

Correspondence

#600



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

AUG 25 2010

John Pappalardo, Chairman
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Dear John:

I am writing in regard to the Council's ongoing work to develop Amendment 5 to the Atlantic Herring Fishery Management Plan (Amendment 5). I recognize the complexity and controversial nature of the issues being addressed in this amendment, including catch monitoring, river herring bycatch, midwater trawl access to groundfish closed areas, interactions with the Atlantic mackerel fishery, and protection of spawning Atlantic herring. Because of the importance of these issues to future Atlantic herring management, and the wide range of opinions on how to address them, I urge the Council to include a broad range of alternatives to address these issues in the Amendment 5 draft documents that will be distributed for public hearing purposes.

I appreciate the amount of work involved in developing Amendment 5, and assure you that my staff will continue to work closely with yours to complete this project.

Sincerely,

Patricia A. Kurkul
Regional Administrator

Cc: Paul Howard



#66



UNITED STATES DEPARTMENT OF COMMERCE
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NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

Mr. John Pappalardo, Chairman
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

MAR 22 2010

Dear John:


I am writing to comment on the development of catch reporting and monitoring alternatives for Amendment 5 to the Atlantic Herring (Herring) Fishery Management Plan (Amendment 5).

Amendment 5 considers both minor and major changes to improve catch reporting and monitoring. At the August 24, 2009, Herring Oversight Committee (Committee) meeting, my staff expressed concern with Amendment 5 establishing new monitoring programs, without identifying funding sources for these programs. I reiterate that concern. Minor changes to catch reporting (e.g., increasing the frequency of catch reporting, expanding the use of vessel monitoring systems, expanding notification requirements) can likely be administered with existing National Marine Fisheries Service (NMFS) resources. However, the development of new monitoring programs (e.g., at-sea or dockside monitoring, video-based electronic monitoring, catch monitoring and control plans) or specific requirements for existing monitoring programs (e.g., 100% NMFS observer coverage) would require new funding sources. Objectives can be specified in the amendment, but observer coverage needs will continue to be assessed through the Standardized Bycatch Reporting Methodology process. The draft Amendment 5 document does not currently identify new funding sources for these programs, and relying on redirected NMFS resources to build and administer these programs is not feasible. I urge the Committee to continue to develop Amendment 5, and in doing so, identify funding sources for alternatives establishing new or significantly expanding existing monitoring program. Without additional funding, these alternatives are not viable.

At the August 2009 Committee meeting, my staff also discussed with the Committee that certain fishery practices (e.g., transferring catch at sea, transporting catch aboard carrier vessels, buying and selling catch at sea) make it difficult for NMFS to track herring catch, and asked the Committee to consider alternatives to modify complicated fishery practices to improve monitoring. Alternatives that limit transfers between vessels with possession limits, structure the activities of herring carrier vessels, and modify reporting requirements to provide for the buying/selling of catch at sea could greatly improve the efficiency of catch monitoring.

My staff outlined minor notification and reporting changes that we think will improve both the accuracy and efficiency of herring monitoring. These recommendations were shared with New England Fishery Management Council staff and are enclosed with this letter. Improving catch reporting and monitoring in the herring fishery are important aspects of Amendment 5, and I encourage the Committee to develop alternatives that effectively achieve these goals.

Sincerely,


Patricia A. Kurkul
Regional Administrator



Catch Reporting Recommendations for Herring Amendment 5

	Current	NERO Recommended
VMS Declaration	Limited access vessels (Category A, B and C vessels) declare "HER" prior to leaving port, or "DOF" if targeting a non-VMS species.	Same as current requirements, plus gear declaration to facilitate enforcement of midwater and purse seine LOAs.
	Herring vessels may turn off VMS units while in port.	Herring vessels must request a power down exemption (consistent with other FMPs).
Limited Access Notification Requirements	<p>For Category A and B midwater and purse seine trips:</p> <ul style="list-style-type: none"> • Notify NMFS OLE via VMS 6 hrs prior to landing; • Obtain an LOA; • Notify observer program 72 hrs before departure; • Carry observer if requested. 	Extend both observer and OLE notification requirement to all limited access vessels.
Limited Access Catch Reporting	<p>IVR: Limited access vessels must submit a catch report via IVR each week by midnight on Tuesday (for the preceding week).</p>	<p>VMS: Herring landings and discards reported through VMS either <i>daily or at each offloading</i>, including:</p> <ul style="list-style-type: none"> • Herring lbs kept and discarded; • Date and stat area where fish were caught; and • Trip identifier number.
	<p>VTR: Monthly.</p>	<p>VTR: Weekly (vessels that also have groundfish permits will begin this in May 2010).</p>
Open Access Catch Reporting	<p>IVR: Vessels that land more than 2,000 lbs of herring on any trip in a week must report via IVR each week by midnight on Tuesday (for the preceding week).</p>	Eliminate IVR reporting requirement.
	<p>VTR: Monthly.</p>	<p>VTR: Weekly.</p>
Carrier Reporting Requirements***	<ul style="list-style-type: none"> • LOA • Monthly VTR; • Carry an observer if requested; 	<ul style="list-style-type: none"> • LOA or at-sea dealer permit • Carrier declaration through VMS • No VTR reporting • Observer and OLE notification requirements

***Carriers are also subject to their vessel permit notification/reporting requirements.

HGC



SUSTAINABLE FISHERIES COALITION

www.fisheriescoalition.org

PO Box 440 Winterport, Maine 04496-0440

The Sustainable Fisheries Coalition is an organization of the Atlantic herring and Atlantic mackerel mid-water trawl and purse seine industry, operating from Maine through New Jersey. The Coalition was established in 2007 to improve public outreach and education and increase awareness of the economic importance and environmental sustainability of the Atlantic herring and Atlantic mackerel fisheries.

