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New England Fishery Management Council

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MEMORANDUM

DATE: June 8, 2012
TO: Council Members
FROM: Lori Steele, Herring Plan Development Team (PDT) Chairman; Rachel Neild, NEFMC Staff
SUBJECT: **Public Comments Re. Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP)**

During both comment periods for Draft Amendment 5 to the Herring FMP (April 20, 2012 – June 4, 2012), nine public hearings were conducted, and thousands of written comments were received. The Council held eight public hearings during March 2012 to solicit comments on the Draft Amendment 5 document under the provisions of the Magnuson-Stevens Act; another hearing was held by the Council in April 2012 during the 45-day comment period required by the National Environmental Policy Act (NEPA).

This memo summarizes the issues raised and comments received on Draft Amendment 5 and the Draft Environmental Impact Statement (DEIS), from both the public hearings and written comments. At its June 19-21, 2012 meeting, the Council should consider these comments when developing its recommendations for the selection of final measures to include in Amendment 5.

The total number of written letters and emails received during the comment period for Amendment 5 is **47,861**; some are signed by multiple individuals due to being batched emails. Many of these comments received were from stakeholders, industry groups, environmental organizations, and individuals (groundfish, tuna, bluefin, herring, lobstermen, and recreational fishermen, as well as other stakeholders). A list of the many groups providing comments includes (please see comment letters for more information about the individual organizations and entities): PEW, Honest Bycatch, CHOIR, ABTA, Earthjustice, MCSBA, NRDC, SBCBA, Buckeye Brook Coalition, Oceana, Blue Ocean Society, Whale Watch Industries, MA Commercial Striped Bass Association, Strippers Forever, Innovative Stone, Cape Cod Conservation District, NAMA, Nantucket Angler's Club, MA Lobstermen's Association, Maine Lobstermen's Association, Town of Wellfleet, Lund's Fisheries, Recreational Fishing Alliance, RI bottom trawl fleet, NETC, Conservation Law Foundation, Watershed Action Alliance of SE Mass, Western Sea Fishing Company, Cape Seafoods Inc., New England Coastal Wildlife Alliance, Jones River Watershed, Alewife Harvesters of Maine, Coastal Conservation Association of NH, Town of Nantucket, MA, Dukes County Fishermen's Association, Cape Cod

Commercial Hook Fishermen's Association, ME Association of Charterboat Captains, Save the Bay, ME Coast Fishermen's Association, Commercial Anglers Association, Great Egg Harbor Watershed Association & River Council, CT Charter and Party Boat Association, CIIFA, New England Aquarium, Bourne Consulting Engineering, Cape Cod Commercial Hook Fishermen's Association, National Coalition for Marine Conservation, ASMFC, Little Bay Lobster LLC, SF Offshore Inc., Island Institute, Penobscot East Resource Center, MSBA, MCFA and NORPEL.

There were a number of management actions discussed by many of those who submitted comments, but five issues provide a common theme throughout many of the written comments and those provided at public hearings:

1. **100% Observer Coverage on Category A/B Herring Vessels (little/no support for similar requirements on C/D vessels)**
2. **Implement Measures to Address Net Slippage – Closed Area I provisions and trip termination (10 slippage events vs. 5 slippage events)**
3. **Require Herring Dealers to Accurately Weigh All Fish**
4. **Prohibit Midwater Trawl (MWT) Vessel Access to Groundfish Closed Areas**
5. **Establish a River Herring Catch Cap immediately (not unanimously supported by those who expressed support for the other four issues identified above)**

Two tables are provided at the end of this memo, which show those groups that commented on the first four management actions and those that commented on all five management actions.

The major issues that were identified and discussed during the comment period are summarized below. The purpose of this memo is to provide an overview of the comments received on Draft Amendment 5; this memo is not intended to reflect every comment that was received. The letters and public hearing summaries should be referenced to gain a better perspective on individual comments.

