act (FOIA) disclosure and may be made available to anyone requesting such.

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March 28, 2012

Over the past decade there have been declines in river herring. The decline has been alarmingly noticeable, therefore in 2004 the a closure of the river herring fishery within Rhode Island inland waters was implemented. At the time there was no clear understanding for these declines in returning alewife and blueback herring. Many thought it was predatory increase or overfishing by anglers, and lobster fisherman.

Since the closures were implemented there has been monitoring many of these river systems, collecting data on the number of fish returning each year to spawn. Many of these rivers and streams are also being monitored for water quality information as well. There have been many notable and costly restoration projects, such as dam removals, habitat restoration, fish ladder installations, and repairs to existing ladders. Some organizations even put together groups of volunteers that work diligently to lift hundreds of thousands of herring over dams where no passage exist. Over the better part of the past decade, not one of our rivers are showing any sign that the herring are returning to their original stock status despite all the efforts made thus far.

Alewife and blueback herring are one of the most important part of the ecosystem of the ocean. They help to provide a balanced diet for so many species, like striped bass. Now there are concerns of diseased striped bass being detected with micro bacteriosis. It is being considered due to malnourishment. Osprey, Bald Eagles, once endangered have now got to compete for the few returning herring to sustain themselves and their hatchlings.

In our inland waters the annual herring runs once teaming hundreds of thousands of fish would bring people to observe this amazing site, or to take as many as 12 fish on a limited number of days as bait. Fisherman would bring along their young children so they could also experience such an amazing event of nature. Many areas once realised economic growth due to the herring runs because of visitors from all over who came to witness the event, or from anglers purchasing supplies, bait and tackle. However those boom days are gone now which is especially sad considering the overall economic downturn.

The commitment from land will continue, however there is only so much that can be accomplished from land. River herring only spend a very short portion of their life within our inland waters. This is why we need to address the bigger picture in our ocean waters especially within three miles of coastlines. I encourage this council to implement catch caps on river herring, where currently there are none. Secondly, increase Federal on board observers to finally provide accountability, and ending the practice of at sea dumping where no observers are available.

Paul Earnshaw



President

Buckeye Brook Coalition

P.O. Box 9025

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Congress Hall Hotel
Cape May, New Jersey
March 29, 2012, 7 p.m.

Hearing Officer: Doug Grout

Other Council Members in Attendance: Erling Berg (MAFMC)

Council Staff: Lori Steele; Jason Didden (MAFMC)

Attendance: see attached (approximately 15 people)

Mr. Grout introduced Council members and staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the NEFMC Amendment 5 public hearing document. After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5.

Public Comments

Jeff Reichle, Lund's Fisheries: Thank you for holding a meeting in Cape May. I will leave most of our comments to Jeff Kaelin, but I want to touch on a couple of things. Number one, I think it's a good thing that we are getting to a point where we are asking all industry to weigh everything that comes across the dock, in one way or another. I think that's a long time coming, and we support that 100%.

I want to talk a little about observer coverage – I think industry is tired of listening and being forced by a lot of half-truths floating around. Most of us have agreed that we would like to have 100% observer coverage because we have a very clean fishery and want to prove that. However, we don't want that coverage forever, and we are limited to what we can pay for it. But a good portion of the industry has decided that it's about time for people to put up or shut up, and we are ready to put up, to prove how good our fishery is.

I know I am not supposed to do this, but I am going to ask that you send the message back to the Council what happened this year with the closure of the herring fishery in Area 2 has grossly affected the mackerel fishery here in the Mid-Atlantic. Even though mackerel fishing has been very poor the last four or five years, we did have some mackerel show up in January this year. We fished on them for about three week, but because of the way the herring quota is being managed, we are shut down and stopped from catching mackerel because of the herring quota. This is a huge economic impact on Mid-Atlantic boats, and some of these bigger boats have little if any alternative. I hope that we can get Amendment 6 done by about six months from now.

Jeff Kaelin, Lund's Fisheries: I do government relations and fisheries management work for Lund's Fisheries. I am a resident of Cape May, New Jersey now.

Mr. Kaelin read a written statement into the record (see attached).

Fred Akers, Great Egg Harbor River: I am the River Administrator for Great Egg Harbor River, which is a little bit north of here. We are concerned about what's happening with river herring. I have submitted comments on Amendment 5, which I am not reading into the record. Thanks for the color coding in the document, it was very useful.

We are concerned about the future of river herring. On the Great Egg Harbor, which is a federally-designated wild and scenic river, we have done some data work in 1998 and 1999, and the river herring were found to be breeding in a number of locations. We also worked with Fish and Wildlife Service and others to build a \$500,000 fish ladder, and that was about 2006. At the same time, there was another \$600,000 fish ladder huge fish ladder built. There is a multi-million dollar on Union Lake. And there are three or four or five other fish ladders scattered in the south jersey area. There have been and continue to be significant investments and work on maintaining habitat on the freshwater side. New Jersey closed the river herring fishery this year but had to maintain 5% bycatch for river herring caught in Federal waters and landed in New Jersey. We want to see that part of the river herring story better protected through this amendment. That's why I am here.

John Connelly, Lund's Fisheries: I operate a boat for Lund's fisheries. We fish for herring and mackerel. I haven't fished in a month now because of the herring closure in Area 2. Probably two more months, I will be out of work. I take observers on the boat. Last fall, we had four trips with no observers. All the other trips, we had observers. Every one of them tells me that it's a clean fishery. I would like to see the people who say it's not put the money where their mouth is. If it's that bad a fishery, we have no problem taking observers. I had over 80% last year.