August 16, 2010

Philip T. Feir
Colonel, U.S. Army
U.S. Co-Chair
International St. Croix River Board
696 Virginia Road
Concord, MA 01742-2751

Bill Appleby
Director, MSC Operations-Atlantic
Canadian Co-Chair
International St. Croix River Board
45 Alderney Drive
Dartmouth, NS B2Y 2N6

Dear Colonel Feir and Director Appleby

On behalf of the fishermen and plant employees of the Atlantic herring and mackerel companies organized as the Sustainable Fisheries Coalition; Cape Seafoods, Inc. of Gloucester, Massachusetts; Irish Venture, Inc. of New Bedford, Massachusetts; Lund's Fisheries, Inc. of Cape May, New Jersey; and NORPEL (Northern Pelagic Group) of New Bedford, Massachusetts, I am writing to provide you with our comments concerning the International Joint Commission's (IJC's) proposed *Adaptive Management Plan for Managing Alewife in the St. Croix River Watershed, Maine and New Brunswick*.

We are opposed to the plan's limited scope and encourage the IJC to act immediately to re-open all of the St. Croix's boundary dam fishways to alewife passage, as envisioned by the 1909 Boundary Waters Treaty. We do not believe there is a scientific basis to suspect that important recreational bass fisheries taking place in the watershed would be negatively affected by the introduction of alewife above either Spednic Lake or West Grand Lake. At the same time, we understand that more than 22,000,000 alewife could be sustained by maximizing the St. Croix watershed's available habitat.

Our companies directly employ about 350 people and have collectively invested approximately \$80 million in plants and vessels, in addition to providing markets for many independent vessels, and are nearly 100 % dependent upon the Atlantic mackerel and Atlantic herring fisheries. Historically, alewife and blueback herring have been taken as an incidental catch (often referred to as 'bycatch') in these fisheries, depending upon the place and time of year. Those that may be caught are usually used as lobster bait.

In recent years, the Atlantic States Marine Fisheries Commission (ASMFC), and the New England and Mid-Atlantic Fishery Management Councils, have been considering the condition of blueback herring and alewife stocks, from Cape Hatteras to the Canadian Border, and investigating sources of mortality including the incidental harvest of some portion of these resources through 'directed' fisheries that utilize small mesh nets for pelagic fishing. An assessment of these populations will not be available before 2012.

The plan mentions the National Marine Fisheries Service's 2006 designation of alewife and blueback herring as species of concern and highlights the agency's intention to foster voluntary efforts and conserve the species before listing becomes warranted. Recognizing this goal as an opportunity, we are engaged in modifying our fishing practices to avoid these fish, as required by federal fisheries law.

ASMFC's shad and river herring fishery management plan (FMP) is intended to address the health of alewife and river herring stocks throughout their range, which should include Atlantic Canada, in our view. As the FMP states, "much of this reduction has been related to spawning and nursery habitat degradation or blocked access to habitat, resulting from human activity (e.g. human population increase); sewage and storm water run off; industrialization; dam construction; increased erosion, sedimentation and nutrient enrichment associated with agricultural practices; and losses of riparian forest and wetland buffers associated with resource extraction and land development". In addition, the FMP describes current threats to these populations as "barriers to migration; water withdrawals; toxic and thermal wastewater discharge, channelization, dredging and instream construction; inappropriate land uses; atmospheric deposition; climate change; competition and predation by invasive and managed species; fisheries activities; and instream flow regulation." In other words, as a river herring scientist opined in a meeting one day, "Habitat is where it's at."

We agree with the ASMFC's statement, in a recent letter to the ICJ commenting on this Plan that "a rebuilt alewife population on the St. Croix will provide numerous benefits beyond (those who are employed by and benefit from) directed commercial and recreational fisheries

We also agree with the ASMFC that the proposed Adaptive Management Plan is unlikely to result in significant ecological or economic benefits in the near future. We believe the Plan represents 'business as usual', given the local politics on this issue, and represents a lost opportunity. We encourage the St. Croix Watershed Board, and the ICJ, to aggressively pursue the expansion of alewife productivity by providing access to the remainder of St. Croix spawning habitat and amend the Plan accordingly.

Thank you for your attention to, and consideration of our comments. Please do not hesitate to contact us if we can provide you with additional information.

With best regards,

Jeff Kaelin

SFC Clerk; Lund's Fisheries Inc.

Dave Ellenton

Cape Seafoods, Inc., President

Peter Mullen

Irish Venture, Inc.

Jeffrey Reichle

Lund's Fisheries, Inc., Treasurer

Peter Moore

NORPEL

Brady Schofield

NORPEL

Jerry O'Neill

Western Sea Fishing Co., Inc.



#60



August 5, 2010
Mr. Doug Grout, Chairman, Herring Oversight Committee
New England Fishery Management Council
50 Water Street
Newburyport, Massachusetts 01950

RE: Amendment 5 to the Atlantic Herring Fisheries Management Plan

Dear Mr. Grout:

As you know, the Herring Alliance is committed to reforming the management of the Atlantic herring and mackerel fisheries and mitigating the impact that these small mesh fisheries are having on the target stocks, the animal populations that rely on these stocks for food and the incidental catch of weak stocks, including river herring, shad and groundfish. For this reason we have advocated for comprehensive amendments to the Atlantic herring fisheries management plan (FMP) that address science-based catch levels, catch monitoring and specific measures critical to protecting non-target species.¹

In anticipation of your upcoming committee meeting, we wish to emphasize the following points:

- It is critical for the committee to recommend a comprehensive range of management alternatives.
- All catch must be subject to robust at-sea sampling.
- River herring incidental catch hotspots must be protected.
- An annual catch cap for river herring and shad must be established.
- Groundfish closed areas must be protected from midwater herring vessels.