1. **100% Observer Coverage on Category A/B Herring Vessels**
 - This was one of the most common comments from many individuals, fishermen, industry, and stockholders alike. Many feel this is necessary to either confirm or disprove the claims that have been made by many regarding bycatch in the directed herring fishery. Some commenters suggested that the coverage may prove that there is more river herring bycatch than is currently being documented. While there is a general desire to have the federal government cover the entire cost of the observer coverage, some feel that the cost of an observer can be split amongst industry and the federal government, and there are still others who don't want the 100% observer coverage. Many comments, particularly those from the herring industry, suggested that there should be a time limit or a "sunset clause" (ex. 1 to 2 years) on this management action to collect substantive data on the total bycatch of the herring fleet for vessels in Category A/B fleet, since they cover about 97% of the herring catch in the Northeast region.

- It was suggested that this management action could create controversial funding issues amongst federal government and industry. Some feel this could end the small herring boat fishery if industry has to pay for observers, which the small vessels would not be able to keep up with and the larger vessels may only be able to cover observer cost for a short time.
- A handful of fishermen (tuna), industry, and environmental groups suggested that there should be two or three observers on a boat at one time to handle the necessary and required actions of an observer needed for a 24 hour operation.
- Several commenters stated that the same results can be achieved without 100% coverage on category A,B, C, and D vessels (the concern is regarding C/D category vessels, which are smaller vessels with less budgets and they only cover a very small percentage of the herring catch (1%-3%)). Some comments proposed to have 100% coverage in closed groundfish areas only.
- Many lobstermen commented that there can be significant gear conflict between lobster pots and the midwater trawl gear and would like to see 100% observer coverage.
- One comment suggested that the 100% should be for pair trawlers only and that coverage should be set by gear types not by permit category. One fisherman stated that he wants the pair trawlers eliminated.
- Some comments expressed concern that grouping Category A/B boats with Category C/D boats could skew the data because they felt that Category A/B vessels have much less bycatch than Category C/D vessels. The comment was to make the Council aware of the variation between these vessels and to be cautious about the 100% coverage due to the funding issues.

2. Implement Measures to Address Net Slippage – CAI Provisions and Trip Termination (10 vs. 5)

- Many of the comments regarding measures to address net slippage expressed support for this management action and felt that there should either be a limit of five (5) or ten (10) slippage events (. Many of the comments suggested that this would give those who have slippage events as a common occurrence more incentive to haul that set in or deal with the repercussions of possible trip termination or a catch deduction (discussed in Option 4 of the Measures to Address Net Slippage).
- It was noted in several comments that the Released Catch Affidavit are only required when there is an observer on board, so if there is not 100% observer coverage then not all of the slippage events are likely to be documented.

3. Require Herring Dealers to Accurately Weigh All Fish

- There were two general themes within the comments regarding this management action. The first is to accurately weigh all the fish brought into port with scales, and the second is to use a volumetric measurement. A few comments suggested that herring is an easily perishable product and it will rot in the time that the fish were weighed.
- A few fishermen (herring, lobster, and groundfish fishermen, as well as carrier vessel operators) made comments stating that using volumetric measurement is accurate and it is well-understood throughout the fishery. For example, a tote of herring would be 100 to 110 lbs and the grey tubs are about 1,000 lbs. Another comment suggested that 90% of the

herring is pumped out of boats with vacuum pumps and go directly into tanker trucks or a truck with 18 to 24 vats. They estimated that each vat equaled 1,800 lbs. They have been supporting a certain formula and have trust with their end users and noted that they wouldn't pay for more fish and if anything they would pay for less and stated that if that were the case then it would be questioned by the fishermen.

- Pew Environmental Group and Earthjustice suggested that the following measures in Section 3.1.5 Option 2 (Dealers must accurately weigh all landed fish) with all of the following Sub-Options be considered: Sub-Options 2A: (Annual documentation of catch composition estimation methodology); Sub-Options 2B: (Weekly reporting of catch composition estimation for each individual landing); Sub-Option 2C: (Dealer participation in SAFIS with vessel error-checking through Fish-on-Line).

