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SUSTAINABLE FISHERIES COALITION

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P.O. Box 440 Winterport, Maine 04496-0440

November 8, 2010

John Pappalardo, Chairman
New England Fishery Management Council
Mill
Newburyport, MA 01930

RE: Haddock Sub-ACL for the Herring Fishery

Dear John:

We are writing to you on behalf of the Sustainable Seafood Coalition whose members range from Maine to New Jersey and represent both the harvesting and processing sectors of the Atlantic herring and mackerel fisheries. We are extremely concerned with the management of the herring fishery in 2010 and the resulting loss of income and fishing opportunities that resulted. We have had to deal with an unprecedented number of changes in a very short period of time: reductions in the herring TAC, a complete redistribution of historic removals from the fishery (less inshore – more offshore), a reduction in the haddock catch Cap, a change in monitoring in Area 3 and the combined state/federal effort controls that resulted in a extreme derby fishery inshore with a 48 hour notice of a closure with a final 12 hour landing window in a full blown gale.

We do not expect the Council to be able to take immediate action to address all of these concerns. However, the insufficient haddock catch Cap that prevents full access to the offshore fishery is an area that the Council can recommend desperately needed relief for this fishery in 2011 and 2012.

We request:

1. That the Council recommend the National Marine Fisheries Service (Agency) take Emergency action to increase the Haddock Catch Cap for the herring fishery in 2011; and
2. That the Council prioritize a framework action to adjust the method of determining the haddock sub-ACL for the herring fishery and evaluate decoupling the Gulf of Maine (GOM) and Georges Bank (GB) under this allocation.

HISTORY

Framework 43

In 2006 the Council recommended Framework 43 to the Multispecies Plan to establish a **catch Cap for GOM/GB haddock** in the herring fishery. The catch Cap is calculated annually as 0.2 percent of the total US target TAC for haddock. The Regional

Administrator monitors the Cap through landings observed by NMFS approved observers, law enforcement reports, VTRs and dealer reports. If the Cap is fully caught the directed herring fishery must be closed in the GOM/GB Herring Exemption Area through the remainder of the groundfish fishing year. The Herring Exemption Area covers 90% of the GOM/GB haddock stock area and encompasses almost the entire herring management areas 1 and 3. Although the haddock incidental catch Cap applies just to haddock caught by vessels with Category A and B permits, the closure of the herring fishery would apply to all herring vessels, including those with limited access Category C and open access Category D herring permits. A closure is also likely to impact the mackerel fishery.

In 2006, the Council considered alternatives that would allocate 1-2% of the US haddock TAC to the herring fishery. However, since the Cap was not to be extrapolated across the fishery in these areas, the measures chosen to allocate were based on the 2006 target observer coverage rate of 20% of the fishery – even though the monitoring program was inclusive of other data and reports. Thus, the herring fishery receives the fraction of 0.2 of 1% of the TAC through the groundfish specification process.

Herring Fishery Performance under the Cap

The herring industry has taken a number of measures to avoid incidental catch of haddock in the fishery. In June of 2005 Captains and vessel owners from the vast majority of active participants in the midwater trawl fleet traveled to the flume tank at Memorial University in St. Johns, Newfoundland to explore possible gear modifications. Many participants in the fishery modified their nets, increasing the forward mesh size of the net and some continued with experiments in modifying the top sheet as well. Today, plans are in development to explore grids and other methods that may further reduce haddock interactions. In addition, vessels continue to share information and communicate haddock interactions among the fleet.

As indicated in Table 1, the herring industry successfully managed the Cap from 2006-2009, staying under 20% of the Cap in these years. However, in 2010 a combination of management changes drastically changed the percent of the Cap attained, which significantly impacted the fishery: a reduction in the inshore herring TAC, a reduction in the haddock TAC (which corresponds to a reduction in the Cap) and the greatest change – the implementation of new regulations for Closed Area I that required 100% observer coverage to access the area. These actions resulted in a defacto closure of the Georges Bank herring fishery in late September as vessels voluntarily left the area 4 months into the season when the Cap reached 80% to avoid the total closure of Area 1 and 3. As of October 30, 60% of the Area 3 TAC remains unharvested.