Atlantic herring are a vital public trust resource. Concern about the issues related to this fishery is extremely high, extending well beyond those directly involved in the business of catching and marketing Atlantic herring. We urge the Committee to recall the enormous outpouring of interest in monitoring and bycatch registered during the scoping process for what has become Amendment 5. This widespread interest is understandable since, as food, all herrings (Atlantic, blueback, alewife, and shad) together form a vital link in the ecosystem – they are *keystone* species whose status has profound impacts throughout the ecosystem, including effects on the human environment. The management decisions made for this fishery impact groundfishermen due to the bycatch of groundfish by midwater trawl ships and due to the depletion of herring as a food source for groundfish. Those whose commercial and recreational interests depend on tuna and other large pelagic fish are directly impacted, again by the direct removal of food from the ecosystem and bycatch. The success of inshore spawning in codfish is also thought to be linked to the availability of

¹ Recommendations relevant to your current deliberations are summarized in the Herring Alliance letter dated July 19, 2010.

cc: LS (8/24)

herring as forage, including river herring.² The direct harvest of river herring and shad is being shut down in state after state, striking at the heart of coastal communities and the region's fishing heritage.

The Herring Oversight Committee and the Council have a responsibility that extends beyond the short-term interests of those few in the herring business who have most conspicuously fought against accountability in the herring fishery. The herring belong to all manner of user groups – those mentioned above, those who value healthy ocean ecosystems from land-locked and coastal states alike, and those whose businesses depend upon enriching the lives of visitors who come to New England for ecotourism. The herring are a public trust resource and the Council's stewardship must take this into account in addition to the near-term interests of a few in the herring business. The committee's job includes safeguarding the interests of those who are unable to do so, including future generations.

Industry representatives on the Council and attending public meetings have argued that it is too dangerous to sample the portion of the midwater trawl catch that is not pumped into the ship's hold. At the same time they have attempted to assure the public that the residual catch is only a few hundred pounds – nothing we should worry about. All catch must be sampled, and if current fishing practices are not amenable to catch sampling then these fishing practices need to be changed.

The industry and some Council members have worked hard to defeat programs that could establish effective disincentives to the practice of releasing (i.e., *slipping*) large quantities of fish to the sea without sampling. Managers, fishermen and the public need to be able to determine the amount and composition of the catch through reliable sampling which estimates the total catch and includes the catch released to the sea. Herring that interact with trawl gear have a very high mortality rate, much higher than that for seines, even when released directly to the sea.³ Thus, mortality is expected to be underestimated if catch from trawl nets is released without sampling. Additionally, catch remaining in nets at the time of release cannot be assumed to be representative of portions of the catch that may have been pumped aboard, due to stratification and mechanical sorting at the intake.

It is critical for the committee to recommend a comprehensive range of management alternatives. The central purpose of the National Environmental Policy Act (NEPA) is to ensure that both decision-makers and the public are well-informed about the potential environmental effects of proposed actions.⁴ This is accomplished through the Environmental Impact Statement (EIS) and NEPA's requirement to analyze a comprehensive range of the reasonable alternatives which is "the heart of the [EIS]."⁵ The NEFMC and NMFS must "study, develop, and describe appropriate alternatives to recommended courses of action in any

² Jordaan A, Hall C, Frisk M (2008) Is the recovery of cod (*Gadus morhua*) along the Maine coast limited by reduced anadromous river herring populations? Mia J. Tegner Memorial Research Grant in Marine Historical Ecology and Environmental History Final Report, October 2008; Ames T (2010) Multispecies Coastal Shelf Recovery Plan: A Collaborative, Ecosystem-Based Approach. *Marine and Coastal Fisheries: Dynamics, Management, and Ecosystem Science* 2:217–231, 2010.

³ Suuronen et al., (1996) Mortality of herring escaping from pelagic trawl codends. *Fisheries Research* 25: 305-321

⁴ See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA ensures that the agency will "carefully consider detailed information concerning significant environmental impacts" and that such information is available to the public); *accord*, *Baltimore Gas & Electric Co. v. NRDC*, 462 U.S. 87, 97 (1983). NOAA Fisheries' regulations emphasize their duty to prepare an EIS that adequately informs the public of the environmental impacts of the proposed action: "An EIS must provide a full and fair discussion of significant environmental impacts." (National Oceanic and Atmospheric Administration Administrative Order 216-6, hereafter "AO 216-6") AO216-6 § 5.04.a.1.

⁵ 40 C.F.R. § 1502.14; 42 U.S.C. § 4332(2)(c)(iii)..

proposal which involves unresolved conflicts concerning alternative uses of available resources.”⁶ The environmental impacts of the proposed action and any alternatives must be presented in comparative form, “sharply defining the issues and providing a clear basis for choice among options by the decision-maker and the public.”⁷

NOAA Fisheries’ own NEPA regulations underscore the importance of an adequate alternatives analysis: “An EIS must provide a full and fair discussion of significant environmental impacts and inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.”⁸ While technical and economic factors must be considered when identifying alternatives for consideration in an EIS, NEPA contemplates that agencies even consider alternatives beyond current funding levels and current law because the EIS may serve as the basis for a change in funding or law.⁹

Thus, it is critical at this stage of the development of Amendment 5, when recommending alternatives for the full Council’s consideration as part of the EIS, that a full range of the reasonable alternatives be identified in order to meet the goals and specific requirements of NEPA. Such alternatives should allow decision-makers to make clear choices about the range of potential alternative uses for the resources impacted by the Atlantic herring fishery, ranging from the harvest of Atlantic herring for commercial use, to its role in the ocean ecosystem, to the impacts to species caught as bycatch such as river herring and groundfish.