4. Prohibit Midwater Trawl Vessel Access to Year-Round Groundfish Closed Areas

- Many comments suggested that this is both a resource and equitability issue and that there is plenty of opportunity for herring vessels to fish outside the groundfish closed areas. The countering comments raise the concern that midwater trawl vessels could shift effort to areas with more groundfish bycatch, which is what they are trying to avoid.
- Some environmental groups felt that the only exception to fish in groundfish closed areas should be under an exempted fishing permit for experimental/scientific purposes (*Alternative 5*). Other comments from herring industry members (and fishermen) supported criteria to re-establish measures for midwater trawl vessel access to the groundfish closed areas through *Alternative 2* in Amendment 5 (pre-Closed Area I provisions); and comments from fishermen supported the no action alternative (*Alternative 1*).
- Tuna fishermen also provided comments suggesting that the midwater trawl fleet is a noise disturbance and could be part of the possible decline in the bluefin tuna fishery in the Northeast.
- One association commented that midwater trawl fishing in groundfish closed areas should only be allowed if there are observers aboard 100% of the vessels going into closed groundfish areas.

5. Establish a River Herring Catch Cap

- Many comments supported an immediate catch cap for river herring, which they felt was already authorized in Amendment 1 to the Atlantic Herring FMP. Some comments are in support of "hotspots," which are referred to as "Monitoring/Avoidance Areas" in Amendment 5 (options proposed in Amendment 5 would increase monitoring in these areas).
- A few comments also indicated a need to include river herring (and shad) as stocks in the Atlantic herring fishery. Some comments discussed that the proposed river herring catch triggers are too high if they are used as catch limits and could ultimately decrease the herring runs in Southeast Massachusetts.
- Industry and fishermen suggested daily reporting on river herring bycatch, which should be addressed with cooperation through the industry and an outside academic-partner.

- One conservation group suggested closing known bycatch hotspots when a certain catch threshold is reached, in order to balance the economic impacts on the herring fleet and lobster fishery.
- A conservation group suggested to implement an immediate cap for all alosines (river herring and shad, or “River Herring”) based on a 3 or 5 year median annual river herring and shad catch by management area, with a provision for updating the cap based on new scientific information as it becomes available (through specifications).
- An environmental group suggested to allow for a future expansion (through a Framework Adjustment) of the closures to the larger “River Herring Monitoring/Avoidance Areas.”

Carrier Vessels and Transfers At-Sea

These issues were not as prevalent throughout the comments but are worth noting.

- Three corporations commented on the flexibility for carriers utilizing vessel monitoring systems (VMS) as a vital aid to their operation and helpful to smaller vessels. An individual made a comment that VMS would help with the details on how the permit was being used.
- It was also suggested by many that there should be no change in the current transfer at-sea provisions currently in place.
- A corporation is in support of the new Federal At-Sea dealer permit for carrier vessels to minimize double-counting of landings.

Mackerel Concerns

- One comment regarding the mackerel fishery stated that it was affected because the herring quota was already met this year in Area 2, which consequently shut down the mackerel fishery in Area 2. It was stated that this creates a large economic impact on the Mid-Atlantic vessels fishing for mackerel. The suggestion was made that the Council address this issue as soon as possible.
- There is support for Option 2 regarding the establishment of the new open access herring permit form limited access mackerel fishery participants, in Areas 2/3 only, for those vessels that did not qualify for a limited access herring permit.

Other Comments

- Industry comments suggested that the Council reconsider implementing a portside/dockside sampling program for the herring fishery.
- One comment suggested reviewing the maximum sustainable yield (MSY) of the herring complex and assessing whether the fishery management program put in place is appropriate. Another comment suggested that the Council should be considering maximum sustained value instead of maximum sustained yield for herring because herring may be more valuable indirectly to industries like whale watching and ecotourism.
- A comment was made that herring are much smaller than in the past and if one were looking at gross tonnage of the catch, then mortality rate is probably double (at present day) than it was in the past because one is not collecting a fully mature herring (which is much larger).