Lars Axelsson, Cape May: This is a family operation. We have two vessels, the Flicka and Dursten, out of Cape May. We have been fishing pelagic pretty much my whole career, since I graduated high school in 1973. It is frustrating on my part because I have fished with no regulations and now that we do have regulations. What is frustrating to me is that based on suppositions, this huge machine, this huge amendment is coming to bear, a lot like our health care plan, many pages long. We as fishermen have a hard time deciphering all of that. I take my off to people like Jeff who is willing to hire a full-time guy to try to decipher all of this and then try to condense it down so that we fishermen can understand what needs to be decided on. And then the frustration sets in again because it's based on pre-disposed ideas from other non-user groups of the resource.

Every time I have taken observers aboard my boat to see what kind of fishing I do and how I do, I am sure that if the people have the records of my observed trips, they can see how the fishery was in the mid-80s vs. the 90s vs. the 2000s, and how, with the net designs and the way we fish, we have improved our cleanliness. Whether we have 10% observer coverage, 20% coverage, or 100% coverage, you will roughly see the same bycatch that can occur.

Regarding river herring, I fished during the joint ventures with the east Germans, the Dutch, and the Poles. They were not allowed inside the 20 mile line because of river herring. I think there were some military secrets too, and the river herring was an excuse. But while we have been catching mackerel and encountering herring, and while we catch herring, and we have encountered a few river herring from time to time, nine times out of ten, the market will not accept the river herring to be mixed in with the other species. Most of the time it would go to

zoo food. It was claimed that the seals and penguins couldn't swallow these fish because it would hurt them. So we as a fleet have steered clear more and more through communication and the way we handle our gear and the way we fish it.

I listened to how you are trying to decide whether groups A and B should be covered more than C and D groups. And how bottom trawlers maybe don't have to carry observers, but the terrible midwater trawl boats in the A class do. From my own fishing experience, I have an understanding of what river herring look like compared to herring on the machine. Most often, the river herring tend to be closer to the ocean floor as compared to the rest of the fish. So if you are fishing harder on the bottom in an area where there is river herring, you will get more river herring mixed in with the herring. We have learned to fish our nets higher off the bottom in areas like that and have minimized the take quite a bit. But when you are talking about ¼ of 1 percent, ½ percent, in my mind's eye, just like the judge determined in regards to how much haddock and other bycatch are being taken in the closed areas Downeast, in our area here, it's a lot of to do and a lot of resources that are being expended on river herring. From my point of view, I think it's a waste of funds. I would much prefer to see the money and human resources to be exercised maybe towards scientific studies. Take the observer data from the boats and apply that to a status of the stock. Then, we can derive decent science that could either prove or disprove the amount of product that is in the ocean.

I can't understand for the life of me, back in the 70s, quotas were over 100,000 tons, 200,000 tons for years. In the mid-80s, the areas were given as much as 100,000 tons per area. When it got reduced again to Areas 1, 2, 3, there was an 80,000 ton reserve, and it has just been perpetually going down, for whatever reason I can't understand. Yet the fish have come, the fish have gone, before regulations, and even now with regulations. So maybe a redirection of the information you are going to garner rather than policing these terrible boats that are out taking unwanted species. Use that information to apply to the status of the stock model so that we can get good numbers to yield better quotas and become an even more sustainable fishery.

Draft Comments, Lund's Fisheries, Inc.

A5 to Atlantic Herring FMP – Thursday 3/29/12 Cape May hearing, Congress Hall 7pm

Sec. 3.1 PROPOSED ADJUSTMENTS TO THE FISHERY MANAGEMENT PROGRAM

Sec. 3.1.1 Regulatory Definitions (Transfer at Sea and Offload)

We support the establishment of regulatory definitions for *transfer at sea* and *offload* as an intent to clarify the regulatory definition of existing fishing operations, including clarifying that pair trawling does not represent a transfer at sea, increase the potential for accurate reporting in the fishery and minimize the potential for catch to be double-counted.

Sec. 3.1.2 Administrative/General Provisions

We support the proposed regulatory change that would clarify that vessels working cooperatively in the herring fishery are subject to the most restrictive possession limit associated with any of the vessels. The amendment refers to “paired purse seine operations”, which is a description that we are not familiar with in the Atlantic herring fishery; traditionally, any purse seine skiff being used to set a purse seine has been considered part of the purse seiner itself and not a “paired vessel.”

We support the amendment’s intent to make VMS power-down provisions consistent with the multispecies, scallop and surf clam/ocean quahog fleet and allow VMS units to be powered down after the issuance of a Letter of Exemption (LOE), if the vessel is expected to be out of the water or not fishing for an extended period of time.

We support the establishment of a new Federal At-Sea Herring Dealer permit for carrier vessels or other vessels selling Atlantic herring to any entity since the intent is to improve reporting in the fishery. We encourage the agency to ensure that double-counting of landings is minimized through this change.

Sec. 3.1.3 Measures to Address Carrier Vessels and Transfers of Atlantic Herring At-Sea

We support 3.1.3.2 Option 3, which would provide flexibility for herring carriers to either utilize a VMS for declaration, thereby eliminating the minimum seven-day enrollment period and allow for engagement in other activities, or maintain the status quo (minimum seven day enrollment period with LOA restrictions), which would accommodate smaller carrier vessels that do not utilize VMS.

We support 3.1.3.3 Option 1, which would make no changes to current provisions regarding the transfer of fish at sea. It is our understanding that current reporting requirements are adequate to determine and segregate catches and allow for the transfer of herring at sea to vessels without a herring permit, for personal use as bait.