We are alarmed by the Herring Oversight Committee’s aggressive elimination of alternatives from the draft amendment in advance of the Plan Development Team’s (PDT) analysis and the opportunity for public comment period and fear that the document will not contain the range of alternatives and environmental impact analysis required by NEPA. For instance, the Oversight Committee at the July meeting effectively eliminated from consideration all of the proposed accountability measures in the document designed to prevent abuse of the exceptions to a slippage prohibition (i.e. trip termination, slippage caps) leaving nothing in their place.

All catch must be subject to robust at-sea sampling. Reliable catch estimation is a critical objective for Amendment 5. The target catch (Atlantic herring) and the incidental catch must be reliably estimated from a robust sampling program. Discarding of catch without sampling (e.g., release or slipping of trawl nets) is not compatible with this objective. If current fishing practices do not allow for sampling, the fishing practices must be modified to allow sampling and to allow catch estimation. As the Herring PDT recently concluded:

*...sea sampling will remain the best method for estimating at-sea discards, an important piece of information that cannot be generated at all from a portside sampling program...*¹⁰

Without reliable estimates of the target and incidental catch, including its impacts on other fisheries and the ecosystem, the Atlantic herring fishery cannot be managed within the law.¹¹

⁶ 42 U.S.C. § 4332(2)(E).

⁷ 40 C.F.R. § 1502.14.

⁸ AO 216-6 at § 5.04.a.1.

⁹ See, e.g., NEPA’s Forty Most Asked Questions 1-2; 40 C.F.R. Sections 1500.1(a), 1502.14, 1506.2(d).

¹⁰ Final Herring PDT Report, June 15, 2010, Holiday Inn, Mansfield, MA, pg 2.

¹¹ National Standards 1 and 9: 16 U.S.C. 1851-1852 MSA §§ 301-302., 98-623 & 104-297.

River herring incidental catch hotspots must be protected. The Herring PDT has done an outstanding job of utilizing the best available science to identify times and areas where the incidental catch of river herring and shad is expected to be high.¹² Amendment 5 must include well-developed alternatives for protecting these depleted stocks within these hotspots.

The Committee motion recommending development of an alternative prohibiting directed fishing for Atlantic herring within hotspots should be fully developed as one or more alternatives in Amendment 5 (McGee/Libby, 28 July 2010).

An alternative should also be developed that would establish an incidental catch cap similar to the threshold used to regulate bycatch of groundfish within Groundfish Closed Areas. That is, a catch rate threshold (e.g., an amount per haul) and a total catch level per trip should be established for river herring and shad to regulate access of Atlantic herring vessels to each hotspot area. If either threshold is exceeded, access to the hotspot area would be suspended. The new rules currently being developed by NMFS for access to CA I will be ineffectual if applied to river herring hotspots if they lack catch caps.

An annual catch cap for river herring and shad must be established. The draft Amendment 5 document currently includes good background information on *Measures To Address River Herring Bycatch* (section 3), but the specific management alternatives remain weak because they are not backed up with an annual catch cap for river herring and shad. This is a fundamental flaw in the current draft of the Amendment. During your last committee meeting, Mr. Stockwell (Maine Department of Marine Resources) suggested that river herring landings caps be inclusive of federal waters incidental catch as required by the Atlantic States Marine Fisheries Commission (ASMFC), which deflated further consideration of a river herring incidental landings cap as part of Amendment 5. Unfortunately, we remain unaware of any such requirement and in fact at a subsequent ASMFC meeting George Lapointe from the same agency (Maine DMR) advanced a successful motion to clarify the very opposite of Mr. Stockwell's suggestion.

(http://www.asmfc.org/press_releases/meetingWkSummaries/2010/2010SummerMeetingSummary.pdf)

Either the ASMFC or the federal councils must take responsibility for establishing reasonable river herring monitoring and protections.

Without a specified annual cap and monitoring sufficient to track progress toward the cap, the fleet will lack the incentive to minimize incidental catch. The bycatch avoidance program for Chinook Salmon in the Bering Sea pollock fishery, for example, functions because the fishery is closed when the annual catch cap is reached.¹³ This provides a powerful incentive to avoid bycatch through any mechanism possible. As a related matter, we feel the discussion of the Bering Sea program in the Amendment 5 Discussion Document is incomplete at this time in that it does not mention or discuss the underlying salmon cap. A similar system is used to control the bycatch of yellow tail flounder in the New England scallop fishery. The move-along rules and many of the other alternatives outlined in the current Amendment 5 document will not work effectively absent a strong incentive to hold catch of river herring and shad below an annual cap. Moreover, given the failure of the Council to include river herring and shad as stocks in the Atlantic herring fishery, the

¹² National Standard 2: 16 U.S.C. 1851-1852 MSA §§ 301-302., 98-623

¹³ Federal Register / Vol. 75, No. 55 / Tuesday, March 23, 2010 / Proposed Rules on Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery.

absence of an annual bycatch cap would seem to erase any doubt that this fishery fails to comply with the Magnuson-Stevens Act's annual catch limit, bycatch and overfishing requirements.