- Some stakeholders noted the importance of predator-prey relationships and expressed concern that there was not adequate discussion in Amendment 5 about this issue, given the fact that it is included as one of the objectives of the amendment.
- One commercial fisherman recommended that in the analysis of bycatch, the threshold for a directed herring trip to be changed to 10,000 lbs. to separate vessels targeting herring from mixed trips.
- A few fishermen suggested that the observer program add a new protocol to ask the question, when entering the vessel, if there are any fish aboard prior to sailing; it was noted that this can be a common scenario amongst the fleet for a number of reasons (ex. Not enough trucks show up to pump the fish off the vessel). The commenters felt that this may help improve catch estimates from observer data and reduce discrepancies between data sets.
- One comment suggested conducting the retrospective analysis of river herring from the past 40 to 50 years to more specifically determine when/how the declines occurred, but bluebacks and alewives should be assessed separately to better understand trends.
- A comment discussed the collapse of the groundfish in the Gulf of Maine and that a study was done showing that the presence of pelagic fish, such as mackerel and herring, directly impacted groundfish recovery.
- One comment suggested that the Maine and Massachusetts alewives are derived from separate stocks and that offshore seiners and trawlers destroyed the Massachusetts stock (data in annual reports was used to make this statement).
- One fisherman suggested that the Council create a permit category for those who catch a small amount of herring for bait.
- Some industry members expressed opposition to Amendment 5 because they felt that much of the information that has been presented to the public to gain support for the amendment is misleading.
- One conservation group suggested that river herring and shad must be added to the Atlantic Herring FMP.
- Several comments from conservation groups suggested pre-trip and pre-landing notification requirements should also apply to Category D vessels fishing with midwater trawl gear in all Herring Management Areas.
- Environmental groups commented on the fact that they oppose Sub-Options 2D (Requirements for Trips with Multiple Vessels) and 2F (Visual Access to the Net/Codend). The explanation for the opposition is because the groups feel that there should be deployment of an observer always required on all vessels taking on fish in a multi-vessel operation, and the phrasing in Sub-Option 2D contains an unacceptable loophole (the inclusion of the phrase “wherever/whenever” possible). Opposition to Sub-Option 2F related to the vague nature of the requirement.

Amendment 5 to the Atlantic Herring FMP: Group Comment Table (1)

Table 1

1. 100% observer coverage on Category A/B herring vessels (little/no support on C/D)	1. 100% observer coverage on Category A/B herring vessels (little/no support on C/D)
2. Implement measures to address net slippage-CAI provisions and trip termination (10 vs. 5)	2. Implement measures to address net slippage-CAI provisions and trip termination (10 vs. 5)
3. Require dealers to weigh all fish	3. Require dealers to weigh all fish
4. Prohibit Midwater Trawl Vessel access to Year-Round Groundfish Closed Areas	4. Prohibit Midwater Trawl Vessel access to Year-Round Groundfish Closed Areas
Support Immediate River Herring Catch Cap	No Comment on River Herring Catch Cap
1. Earthjustice	1. MCSBA
2. NRDC	2. Nantucket Anglers Club (wants to see improved river herring protection)
3. Honest Bycatch	3. Maine Lobstermen's Association
4. SBCBA	4. ABTA
5. PEW	5. Recreational Fishing Alliance
6. Conservation Law Foundation	6. NETC
7. Watershed Alliance of SE Massachusetts	7. CHOIR
8. Coastal Conservation Association of NH	8. Blue Ocean Society for Marine Conservation
9. Commercial Striped Bass Association	9. Town of Nantucket, MA (wants to see improved river herring protection)
10. Commercial Anglers Association	10. Dukes County Fishermen's Association
11. Cape Cod Commercial Hook Fishermen's Association	11. Cape Cod Commercial Hook Fishermen's Association
12. National Coalition for Marine Conservation	12. Connecticut Charter & Party Boat Association
13. Island Institute	13. Bourne Consulting Engineering
14. MSBA	14. Penobscot East Resource Center
15. MCFA	15. None
16. †Massachusetts (Group) signed letter	16. None