Sec. 3.1.4 Trip Notification Requirements

We support a combination of 3.1.4.2 Option 2 and 3.1.4.3 Option 3, which would expand and standardize current trip notification requirements throughout the herring fishery, as we understand the proposal. We are unclear why Option 2 would not reach Category D vessels fishing in Area 2 and why Option 2 is limited only to fishing for herring with midwater trawl gear. Option 3 seems to include all fishing activity in Area 2, and in other herring management areas, and require both observer and enforcement notifications regardless of gear type used. It is our understanding that the small mesh bottom trawl fleet can also take river herring as an incidental catch, not only in the Gulf of Maine but also in Area 2 during the winter months, so it makes sense that all vessels working in the directed herring fishery, whether it be with an A, B, C or D permit be required to both call for observers before fishing and notify NMFS law enforcement before landing, so that monitoring activities, both at sea and shoreside, can provide the most complete picture of what is being caught and landed in the fishery.

Based upon herring fishery landings and other data that has been reviewed during the development of Amendment 5, our understanding is that the number of Category D vessels that would be regulated under this change, and others proposed in this amendment, would be only about 10% of the Category D permits issued. *(For example, Page 6 of the PHD tells us that 2,258 Category D herring permits were issued in 2010 while Page 19 of the PHD tells us that only 244 Category D herring permit holders are expected to qualify for mackerel limited access permits; we can assume that only this limited number of Category D permits were also fishing for herring when they encountered mackerel, likely while fishing in Area 2. While this calculation does not take into account the number of Category D permit holders landing herring in the Gulf of Maine, we expect that the total number of Category D vessels actually fishing for herring are far fewer than the 2200 total number of permits issued. There seems to be a need to rationalize the number of Category D permits that are being issued. We would support a requirement that all Category D permit holders have VMS on board when fishing directly for herring and would anticipate that the number of herring Category D permits applied for would likely drop dramatically if this requirement were imposed.)*

Sec. 3.1.5 Reporting Requirements for Federally Permitted Herring Dealers

We support 3.1.5.2 Option 2, which would require dealers to accurately weigh all fish, and *Sub-Option 2B*, requiring dealers who do not sort by species to document, for individual landing submissions, how they estimated the relative composition of a mixed catch, to facilitate both quota monitoring, incidental catch analysis and cross-checking with other data sources.

We are opposed to 3.1.5.2, *Sub-Option 2C*, which would require dealers to obtain vessel confirmation of SAFIS transaction records to minimize data entry errors at the first point of sale. This proposal seems to be focused on minimizing discrepancies between vessel hauls (an estimate of what is on board) and actual amounts of herring that is purchased by dealers. It places fishermen and dealers in a potentially adversarial, competitive regulatory posture that should be reserved for the Agency, as we understand what is being proposed. If catch is weighed and sorted after landing, dealer reports should become the primary data source for quota monitoring by the Agency, as we understand to already be the case today.

Weighing and sorting will make dealer reports more accurate than they are today and eliminate the need for fishermen and dealers to compare their reports, and potentially be penalized if estimates and actual weights vary, which they will certainly continue to do.

Sec. 3.1.6 Changes to Open Access Permit Provisions for Limited Access Mackerel Vessels in Area 2/3

We support 3.1.6.2 Option 2, which would establish a new open access herring permit for limited access mackerel fishery participants, in Areas 2/3 only, who do not have a limited access herring permit. This permit would be associated with a 20,000 pound possession limit for herring and would assist these vessels by providing a reasonable incidental catch allowance of herring to allow them to be able to fish for mackerel and may reduce discards of herring. This amount equates roughly to the 25,000 pound mackerel incidental catch allowance, made by the MAFMC, for vessels fishing for herring, in all herring management areas, which was established in Amendment 11, the mackerel limited access amendment.

We also urge the Council to begin now to plan for allocating a significant set-aside of Atlantic herring, and explore other options during the upcoming specifications process, to facilitate an Atlantic mackerel fishery in the future that is not severely limited by lack of availability of Atlantic herring, as is the case this year. This year, the expiration of the Area 2 herring quota will keep more than 50 million pounds of mackerel from being harvested, at the same time that herring continue to be widely available in Area 2, according to accounts by vessel captains. Vessels are tied up today due to this fact and millions of dollars of wasted mackerel quota will not be taken due to the failure of the Agency and the NEFMC to set-aside herring quota for this purpose, as we requested when the current specifications were established. We estimate that a 10,000 metric ton set-aside may be adequate for this purpose, given the size of the current mackerel quota, and since the herring-to-mackerel mixing ratio can often be as much as 30%. It is our hope that the ongoing assessment will provide an opportunity to return the Area 2 quota to a level exceeding 30,000 metric tons, as has been the case in the past, to facilitate a mackerel fishery in the future.

Sec. 3.2 CATCH MONITORING: AT-SEA

3.2.1 Alternatives to Allocate Observer Coverage on Limited Access Herring Vessels

Throughout the development of Amendment 5, we have argued that the herring fishery should not be singled out as being required to pay for excessive levels of observer coverage, beyond what the Agency and Council may prioritize through the SBRM process; a treatment similar to other fisheries managed by the Council.

We have taken this position because we believe that the herring fishery is one of the 'cleanest' fisheries in the region, and that this fact continues to be borne out by the data coming out of both the at-sea observer program and the shoreside monitoring program, a program that we believe should be continued in the region.

We have heard herring PDT members say that there is a limit as to the precision and accuracy of catch data accumulated through the observer program, even if the coverage level were to be at 100%, and have heard members of the scallop PDT state that observer coverage levels of about 30% in that fishery are adequate and that 100% observer coverage is unnecessary to satisfactorily monitor the scallop fishery, another regional fishery that we are active in.