Groundfish closed areas must be protected from midwater herring vessels. Data and other scientific information show that midwater herring vessels catch significant amounts of haddock and other groundfish. This fact is counter to the assumption made – based on virtually no scientific information – when midwater trawlers were granted access to closed areas. Midwater trawlers should not be allowed in areas specifically managed for the protection of groundfish unless it can be demonstrated that these vessels can modify their gear and fishing practices to reduce bycatch to negligible (near zero) amounts. As outlined in the Draft Amendment 5 Discussion Document (July 27-28, 2010 Herring OS Meeting), Amendment 5 should include alternatives that prohibit midwater trawl vessels from all of the groundfish closed areas, while recognizing that with appropriate gear modifications and/or practices midwater trawl vessels might regain access through a tightly regulated Exempted Fishing Permit (EFP). If successful in reducing groundfish bycatch, the measures evaluated through the EFP could form the basis for measures regulating future access.

Conclusions. We urge the committee not to lose sight of the importance of developing a full range of management alternatives to recommend to the Council. This will enable the Council to fully realize the benefits of a robust public comment opportunity and PDT analysis that clearly define the impacts of this amendment and the choices to be made. We are concerned by the Committee's premature elimination of a number of alternatives in advance of Council discussion, any significant PDT analysis and opportunity for public comment. Such decision-making leaves the prospect of a draft amendment and EIS that cannot meet its essential monitoring and bycatch reduction goals and objectives.

Sincerely,



Peter Baker, Director
Herring Alliance

cc: Mr. Paul J. Howard, Executive Director, New England Fisheries Management Council
Mr. John Pappalardo, Chairman, NEFMC
Ms. Lori Steele, Fishery Analyst, NEFMC Staff – Herring FMP



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#6e

Doug Grout, Chairman
Herring Oversight Committee
New England Fishery Management Council
50 Water Street Mill 2
Newburyport, MA 01950

RE: Protection of Spawning Aggregations in Herring Amendment 5

July 26, 2010

Dear Mr. Grout,

I am writing on behalf of the Board of Directors and the membership of the Cape Cod Commercial Hook Fishermen's Association (CCCHFA) to express strong support for the Council's November 2009 addition of spawning herring protections as a priority in Amendment 5 and to urge the Herring Committee to begin the development of measures to address this critical priority. Below, I present the most recent evidence that spawning protections are increasingly necessary and outline suggested steps to address this problem.

Several recent developments in the fishery have highlighted the urgency of additional protections for spawning herring aggregations, particularly in Area 3 and the Nantucket Shoals.

- First, changes to the management area boundaries in Amendment 1 resulted in expansion of Area 3 (i.e. the "offshore" herring stock) to the west- in fact these changes pushed Area 3 right up to the demarcation line 3 miles from Chatham, MA. Removals of spawning fish from inshore Area 3 are no longer limited by the additional protections formerly afforded by their inclusion in the inshore stock component.
- Second, fishing pressure on the Area 3 stock appears to be increasing, with higher utilization of this Area TAC in 2009 considerably higher than other recent past years.
- Third, anecdotal reports suggest that the Area 3 herring harvest in 2009 consisted of alarmingly high ratios of spawning fish.
- Finally, concerns about the health of the herring resource which manifested last year in the form of a troubling stock assessment update and the related catch limit reductions have only worsened in light of the apparent lack of herring availability this summer.

In short, protections for spawning herring in Area 3 to complement the suite of protections currently in place in the Gulf of Maine are critical at this time to avoid repeating the mistakes of the past. Fortunately, the Council has identified this issue as a priority for Amendment 5 and strong simple solutions should be easily developed for inclusion in the draft alternatives. We believe it is important for the Herring Oversight Committee to begin this important work as soon as possible and suggest the following preliminary approaches:

Protecting a Resource, a Tradition, and a Way of Life

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- There are three key components to addressing any catch or bycatch concern, including spawning herring: **monitoring, reduction, and limitation.**
- First, detecting the catch of spawning herring in areas of concern must be a clear priority of the new Amendment 5 monitoring program. The most important initial step is to identify spawning herring as a sampling priority of the Federal Observer Program (currently, it is not).
- We suggest the Committee, at its July meeting, request that the Plan Development Team and/or state port sampling partners prepare brief summaries for presentation at the September meeting. These summaries should include the most recent data available on catch of spawning herring as sampled through existing port-sampling programs.
- In addition, state port-sampling data on spawning fish must be quickly incorporated into the NMFS management infrastructure to inform new spawning protections developed by the Council.
- Additionally, measures to reduce the impact of fishing on spawning aggregations should be developed and analyzed. In this area, the recent progress on river herring bycatch concerns represents a useful starting point. In particular, the concept of “move-along” rules, in conjunction with voluntary industry bycatch communication and avoidance programs, offers a strong model for the protection of spawning herring.
- Finally, establishing a strict limit on the catch of spawning herring should be fully considered.

CCCHFA looks forward to continued engagement on this important issue. Thank you for your consideration

Sincerely,

Tom Dempsey
Policy Director

#6f



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

July 22, 2010

Doug Grout, Chairman
 Herring Oversight Committee
 New England Fishery Management Council
 50 Water Street, Mill 2
 Newburyport, MA 01950



Re: Amendment 5 Monitoring Alternatives

Dear Doug,

I am writing on behalf of CHOIR to both clarify our position on the monitoring alternatives and to comment on the current status of the document.

CHOIR has submitted three different policy documents since the amendment process began: the original CHOIR Monitoring Proposal in December of 2008 (Proposal), a letter outlining minimum monitoring standards in March of 2010 (March Letter) and a Memo in May of 2010 proposing and defining options to Maximize Sampling and Address Net Slippage (May Memo). The initial Proposal is a comprehensive document with many options but the key idea contained within was the idea of Maximized Retention. Maximized retention would require that almost all catch be brought to shore in order to allow for accurate sampling.