**The left column shows the groups that expressed support for the management actions discussed in 1-4 plus an immediate river herring catch cap. The right column shows the groups that expressed support for the management actions discussed in 1-4, but had no comment on the river herring catch cap.*

† A list of groups associated with these letters is seen in Appendix 1.

There are other groups and companies seen in Table 2 (below) that expressed support and/or opposition to these five management measures separately; these will be shown by the number associated with the management measures (seen in Table 1 above) as 1, 2, 3, 4, and river herring catch cap (RH).

Amendment 5 to the Atlantic Herring FMP: Group Comment Table (2)

Table 2

Group/Company	Management Measure(s) 1-4 + RH Catch Cap
Town of Wellfleet	1, 2, 4, RH Catch Cap (no comment on 3)
Innovative Stone	1, 2, 4, RH Catch Cap (no comment on 3)
NAMA	1, 2, 4, RH Catch Cap (no comment on 3)
Ipswich River Watershed Association	1, 2, RH Catch Cap (no comment on 3 or 4)
CIIFA	1, 2, 4 (no comment on 3 or RH Catch Cap)
First Light Anglers	1, 2, 4 (no comment on 3 or RH Catch Cap)
Massachusetts Lobstermen's Association	1, 3, 4 (no comment on 2 and opposes RH Catch Cap)
Friends of River Herring	1 and 2 only (wants safe zones for R. herring)
Lund's Fisheries	1,3 (oppose 2, 4, and RH Catch Cap)
Cape Seafoods, Inc.	1,3 (oppose 2, 4, and RH Catch Cap)
Western Sea Fishing Company	1,3 (oppose 2, 4, and RH Catch Cap)
NORPEL	Opposes all but 3 (which there was no comment)
Save the Bay	1, 3, RH Catch Cap (no comment on 2 or 4)
New England Aquarium	1, 2, 4, RH Catch Cap (no comment on 3)
ASMFC	1, 2, 4, RH Catch Cap (no comment on 3)
**Connecticut & LI Sound (Group) signed letter	1, 2, 3, RH Catch Cap (no comment on 4)
**New Hampshire (Group) signed letter	1, 2, 3, RH Catch Cap (no comment on 4)
*Rhode Island (Group) signed letter	1, 2, 3, RH Catch Cap (no comment on 4)

*** A list of groups associated with these letters is seen in Appendix 1.*

Appendix 1

fMA Group Letter: Refer to Table 1

Neponset River Watershed Association, Alewives Anonymous, Inc., The Association to Preserve Cape Cod, Center for Ecological Economic and Ethical Education, Charles River Conservancy, Charles River Watershed Association, Environment Massachusetts, Duxbury Management Commission, Duxbury One Fly, Environmental League of Massachusetts, Friends of the Blue Hills, Friends of Herring River (MA), Wellfleet & Truro, MA, Green Futures, Housatonic Valley Association, Jones River Watershed Association, Leesville Pond Watershed and Neighborhood Association, Mass Association of Conservation Commissions, Massachusetts Baykeeper, Massachusetts Watershed Coalition, Mystic River Watershed Association, New England Coastal Wildlife Alliance, North and South Rivers Watershed Association, OARS (Assabet, Sudbury and Concord Rivers), Ocean River Institute, Parker River Clean Water Association, Town of Wellfleet Natural Resources Advisory Board & Shellfish Advisory Board, Wellfleet Conservation Commission, Westport River Watershed Alliance