Even so, we and the majority of other Category A-permitted herring vessels owners, are willing to support observer coverage levels of 100 per cent in the herring fishery, for a limited period of time, because we remain convinced that the data will continue to show that incidental catches in this fishery are not of significant biological concern to haddock, shad, river herring or any other regional fishery stocks. We are taking this position as a challenge to our detractors, who so far have shown no interest in the actual data coming from current monitoring programs and who continue to make unsubstantiated claims about how the herring fishery operates. We will take observers at a 100% rate to continue to demonstrate that the herring fishery is a responsible fishery.

We take this position with a couple of caveats, however. First, we do not support maintaining 100% observer coverage levels in the herring fishery forever since we do not believe this coverage rate is necessary and because the expense can be significant. We suggest that a 100% requirement be temporary and only last two years, after which time the PDT should be tasked to analyze the data and report to the Council as to whether or not this level of coverage is necessary to adequately monitor the herring fishery in the future.

Second, we are only willing to purchase observer coverage, beyond those levels that may be allocated through the SBRM process, and up to 100%, if the daily cost can equate to the \$325 a day rate paid by the West Coast H&G fleet, a fleet whose observer coverage rates have been suggested as a model for the herring fishery during the development of Amendment 5 by those who argue that we are under regulated and operating unsustainably. We are opposed to paying the \$1200 a day rate calculated by the observer program since this represents a cost that would not be sustainable in the low value Atlantic herring fishery.

Third, we only support a temporary, 100% observer program in the herring fishery if the program would authorize the Agency to provide a vessel with a waiver if a Federal observer, or an observer from an approved observer service provider, is not available for a particular trip. We simply cannot afford to have our vessels tied up if an observer is not available to us for some reason and we are willing to both take and pay for an observer on that trip.

Sec. 3.2.2 Management Measures to Improve/Maximize Sampling At-Sea

We support the addition of the provisions listed in Sec. 3.2.2.2, which are intended to improve sampling by observers at-sea and we understand that many of these provisions are already in place; these include requirements for a safe sampling station, requirements for 'Reasonable Assistance', requirements to provide notice, requirements for trips with multiple vessels, improving communication on pair trawl vessels and providing visual access to the net and codend. It is our understanding that the relationship between the Federal observers that have been on our vessels over the past few years and our fishing captains is excellent and we have

attempted to cooperate with every request made to us by the observer program throughout this period of time.

Sec. 3.2.3 Measures to Address Net Slippage

We support Sec. 3.2.3.2 Option 2 requiring the use of a released catch affidavit for ‘slippage events’ and understand that these affidavits are already in use, with the support of vessel owners and captains.

We are opposed, however, to the continued application of the Closed Area 1 Sampling Provisions (Sec. 3.2.3.3), either within Closed Area 1 or elsewhere because of the requirement that all fish be brought on board for sampling and inspection by the observer. As we have repeatedly pointed out during the development of Amendment 5 there are significant operational restrictions that make it impossible, or dangerous, to bring the pump and codend over the rail during fishing activities on midwater trawl fishing vessels. Our captains tell us that the observers have no problem seeing what remains in the net after pumping, while the net remains alongside the vessel and, as we indicate above, we have no problem providing visual access to the net and codend so that the observer can do his or her job.

We are strongly opposed, however, to all of the options listed in Sec. 3.2.3.4 Options 4A through 4D (proposing catch reduction and trip termination) as being simply punitive in nature and not being constructive to the ongoing cooperation between our captains and the observers on our vessels.

In addition, we urge the Council and the Agency to repeal the Closed Area I regulations since there is no indication that incidental catches in Closed Area I differ significantly from those in other areas where the herring fishery operates and due to the fact that there is no data to indicate that the herring fishery is having any significant mortality effect on any groundfish species, either inside or outside of Closed Area I.

It is important, however, to retain in regulation that fish can be released throughout the herring fishery if the vessel operator finds that:

1. Pumping the catch could compromise the safety of the vessel;
2. Mechanical failure precludes bringing some or all of the catch aboard the vessel; or
3. Spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch.

Finally, as we all know, the Council’s habitat and groundfish committees are moving towards either eliminating Closed Area I or modifying the area due to its lack of relevance today as either a groundfish protection or habitat protection area, making regulations specific to the area equally irrelevant to managing the herring fishery today or in the future.

Sec. 3.2.4 Maximized Retention Alternative (Experimental Fishery)

We support Sec. 3.2.4.1, the no action alternative. Herring vessels would continue to operate under the regulations and possession limits for any fisheries for which they possess permits.

Amendment 5 would add other regulatory changes, which we could support, consistent with our comments.

The herring fishery has taken place in this region for more than 100 years and was the first fishery to agree to hard quotas, more than a decade ago with the approval of the Federal FMP, by the Council and Agency, in 2001. The idea that the herring fishery should be operated as an experimental fishery has been suggested by advocates who clearly would like to eliminate the majority of the fishery and the vessels in it. This proposal only has punitive value and should be summarily rejected by the Council.

Sec. 3.3 MANAGEMENT MEASURES TO ADDRESS RIVER HERRING BYCATCH

Sec. 3.3.2 River Herring Monitoring/Avoidance

The public hearing document tells us that the long-term goal of this section of the proposed amendment is to adopt river herring bycatch avoidance strategies in the time and areas where interactions with the herring fishery are observed or anticipated.

At the same time, the Magnuson-Stevens Fishery Conservation and Management Act's National Standard Nine requires that "*conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.*" National Standard One requires that "*conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the United States fishing industry.*" The Atlantic herring fishery is not considered overfished, nor is overfishing occurring, so maintaining OY in the fishery must be a Council priority.

We agree with the amendment's goal, since it has now become clear to us that minimizing the incidental catch of alosine species has recently become both a public and a Council interest and we recognize our duty under the law to reduce the incidental catch of these fish.