While we still believe Maximized Retention could work in the herring fishery, after watching this process unfold over the first year, in March 2010 we submitted an alternate position in the aforementioned March Letter. This letter can be seen as both a simplification of our initial position as well as a compromise. In this memo we outline the four minimum standards we believe are required for a new system based on traditional tools: high levels of at-sea observer coverage, transparent extrapolation, maximized sampling, and the elimination of the current reliance on self-reporting. Unlike our initial proposal, this system would not require that everything is brought to shore and would simply require that dumping be minimized and as much catch as possible be sampled, and that accurate third-party data on catch is made available to the public in a timely fashion

And finally, in May of 2010 we submitted another memo that is intended to help the Committee define options for Maximized Sampling and to address slippage but could be used as the basis for the new monitoring system. The backbone of this document is a set of management measures based on the recent special rulemaking for Closed Area I- that would be considered and analyzed for the entire herring fishery that would help ensure that as much catch as possible is sampled. This document also outlined other tools that could be used to refine the system. This is essentially one type of system you could have that conforms to the minimum standards we outlined in the March Memo.

cc: LS, Council (7/26)

We would suggest two changes that could be made to the Memo. First, given the discussion that took place at the May meeting regarding gear exceptions, we believe that the Committee should adopt options that would allow the PDT to examine exceptions to the dumping rules on a gear-by-gear basis, as opposed to simply exempting purse seine gear. Second, we believe that the Committee should analyze multiple options for accountability measures, including both trip termination and a system of dumping caps.

We would ideally like to see two different alternatives in the document. First, we would like to see an alternative based on the ideas outlined in our two memos. This system would have to follow the basic minimum standards outlined in the March Letter and could follow the Closed Area I-type system outlined in the May Memo. And the second alternative would be based on the Maximized Retention system outlined in our initial proposal.

We will include both the March Letter and the May Memo as correspondence for this meeting. They can also be found online at the following links: [March Letter](#) and [May Memo](#) and the initial CHOIR proposal can be found online at: [CHOIR Proposal](#)

We look forward to working with you and the rest of the Committee as this process moves forward.

Thanks for your time,

A handwritten signature in blue ink that reads "Stephen B. Weiner". The signature is written in a cursive style with a blue highlight underneath.

Steve Weiner, Chair

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

March 17, 2010

Doug Grout, Chairman, Herring Oversight Committee
New England Fishery Management Council
50 Water St, Mill 2 Newburyport, MA 01950

Dear Doug,

I am submitting the following comments regarding Amendment 5 on behalf of CHOIR to request inclusion of a monitoring alternative or alternatives that meet **certain minimum standards** as outlined below, and that provides **actionable data** to inform solutions to the other priorities of the Amendment. CHOIR is an industry coalition made up of over 275 commercial and recreational fishing organizations, fishing and shore-side businesses, researchers and eco-tourism companies.

Monitoring Standards

CHOIR stands by the concept of Maximized Retention, in both the complete package originally contained in the former Alternative 3 or as a modular component of a new alternative. We believe it is the best, and most financially efficient, long-term solution for monitoring within the herring industry. However, we recognize that implementation of Maximized Retention may require more time and short-term investment than other options.

If the Council chooses to develop a more traditional alternative in addition to one with maximized retention it should meet the following minimum standards. These standards are based on sensible practices from other large-boat, high-volume U.S. fisheries, as well as other New England hard TAC fisheries. CHOIR recommends this program apply only to Category A and Category B vessels at this time, ensuring coverage of over 95% of the catch in the fishery.

- **Coverage:** An alternative based on the existing system would utilize NMFS At-Sea Observers as the functional core. 100% coverage is needed considering the size and fishing power of this fleet and its preponderance of rare but significant bycatch events. However, lower coverage rates could be considered provided there is a binding minimum level. CHOIR recommends that this be set at or above 50%. In addition, observers should be required on both vessels during pair trawling if the trip is targeted for observation.
- **Transparent Extrapolation:** A minimum coverage less than 100% should only be included if there will be fully transparent, near real-time fleetwide extrapolation of all catch. This would be no more restrictive than what NMFS currently provides to the public for hard TAC programs in the groundfish fishery (i.e. U.S./Canada Resource Sharing Area or Special Access Programs) and is set to provide for all groundfish sectors in fishing year 2010.

- **Maximized Sampling:** At-sea discarding of unobserved catch on otherwise observed trips (dumping, slippage) should be explicitly minimized through regulation in order to allow for accurate data to be gathered by this monitoring system. CHOIR requests that an alternative be crafted that attaches accountability measures (trip termination, dumping caps, etc) to all dumping events. Safety is important but should not be used as an excuse to frustrate the development of new ideas that will help quantify true catch and discard rates.
- **Eliminate Reliance on Self-Reporting:** Third party observation and monitoring should be the backbone of this monitoring system in order to obtain the best data possible. Tools like the “Code of Conduct” will not work and should be removed from the Amendment. All catch (discard and landing) totals should be verifiable through actual weights or volumetric proxies and not based on captain’s estimates alone.

Actionable Data

The new monitoring program should provide high quality, near real time data to inform the other priorities within Amendment 5: new measures to address river herring bycatch, herring vessel access to groundfish closed areas, and protection of spawning aggregations. Properly designed and paired with triggered time and area closures, the monitoring program can eliminate the need for predetermined and ineffective closures, benefitting the ecosystem and the herring industry at the same time. It will require coordinated development of all aspects of the Amendment.