****CT and LI Sound Group Letter: Refer to Table 2**

CT DEEP, NY Dept. of Environmental Conservation, Save the Sound, Rivers Alliance of CT, Citizens Campaign for the Environment, Audubon CT, Park Watershed, Friends of Oyster Bay, Housatonic Valley Association, The Maritime Aquarium, Audubon NY, Mianus River Watershed Council, Coalition to Save Hempstead Harbor, Naugatuck River Watershed Association, Environment CT, Naugatuck River Revival Group, Farmington River Watershed Association, Northeast Organic Farming Association CT Chapter, Quinnipiac Watershed Association, Branford Conservation Commission, CT Watershed Conservation Network, Coginchaug WHP Implementation Committee & Middlefield Inland Wetlands and Watercourses Commission, Long Island Sound Assembly Regional Council, Project Oceanology, Redding Conservation Commission & Saugatuck Watershed, Roxbury Conservation Commission, Shoreline Shellfish, LLC & Sound Marine Skills, Inc., The Sound School, Inland Wetland & Watercourses Commission Trout Unlimited Hammonasset Chapter, Trumbull Conservation Commission, Yale School of Forestry and the Environment

****NH Group Letter: Refer to Table 2**

Great Bay-Piscataqua Waterkeeper, Conservation Law Foundation, Audubon Society of New Hampshire, Citizens for a Future New Hampshire, Citizens for Sludge-Free Land, Department of Natural Sciences, Environment New Hampshire, Global Awareness Local Action, Great Bay Trout Unlimited, Lamprey Rivers Advisory Committee Wild & Scenic Rivers Program, Green Alliance Portsmouth, New Hampshire, New Hampshire Rivers Council, Seacoast Science Center, Smuttynose Brewing Co., Portsmouth Brewery, Sustainability Department, Southern New Hampshire University, The United Church of Christ, Winnicut River Watershed Coalition

****RI Group Letter: Refer to Table 2**

Buckeye Brook Coalition, Environment Council of Rhode Island (list of groups below), Blackstone River Watershed Council/Friends of the Blackstone, Friends of the Hunt River Watershed, Environment Rhode Island, Friends of the Moshassuck Providence, RI, Kickemuit River Council, Wood Pawcatuck Watershed Association, Woonasquatucket River Watershed Council, American Lung Association of the Northeast, Apeiron Institute for Sustainable Living, Appalachian Mountain Club, Arpin Group, Inc, Audubon Society of Rhode Island, Blackstone River Watershed Council, Buckeye Brook Coalition, Center for Environmental Studies, Brown University, Childhood Lead Action Project, Clean Water Action, Coastal Institute, University of Rhode Island, Common Fence Pt Improvement Association, Concerned Airport Neighborhoods, Conservation Law Foundation, Empire Loan, Environment Council of Rhode Island Education Fund, Environment Northeast, Environment Rhode Island, Environmental Justice League of Rhode Island, Fort Adams Trust, Friends of India Point Park, Friends of the Pawtuxet, Full Circle

Recycling, Green Circle Design, Greene Goddess Farm, Greenways, The Episcopal Diocese of Rhode Island's Environmental Stewardship Task Force, Greenways Alliance of Rhode Island, Groundwork Providence, Heartwood Group Inc, Herrf Jones, Lincoln Land Trust, Narragansett Bay Estuary Program, National Education Association RI, National Wildlife Federation, Northeast Region, New Dawn Earth Center, Norman Bird Sanctuary, Ocean State Action, People's Power & Light, Providential Gardener, R.W. Chew, LLC, RI Association of Conservation Commissions, RI Association of Railroad Passengers, RI Environmental Education Association, RI Interfaith Power & Light, RI Land Trust Council, RI Rural Development Council, RI Saltwater Anglers Association, RI State Nurses Association, RI Tree Council, RI Wild Plant Society, Roger Williams Park Zoo, Save The Bay, RI, Scituate High School, National Energy Education Development Project, Sierra Club, Rhode Island Chapter, Southside Community Land Trust, The Greene School