As this amendment has developed over the last few years, however, we have come to the realization that most of the river herring monitoring and avoidance strategies proposed by the Council in the amendment do not recognize the temporal and spatial variations dictating where river herring will be from year to year, or even from day to day, and that the extensive areas that are proposed to be closed threaten our ability to continue to catch herring, either to provide an important baitfish for the region's lobster and crab fisheries or to export high quality, nutritional herring for human consumption when international markets are available to us under favorable terms.

Consequently, during the past two years, we have been working with other boat owners, organized as the Sustainable Fisheries Coalition (SFC), and in partnership with the Massachusetts Division of Marine Fisheries (DMF) and the UMASS Dartmouth School of Marine Science and Technology (SMAST), to replicate a bycatch avoidance project already in use in the scallop fishery, to reduce the incidental catch of yellowtail flounder; an approach recognized as effective by this Council.

Our project, funded for the past two years through the National Fish and Wildlife Foundation, and with recent financial support from the Nature Conservancy to allow for the participation in the project by small mesh bottom trawl fishermen, is already working to create awareness of the issue within the fleet and direct effort away from where river herring species are known to be on a daily, real time basis. At this time, we are seeking additional funding through the MAFMC RSA program, so that this low cost, real time program can continue into the next fishing year. This program includes a goal of monitoring 50% of trips that are landed, so that incidental catches can be identified and quantified.

Within this context, we support Sec. 3.3.2.2.4 Option 4, a two-phase bycatch avoidance approach based on SFC/SMASST/DMF project, as the only option that will work to reduce the incidental catch of river herring in the herring fishery and allow for the continued production of optimum yield from the Atlantic herring resource. The project should involve all vessels directing on Atlantic herring, including Category A, B, C and D permit holders. VMS is essential to the success of this project and therefore, all Category D permitted vessels directing on Atlantic herring should be required to have VMS on board.

Sec. 3.3.5 River Herring Catch Caps

We support the Council considering a biologically-based river herring catch cap through a framework adjustment to the herring FMP or the herring specifications process after the ASMFC completes its stock assessment. We recognize that the employment of a reasonable cap would complement the efficacy of the SFC/SMASST/DMF project. A shoreside monitoring component would be necessary, however, to allow the fleet and the agency to know how much of the cap had been taken at any particular time during the fishing season.

Recently, we participated in a meeting where a preliminary ASMFC assessment report was presented to the Commission's Shad and River Herring Technical Committee and understood one of the conclusions to be that current levels of river herring fishing mortality did not collapse river herring stocks up and down the coast and that, if the current level of incidental catch in the herring fishery were entirely limited, all riverine herring runs would not recover due to the myriad mortality threats that these species face. The relative mortality effects of incidental catches in the herring fishing would be critically important to understand before setting a biologically-based catch cap.

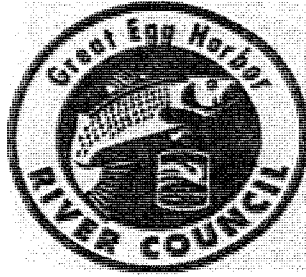
Sec. 3.4 MANAGEMENT MEASURES TO ADDRESS MIDWATER TRAWL ACCESS TO GROUND FISH CLOSED AREAS

As stated above, we believe that there is no relationship between incidental catches in the Atlantic herring fishery and the groundfish closed areas. The GFCAI provisions (CFR §648.80) should be repealed upon implementation of this amendment for this reason and access to the groundfish closed areas should be retained for both herring midwater trawlers and purse seiners, through a LOA issued by the agency, as had been the case for many years.

In response to a previous legal challenge to midwater trawlers' rational access to GFCAI and other mortality closures, in a brief to a Federal court in June 2009, Agency attorneys wrote, *"even if bycatch in the herring fishery (was) hundreds of times the level suggested by the data, then there would be no compelling reason to suspect that haddock or other groundfish stocks (are) imperiled."* The Agency also clarified in its brief that, *"by contrast, the directed groundfish fishery's total allowable catch of haddock is ... 500 times the (existing) herring bycatch cap"* and *"for those stocks that are undergoing overfishing, the bycatch in the herring fishery is so miniscule that the measures sought (evicting herring vessels) could not prevent overfishing of these stocks."*

In conclusion we strongly support Sec. 3.4.1 *Alternative 2 – Pre-Closed Area I provisions*, which would reestablish criteria for midwater trawl vessel access to the groundfish closed areas based on provisions prior to the implementation of the Closed Area I rule.

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**The Great Egg Harbor
Watershed Association &
River Council**

Fred Akers - Administrator
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March 29, 2012

Paul J. Howard, Executive Director
50 Water Street, Mill #2
Newburyport, MA 01950

RE: Draft Amendment 5

Dear Executive Director Howard:

The Great Egg Harbor River supports breeding River Herring, and we are very concerned about the future of our River Herring populations. The current study for their listing under the Endangered Species Act is a reason to move quickly to protect this fish species and other species in the ecosystem dependent on River Herring.

Amendment 5 was initiated almost five years ago, following a wave of public outcry to address concerns with industrial trawling, and the dangerous, poorly regulated practices allowing these huge ships to severely impact the marine food web. Herring trawlers are the largest vessels on the East Coast, and their football field-sized nets catch and kill millions of pounds of unintended catch every year, including depleted fish, like bluefin tuna, river herring, shad, and cod, as well as whales, dolphins, and seabirds.

Specific concerns with the fishery include inadequate monitoring, unmanaged catch of river herring, continued killing of groundfish within closures designed to protect them, and the wasteful practice of dumping catch at sea. Alarming interactions with groundfish also continue, as midwater trawl fishermen demanded and received a five-fold increase in their haddock bycatch allowance.