Conclusion

CHOIR seeks a monitoring program our stakeholders can have faith in, and one that will ultimately protect both the resource and the herring industry. While there was more to the recent cuts than scientific uncertainty, the bottom line is that better monitoring can lead to larger quotas and other benefits for the industry and the region. A recent enforcement memo revealed that 18 herring dealers and vessels of all gear types are entangled in reporting infractions and errors totaling approximately 36,000,000 pounds of herring. A new monitoring system based on third-party observer reports would not only meet the Amendment 5 objective of eliminating reliance on self-reporting, it would reduce scientific uncertainty and would also mean nearly every one of these expensive and divisive enforcement actions would never have been necessary.

We continue to believe that Maximized Retention represents the best option for building a comprehensive monitoring program in the herring fishery; however the ongoing process of restructuring the monitoring portion of Amendment 5 has fragmented the comprehensive program we designed. In light of this, and the resumption of work with new mandates from the Council, we present these additional ideas for potential inclusion in the range of alternatives.

Thanks for your time,



Steve Weiner, Chair

#6h

July 22, 2010

Doug Grout
Atlantic Herring Oversight Committee
New England Fisheries Management Council
50 Water Street
Newburyport MA, 01959

Dear Mr. Grout,

I recently participated in a short film that attempts to communicate a largely held perspective on the river herring story by stakeholders in New England. I would like to share it with the Atlantic Herring Oversight Committee before the upcoming committee meeting.

This five-minute video explains how socializing around and harvesting from the local (river) herring run is a cultural tradition dating back to the Native Americans, and it highlights the importance of these species to the ecosystem. Our experience here in New England is that during a fifteen year period of restoration work and habitat improvement, much of which was done by the recreational fishing community, the number of river herring declined and has yet to recover. Evidence of river herring being caught as by catch in the small-mesh Atlantic herring fleet is clear and the OSC has the opportunity to mandate collection of enough data to answer all of the controversial questions through development of Amendment 5.

Although this video was made to bring attention to this issue and educate the public about river herring, I believe that it also is also a valuable method of communicating the New England stakeholder perspective to members of the Atlantic Herring OSC. Please take a few minutes to watch it. I look forward to following the efforts of the NEFMC to address concerns with small mesh bycatch and its detrimental impact on river herring populations in our coastal waters.

<http://www.youtube.com/watch?v=UYzuCLO-eA4>

Sincerely,
Captain Patrick Paquette
Recreational Fishing Community Advocate
Honest ByCatch; Founder
info@honstbycatch.com
781.771.8374





#61



July 19, 2010
Mr. Doug Grout, Chairman, Herring Oversight Committee
New England Fishery Management Council
50 Water Street
Newburyport, Massachusetts 01950

RE: Amendment 5 to the Atlantic Herring Fisheries Management Plan

Dear Mr. Grout:

On behalf of the Herring Alliance, I am writing about Amendment 5 to the Atlantic herring fishery management plan and the upcoming Herring Oversight Committee meeting (July 27-28, 2010). This letter primarily focuses on your development of alternatives dealing with incidental catch reduction for river herring (blueback and alewife herring) and American shad, and catch monitoring. Our comments regarding alternatives for river herring and shad for inclusion in Amendment 5 are summarized as follows:

- Existing observer data and NMFS seasonal bottom trawl data, from previous years, must be used to identify those areas where future incidental catch rates are expected to be high: *hotspots*.¹
- A set of management alternatives must be developed, based on modifications to the rules for midwater-trawl fishing within groundfish Closed Area I, to substantially reduce incidental catch within hotspots as defined above.
- The amendment must include at least one alternative for a new monitoring system to provide the near-real time data and analysis needed for a system of incidental catch move along rules: rules that force vessels to move out of a circumscribed area when an established incidental catch threshold is reached.
- One or more alternatives for incidental catch reduction through NMFS-administered move-along rules, triggered by an established catch threshold and leading to protection of sufficient size and duration to ensure that incidental catch is held to a minimum.
- The amendment must include alternatives for annual incidental catch caps. A meaningful catch reduction plan must be backed-up by an annual catch cap, which leads to closure of any fishery exceeding its portion of the cap. One alternative should be based on the population biology of these species, and a second should be based on recent landings as reported by Vessel Trip Reports (VTR).

In addition, the Amendment must include alternatives that:

- Protect spawning Atlantic herring on Georges Bank and Nantucket shoals, through time and area closures and/or move along rules for spawning fish, and;
- Protect juvenile and adult groundfish from mid-water trawling by excluding midwater trawling in groundfish closed areas and / or by applying rules based on the recently implemented CA I rules.

¹ The term hotspot has been used in a variety of ways. In this letter we are distinguishing between areas identified as *hotspots* based on data from previous years, and areas where incidental catch rates are judged to be high based on in-season observer data, triggering an immediate adaptive management response in the form of a *move-along rule*.

The Herring Alliance is particularly concerned about the disappearance of river herring and shad from the Eastern seaboard and the contribution of at-sea catch to this problem. This is a matter of great concern to a diversity of stakeholders,² and one that the ASMFC requested emergency action on.³ This request for emergency action was supported by the NEFMC, and MAFMC.⁴ The Herring Alliance strongly supports including robust alternatives for reducing incidental catch of river herring and shad at sea.

We support a strong Amendment 5 to improve data collection through a comprehensive and rigorous catch monitoring system. This is important for documenting and reducing all incidental catch, both discarded and landed, and will also improve data for stock assessments and help ensure that catch of stocks subjected to directed fisheries does not exceed annual catch limits. We have previously provided extensive comments and recommendations for analysis in Amendment 5 and its Environmental Impact Statement (EIS). These directly address the catch monitoring portion of the committee's agenda this month.⁵ Our position on many of these issues was summarized in two recent comment letters from the Herring Alliance, dated 26 March and 20 April 2010.