Table 1: Haddock Catch Cap in the Herring Fishery 2006-2010[1]

Year	Catch Cap (lbs)	Caught (lbs)	% of Cap
2006	161,377	18,067	11.2
2007	404,991	13,496	3.3
2008	541,925	37,126	6.8
2009	316.218	52,382	16.5
2010	189,597	152,722	80.7 *

* (as of 11/6/10)

[1] Haddock Catch in the Herring Fishery, http:// www.nero.noaa.gov/ro/fso/reports/reports_frame.htm

Observer Coverage in Area 3
On November 2, 2009, the Agency published a final rule that modified the LOA under which herring midwater trawl vessels operate in Closed Area I. Under the new regulations, vessels are now required to declare their intent to fish in Closed Area I and must have a federal observer on board to access the area. Table 2 reflects the coverage that resulted from this action in herring management Area 3 from May of this year through October.

Table 2: 2010 Preliminary data May-October - Area 3 [2]

Area	#trips IVR	A. Herring lbs IVR	# Observed trips	Observed A. herring lbs	Observed Haddock lbs	Coverage rate
3	70	29,443,912	100	30,605,202	150,804	104%

Underutilizing OY in US Fisheries
Since 2004 GOM/GB haddock stocks have greatly increased in abundance and both stocks are healthy. The resource is not overfished and overfishing is not occurring. In fact, the resource on Georges Bank is well under-harvested, primarily due to controls placed on the groundfish fishery. The harvest area that is relevant to the incidental catch of haddock in the herring fishery is Georges Bank as indicated in the October 27, 2010, Permit Holder Letter from the Agency ***"The vast majority of observed haddock bycatch has been caught on GB (in Herring Area 3), specifically along the northern edge of GB."*** Table 2 provides a comparison of catch to available TAC for GB haddock for the directed groundfish fishery. The implementation of Amendment 16 in 2010 is expected to allow for increased harvest of the GB haddock ACL for the groundfish fleet; however, limitations on "choke species" are expected to continue to significantly hamper the harvest of this resource. There is sufficient biomass of haddock to allow for the groundfish and herring fisheries to operate in a responsible and sustainable manner on GB.

Table 3: Comparison of Catch to TAC in the Directed Fishery[3]

Year	GB Haddock
2006	11%
2007	5%
2008	5%
2009	10%
2010	20%*

* Projected track

Reduction in the Haddock Sub-ACL for the Herring Fishery
The Sub-ACL for haddock specified for the herring fishery in 2010 is 84 metric tons, a 40% reduction from the 2009 level. Projections from Draft Groundfish Framework 45 seen in Table 3 indicate these specifications will be further reduced to 64 metric tons in 2011 and 54 metric tons in 2012. These extremely low allocations will severely limit the herring fishery

[2] Northeast Federal Fisheries Observer Program
[3] 2006-2007, NE Multispecies FMP A16, Table 51, p 311, 2008-2010, Personal Communication, Groundfish PDT member

on GB and if attained will close the entire fishery, including the GOM during the height of the bait season.

Table 4: GB Haddock Specifications (metric tons)* [4]

Year	US ABC	ACL	Groundfish ACL	MWT/PS ACL
2010	44,903	42,768	40,440	84
2011	34,244	32,840	30,840	64
2012	29,016	27,609	26,132	54

* 2011-2012 – preliminary, do not include CA catch and may change due to future TMGC recommendations, final recommendations by NEFMC pending

Atlantic Herring Specifications
As Council members are aware, the specifications for the herring fishery have been dramatically reduced for 2010-2012. In addition, the allocations to the subcomponents of the resource have been dramatically shifted from historical removal rates by area, with the significant redistribution of available TAC from the GOM to GB (herring management Area 3). The fishery anticipated significant impacts from the reduced inshore TAC. We did not expect the severe limitations the haddock Cap would impose on the fishery in 2010, or that the amount of the Cap would be further reduced to levels that will not allow the fishery to operate in any meaningful way in coming years.