Since the initiation of Amendment 5, these problems have continued to get worse. The National Marine Fisheries Service (NMFS) has repeatedly proven unable to enforce Atlantic herring quotas, the first step in fishery management, due to inadequate catch monitoring. In addition, the practice of dumping catch at sea continues to undermine efforts to identify and record everything that is caught by herring vessels.

We strongly urge you to approve a comprehensive monitoring and management reform program that brings greater accountability and oversight to the industrial trawl fleet. At minimum, the following actions must be approved:

www.gehwa.org – The Official Website of the Great Egg Harbor Watershed Assoc.

OFFICERS

Julie Akers
President
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- 100 percent at-sea monitoring on all midwater trawl fishing trips (i.e., Category A& B vessels) in order to provide reliable estimates of all catch, including bycatch of depleted river herring and other marine life (Section 3.2.1.2 Alternative 2).
- An accountability system to discourage the wasteful dumping of catch, including a fleet-wide allowance of five slippage events for each herring management area, after which any slippage event would require a return to port (Section 3.2.3.4 Option 4D).
- No herring midwater trawling in areas established to promote rebuilding of groundfish populations (Section 3.4.4 Alternative 5).
- An immediate catch limit, or cap, on the total amount of river herring caught in the Atlantic herring fishery (Section 3.3.5, Modified to require immediate implementation of a river herring catch cap).
- A requirement to accurately weigh and report all catch (Section 3.1.5 Option 2).

Thank you for considering measures designed to revise the Atlantic Herring Fishery Management Plan to protect the River Herring and other bycatch species.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fred Akers', written in a cursive style.

Fred Akers

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Hilton Hotel
Mystic, CT
April 25, 2012, 6 p.m.

Hearing Officer: Doug Grout

Council Staff: Lori Steele, Chris Kellogg, Rachel Neild

Attendance: see attached (approximately 20 people)

Mr. Grout introduced Council members and staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the Amendment 5 public hearing document. After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5.

Public Comments

Peter Baker, Herring Alliance, Pew Environment Group: Thank you for the opportunity to offer this statement regarding Amendment 5 to the Herring FMP. Many of you know me. My name is Peter Baker. For the last four years of the development of this amendment, I have spoken to you numerous times and sent you countless letters. I direct the Northeast Fisheries Program for the Pew Environment Group. I am also a founder and director of the Herring Alliance. Since 2007, when the Council made this amendment a priority and the Herring Alliance was founded, we have grown from the 12 original member organizations to 47 local, state, regional, national, and international conservation and watershed organizations. Herring Alliance has members active in every state from Maine to North Carolina.

Development of Amendment 5 has been a long and arduous process with multiple delays and setbacks. Throughout the development, conservationists, recreational fishermen, commercial fishermen, ecotourism companies, river herring enthusiasts, coastal residents, and every day Americans have called for a meaningful reform of the management of the industrial trawl fleet. The Council has included several important measures in Amendment 5 that need to be implemented if the herring industrial trawl fleet is to be allowed to continue to operate in New England waters. As you know, development of this amendment has been contentious. Employees of the industrial trawl fleet have attempted to discredit and intimidate people calling for reasonable management measures. Recent industrial trawl blogs and public comment have accused people calling for reform being racist and xenophobes. They have compared the Pew Environment Group the Third Reich, and they compared people who work for Pew with Satan. Recently, an industrial trawl employee put up a blog claiming that people that want the industrial trawl fleet to be better managed want to kill babies in Africa.

(Mr. Grout asked Mr. Baker to address his comments to the amendment and to keep his remarks focused on the Amendment 5 document.)

The great myth that industrial trawl spokespeople have been stating is that the movement to regulate their fleet is a grand conspiracy created by Pew. They claim that the tens of thousands of people who sent in public comment on this amendment and the hundreds of commercial and recreational fishermen who have showed up for these public hearings this spring are somehow on a payroll.

(Mr. Grout once again asked Mr. Baker to focus his comments on the document, not on the other comments or others who have commented during the public comment process. He discouraged Mr. Baker from personal attacks in his comments.)

What measures in Amendment 5 are necessary if industrial trawling is to continue in New England waters? We at the Herring Alliance have spent much time and effort on this subject. We believe that there are five critical measures that must be implemented as part of Amendment 5. First, industrial trawlers, often fishing in pairs and able to catch hundreds of thousands of pounds of fish each day, must have observers on board to sample the catch. Whether these observers NEFOP observers or third-party observers, and whether or not this is paid for by the government or industry, an observer must be on board an industrial trawler any time it is fishing in New England.

Second, the observer must be allowed to sample all the catch. Limited exceptions must be made for vessel safety or legitimate mechanical failure, as outlined in the Closed Area I rules. Aside from the limited exceptions, all catch must come on board for sampling.

Third, once brought ashore, the catch must be weighed or otherwise verified by a third party. The captain's best guess estimate is not sufficient.

Fourth, industrial trawling should not be allowed in groundfish closed areas. Groundfish stocks and the groundfish industry are in crisis. Allowing industrial trawlers with a proven catch of groundfish into these nursery areas is foolish and unacceptable.

Fifth, a cap or limit on the catch of river herring by industrial trawlers must be instituted. River herring are in trouble. If current assessments are not considered robust enough to form the basis of a biological catch, then the cap should be based on a recent catch, just as herring and mackerel catch limits are currently based on recent catch.