ACTION NEEDED

Emergency Action
The Atlantic Herring fishery is faced with an emergency situation on many levels in 2010 that will be exacerbated by additional restrictions in 2011-2012. The significant reductions in the haddock catch Cap have resulted in the fishery moving off the portion of the herring resource that is considered the most abundant. In addition, the management of the reduced inshore TAC has created a chaotic scheme between the states and federal regimes that has resulted in extreme derby style openings and closures that we have never seen before. The industry is faced with severe economic hardship through lost fishing opportunities that are compounded by numerous actions. The most immediate action the Council can take is to request the Agency implement an Emergency Action to allow the fishery to operate on GB by increasing the Cap to a reasonable amount.

Correspondence from Secretary Locke to Representative Frank dated October 4, 2010:

> Under the NOAA policy applying this authority, I may take economic factors into account in determining whether to promulgate an emergency rule so long as those factors are based on "recent, unforeseen events or recently discovered circumstances." In addition, pursuant to the Act, any exercise of the authority must be based on the best scientific evidence available that indicates doing so will not undermine the conservation mandates of the Act and any action must give priority to conservation measures. See *NRDC v. Daley*, 209 F.3d 747 (D.C. Cir. 2000).

An Emergency Action is warranted in this instance. The issues we are facing with the Cap were unforeseen when FW 43 was recommended by the Council in 2006. Primarily,

[4] Draft Multispecies FW 4,5 10/22/10

the Council could not have anticipated observer coverage rates in Area 3 to increase from the 20% target (the rationale provided for the small amount allocated) to 100% coverage. In addition, herring specifications which reduced and redistributed available resource to the fishery had not been developed at that time.

The best available science supports this action as both GB haddock and herring resources are healthy, under-harvested species. A reallocation of a small portion of the haddock ACL will not undermine the conservation mandates of the Act.

Framework Action:
As the Council is aware, an Emergency Action is a short term fix for the fishery. There is a need for the Council to prioritize an action for 2011 to ultimately remedy the problem. We request a review of the adequacy of the allocation of haddock to the herring fishery and the appropriateness of decoupling the GOM from GB.

Equity in the system
We request the Council consider a consistent methodology or policy in regard to allocation of incidental catch or bycatch of other species in our fisheries in the region. We do not believe that it should be so proscriptive as to not allow the flexibility for the Council to consider variations among our fisheries. However, some consideration should be given to the status of these resources and dependence and need of those who rely upon access to them.

SUMMARY

The Atlantic herring fishery is a limited access permitted fishery (44+ Category A/B permits) comprised of approximately twenty dedicated vessels, including midwater trawl and purse seine. The fishery supports three dedicated processing plants, and is the primary supplier of bait to the region's $319.9 million (2009 value) lobster fishery. Direct investment in the fishery is well over $100 million, resulting in employment estimated at over 500 tax paying citizens.

The remaining processing plants and fleet are barely coping with the reduction in quota. Area 1has been reduced to an annual "race-to-fish" managed by the ASMFC via "days out" of the fishery that is intensified by the 50% reduction in the area quota. This summer, warm surface water in the Gulf of Maine reduced availability of fish to the gear, which increased the fleet and market reliance on the offshore area. As in recent years we have encountered haddock on these fishing grounds.

It is difficult to quantify the losses that could be incurred by the herring fishery if the haddock cap is attained. But, we currently have about 75% of the total quota, with an approximate ex-vessel value of $22 million dollars, locked up in areas that would be affected by the closure. Losses to the lobster fishery are also difficult to quantify, but would affect many thousands of fishermen throughout New England.
We request the Council take action in an expedite manner as possible to address the significant problems in the herring fishery. Action on increasing the haddock catch Cap

will not have negative impacts on the resource or participants in the groundfish fishery, but will provide us an opportunity to remain viable in this industry.

Thank your consideration of our concerns.

With best regards,

Jeff Kaelin
FC Clerk; Lund's Fisheries Inc.

Dave Ellenton
Cape Seafoods, Inc.

Peter Mullen
Irish Venture, Inc.

Jeff Reichle
Lund's Fisheries, Inc.

Peter Moore
NORPEL

Brady Schofield
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Jerry O'Neill
Western Sea Fishing Co., Inc.