To conclude, the industrial trawl fleet began fishing in earnest in New England just over a decade ago. On the strength of about a dozen test tows and the word of the industry that midwater trawl nets could not catch groundfish, these ships were allowed access to all New England waters, including groundfish closed areas. Pair trawling was allowed without ever being tested or well understood. In the fall of 2007, the Council made it a priority to reign in this industrial fleet and create management measures that will lead to accountability. In June, you have the opportunity to make changes that fishermen, conservationists, business owners, and the public have asked for over and over and over again. We at the Herring Alliance implore you to take meaningful action that includes 100% observer coverage, a river herring catch cap, and protection of groundfish nursery grounds.

Bill McWha, CT: I am from the state of CT, I am a private citizen. I wear this hat, etc. We have been doing this for five years. We are tired of coming to these meetings. Every day I come here, it costs me a day's pay, it's money out of my pocket, and it's the same stuff over and over again.

I am in favor of 100% on-board monitoring and/or 100% dockside monitoring. You have to find out what these boats are catching, you have to sample the loads. I am also in favor of 100% retention, even though that's probably not in the document.

For the last three years, I have lifted river herring over a dam in Wakefield Rhode Island. This year was a good year. Instead of one drop in the bucket, maybe this year we had two drops in the bucket. I'm out there working hard, trying to protect the river herring, and I want to know what the New England Fishery Management Council is going to do. We have been talking about this for four or five years. It's time you guys do something. Ever since these midwater trawl herring boats were allowed to fish in New England, the anadromous fish returns to the Connecticut River have plummeted, since 1992 or 93, they have steadily declined. Just recently, they have come back slightly. It happens to be a coincidence that ever since we had herring midwater trawl boats, these anadromous fish declines have taken place. It's got to stop. Either that, or need to limit their catch, with on board observer, or you go to a gear change and drop the size of the nets. You have to do something. You are fishing out the bottom of the food chain. You are cleaning the ocean out. There is going to be nothing left. I am tired of wearing this "etc." hat. I am going to urge you please 100% on board observers and 100% dockside monitoring.

One last thing, Vito Calomo was talking about jobs. Everybody needs a job. The ocean is not the government printing office. We just can't print money to create jobs. You can't print fish. There are only so many fish in the ocean. Either you stop now or you will stop later, but you are going to stop because you are going to run out of fish. The other thing is fish need to become more expensive or they are not going to survive.

Bob Veach, CT Charter and Party Boat Association: On behalf of the members I represent, I ask the Council to consider the following:

100% observer coverage on Category A and B herring vessels in order to provide reliable estimates of catch, including bycatch of river herring, cod, haddock, bluefin tuna, and other marine life.

Closed Area I provisions with trip termination after ten dumping events in order to reduce dumping on Category A and B vessels. Given the nature of the gear being used in this fishery, it is critical that rules are put in place to make sure that unsampled dumping is not occurring.

Prohibit herring midwater trawl vessels from fishing in groundfish closed areas. These boats should have never been allowed in there to begin with.

Implement measures to require weighing of catch across the fishery so that managers have accurate data on how much herring is being landed in the fishery.

By taking these steps, the Council will be able to fix many of the most pressing problems in this fishery. Please do what is right and approve these measures.

Gary Libby, groundfisherman, Port Clyde ME: The number one issue for me in the whole amendment, since before the amendment, is midwater trawl access to the groundfish closed areas. I have a bunch of friends who are groundfish fishermen in the Port Clyde area. They feel like I do. We don't think that trawl access should be allowed in a closed area. We don't think that any access should be allowed in those closed areas. Right now, we are struggling to survive in the groundfish fishery. We have been told in the past that it's not that many fish. Some numbers I see on the papers, it's more fish than I catch in the year. I guess I don't catch many fish. That and monitoring.

I think we need to have the monitoring. I think it's needs to be for catch and bycatch. We need to know what's going on both ends of it. I think it should be A and B vessels because of the 97% figure. If we cover 97% of the fishery, we can extrapolate 3% and pretty much get a handle on the catch and bycatch. I spoke before and written comments. I don't want to take up much time. Those are my big points. The groundfish closed area one is the one that really affects the way we fish in Port Clyde. It's the trawl access in there. If you are going to have closed areas, they need to be protected.

Gary Hatch, Owl's Head ME, Category A Herring Fisherman: I am going to get away from the topics of the past and touch on some of the things in this document that I felt need some refinement. The reason I'm bringing these up is that I feel out of sort. I am a traditional fisherman in this category. I am not only a stop seiner, but a small purse seiner, and we traditionally use carrier vessels. With the things that are brought up in this document, I wish that we could have segregated in the category of what we are so that we could have gotten better feedback. In some instances, we are talking about 150-foot carrier boat, which isn't what the traditional carriers are from the state of Maine or even New England.

To be versatile as a small boat carrier, we need to use a VMS so we can declare in and out daily because in three years ago, we had some menhaden fishery. It looks like we may have some this year, so we aren't tied to being a herring carrier. We can transfer back and forth between our herring days and the opted out days.

The other part is that I would like to touch on is the dealer permit for the herring carrier vessel. With the VMS, that would at least quantify where we are and what we are doing, and the details of how we use that permit. If we declare where we sold it and how much we did, but the catcher would be the one to declare daily to NMFS through VMS on how many were caught. And at the end of the week, both figures would be brought together so that you would have your cross-check for how many fish were caught by that company or organization.

The other one would be the transfers at sea. Again, to say that we can't use carrier vessels, that is the most traditional fishery that this whole fishery has. I would feel that it is a violation of Magnuson to suggest that we can't continue the traditional fishery and the methods that it uses to operate.

David Gelfman, F/V Horse Mackerel: I believe the herring boats should be put out of business, but that's not going to happen. So, the first thing you should do is verify what they catch with a precise system of weighing their catch. You need to have 100% observer coverage on all their trips everywhere, not just in closed areas. If we can't pay for it with government money, they should pay for it with their own money. Their fishery is leading to the destruction of all the other

fisheries. There is no reason why they can't afford to pay a little more and be observed, and verify the claims they make about a clean fishery.

I have spent approximately 60 days over the past two years on the Canadian border on Georges Bank in the closed area. 57 of those days, I had herring boats nearby. There's codfish, juvenile haddock, whales, tuna fish, everything there. Nobody knows what they are catching. You need to make sure we monitor what they catch.

The closed areas should be closed to them. When I started fishing in the early 1980s, there weren't any closed areas. When the herring boats arrived, they were the only ones allowed in. As soon as they started fishing, the herring population started going down. We need to weigh the catch, verify what they catch, observe what they catch, make sure they bring their net on board to verify what's in the net. And make sure they are out of the closed areas.

Peter Mullen, Herring Fisherman, Gloucester, MA: To the comments that we need 100% observer coverage. We have no problem with 100% observer coverage if we can figure out how to pay for it. We can't afford \$1,200 a day. Give us 100% observer coverage. We have no problem with it, so we can clean up some of these lies that are being told up and down the coast.

Eoin Rochford, NORPEL, New Bedford, MA: I am the plant manager at NORPEL in New Bedford. I have a problem with 100% observer coverage. What's going to happen is the government isn't going to pay for it, and it will put smaller boats out of business. The bigger boats are going to be able to pay for it in the short-term, but they will have to pass on costs to end users, particularly the lobstermen. At the plant, we can't afford to pay the higher prices for herring that the lobstermen can. Our markets are basically third world countries. We are market competitive. If the price of fish goes up, we literally can't afford to buy it because we can't make a profit. The bottom line is that we are in business to make a profit. So it's a very dangerous game to start playing. If the government is going to pay for it, then certainly. We would love 100% observer coverage. The State of Massachusetts had dockside observation almost 100% of the time at our plant last winter from when we started receiving product in September until February when Area 2 closed. The dockside observers were shocked, stunned, amazed with the lack of bycatch.

What 100% observer coverage says to me that first, you are saying the observers that are there aren't doing their job because if you look at the data, you will see that there is very little bycatch on the herring boats. Number two, you are saying Massachusetts Department of Fisheries didn't do their job this winter because their documented evidence shows the same story. It's saying DEM, who are basically law enforcement, when they come to check the plants, it's saying that they are not doing their job. It is saying that the U.S. Coast Guard is not doing their job. So before we see 100% observer coverage, I would like to see all of these departments indicted for not doing their job. I feel that you have the public outcry is saddle the industry with burdensome costs that will put most of them out of business, particularly the smaller Category A permit holders and Category B permit holders. Category C and D vessels are fishing usually with bottom gear and not midwater gear. Technically they can fish with midwater gear. But those boats, even though they are catching a small amount, have very high percentages of bycatch which all goes into the mix when you look at the observer data. From looking at this data, I was shocked by what I saw in it. I have midwater fished for years, but I have never seen the bycatch that I have seen documented from the observer program. I asked for the data to see it. The

bycatch across the herring fishery is 1.4% based on the poundage of herring to bycatch, and that is all the bycatch over the last 10 years. I was going through all of the different species and I said I have never seen any of these species at the plant. I would love to see a lobster and take it home for dinner, but the point is that I have never seen that coming off these midwater boats. The data is getting skewed by these smaller boats, particularly the C and D boats. They are seeing a lot more bycatch than the Category A and B permit holders. Now, there is a huge variation in Category A and B boats with regards to the amount of fish they catch. So to bunch them all together and say they have to have 100% observer coverage, there is no problem as long as the government pays for it, but the industry can't afford to pay for it. I, as plant manager, will go out of business indirectly. Maybe that's what most of the people here want. But I want the Council to be more than aware of this if they are insisting on 100% observer coverage.

In regards to fishing in the groundfish closed areas, again, I wish somebody would look at the observer data. It shows little to no interaction. There were three interactions two years ago. If you take away those three instances, there wouldn't be a problem despite the ridiculously low catch cap on haddock we were given. The three instances were freakish, yet there were over 100 other tows made with little or no bycatch. One more freak incident would have closed the fishery down until May of this year when the new groundfish quota came out. That can't be looked at as a management measure.

There's another thing that nobody seems to be taking into account here. There is a massive collapse of groundfish in the Gulf of Maine. Numerous studies in Canada and Europe show predation of pelagic species directly impacts groundfish like cod and haddock. In other words, when there is an overabundance of the pelagic species, it prevents groundfish like cod and haddock recovering. There was a study done on the groundfish collapse in the Gulf of St. Lawrence in the 60s. Within a ten-year period, it rebounded dramatically. Then, it collapsed again in the 80s, and there has been no great recovery. The scientists did a study in 2000, and they discovered that the presence of pelagics, particularly herring and mackerel, directly impacted these fishes recovery. This document never took any of that into account because most of the measures I see are from a "neutral" to a "high negative." There isn't realistically any positive measure, as a plant measure in the herring and mackerel industry, that I can see from this document, which is sad to say the least. In the management program, there should be some positive for each one in the industry somewhere along the line. There is actually none for my industry.

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

ATTENDANCE SHEET
Travel Authorization # 12-70

ATTENDANCE AT: Herring Amendment 5 Public Hearing

DATE: Wednesday, April 25, 2012

LOCATION: Hilton Hotel, Mystic, CT

CERTIFIED BY: _____

IMPORTANT... Any information provided on this form is subject to Freedom of Information Act (FOIA) disclosure and may be made available to anyone requesting such.

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