The two motions passed at the 17 May 2010 committee meeting dealing with (1) defining bycatch hotspot areas and (2) move-along rules triggered by incidental catch rate, represent important steps forward. If properly developed, these motions could lead to a set of strong management alternatives for the draft amendment and EIS. Suggestions for further development are discussed below.

Identification of bycatch seasonal hotspots. The first of the 17 May 2010 committee motions directs the Plan Development Team (PDT) to use observer data to identify gear-specific time/areas where the Closed Area I (CA I) regulations could be applied to reduce incidental catch of shad and river herring.⁶ The concept here is to use observer data from previous years to predict where and when future incidental catch rates are expected to be high, and take management action for those time/areas, or *hotspots*, in the future. The essence of this motion was also put forward in October 2008, when both the Herring Committee and the Council passed similar motions on use of observer data as a basis for time-area closures. The Herring Alliance strongly supports basing a set of alternatives on this concept – so long as they are designed to effectively reduce incidental catch.

The spatial and temporal distributions of incidental catch of river herring and shad in the Atlantic herring fishery, as revealed by data from at-sea observers, has been a focus for at least two years and has been presented to the PDT and committee several times.⁷ These data represent the best scientific information available on at-sea catch of these species and must be used to define seasonal hotspots as an important part of any incidental catch reduction program.

² Letters to US Secretary of Commerce dated 17 and 23 June 2009 from a variety of fishing, watershed and conservation organizations, 104 cosigners in total.

³ Letter from ASMFC Executive Director John V. O'Shea to U.S. Secretary of Commerce Secretary Locke, 27 May 2009.

⁴ Letters from the Mid-Atlantic Fishery Management Council (June 24, 2009) and the New England Fishery Management Council (June 26, 2009) to the US Secretary of Commerce in support of the ASMFC's request for emergency action.

⁵ Letters dated: December 5, 2008; February 5, 2009; August 5, 2009; January 13, 2010; March 26, 2010; April 20, 2010; Monitoring proposal December 5, 2008.

⁶ Federal Register / Vol. 74, No. 171 / Friday, September 4, 2009 / Proposed Rules pp 45798-801; Federal Register / Vol. 74, No. 210 / Monday, November 2, 2009 / Rules and Regulations pp 56562-8.

⁷ For example: Cieri et al 2008. Estimates of River Herring Bycatch in the Directed Atlantic Herring Fishery. White paper presented to NEFMC. Presentation to NEFMC Herring PDT, 14 January 2009, by A. van Atten et al.; Presentation to NEFMC Herring Oversight Committee, 17 May 2010, by M. Cieri.

We recommend that these observer data be used together with the fishery-independent data provided by the NEFSC seasonal bottom trawl survey to develop a set of alternatives for protection of seasonal hotspots for river herring and shad. These fishery-independent data can be used to provide an independent look at where incidental catch hotspots should be expected, thereby increasing confidence in time/areas identified by observers, and also to identify additional time/areas that could become problematic if fishing effort were to be directed on them in the future. A preliminary analysis of the distribution of shad and river herring as revealed by seasonal bottom trawl survey was already presented to the PDT and Committee.⁸

Although the seasonal bottom trawl survey was originally designed to sample demersal fishes (i.e., bottom dwelling), the survey has proven valuable for a much broader spectrum of species including pelagic species. A number of peer reviewed stock assessments and journal articles dealing with pelagic, or benthopelagic, species are based, at least in part, on seasonal bottom trawl surveys.⁹ Thus, despite being a “bottom trawl,” the utility of this survey for pelagic species has endured the test of scientific peer review and its use in this context is well justified.

The Herring Alliance encourages the Council to use the best available science to develop a set of alternatives that seeks to reduce the incidental catch of river herring and shad through time/area closures centered on hotspots. Some concerns have been expressed about the possibility that area closures intended to reduce incidental catch may have the unintended consequence of driving fishing effort into new areas where the incidental catch may also be high. There is always the possibility that a management measure like this one will have some undesirable consequences. However, this possibility is no excuse for failing to address problems where they are known to be occurring based on data from recent years. It is incumbent upon the Council and NMFS to maintain a strong monitoring program so that the consequences of new time/area closures are understood and responded to through appropriate adaptive management.

The move-along concept. The Herring Alliance strongly supports the concept of reducing incidental catch of shad and river herring through rules that are triggered by near real-time catch data for these species. The second of the two committee motions from 17 May 2010 tasks the PDT with developing this concept for the Atlantic herring fishery. In a nutshell, a move-along rule kicks in when the catch rate for the species of concern is observed to exceed a science-based threshold, and requires that the relevant fleet cease fishing within the area (i.e., *move along*) until the risk of further incidental catch falls to an acceptably low level. Analyses suitable for determining an appropriate time period might employ observer data from previous years, information about the movements of shad and river herring and future targeted sampling within exclusion areas established through a move-along rule.

⁸ Presentations by J Courneane to Herring PDT (8 April 2010 and 15 July 2010) and Herring Oversight Committee (17 May 2010).

⁹ Species include alewife, American shad, Atlantic herring, Atlantic mackerel, Atlantic menhaden, blueback herring, butterfish, and dogfish; see Brown SK et. al. 1996. ECNASAP. Silver Spring, MD: National Oceanic and Atmospheric Administration, and Dartmouth, NS: Department of Fisheries and Oceans; Auster et al 2001. *Environmental Biology of Fishes* 60: 331-46; Nye JA et al. 2009. *Marine Ecology Progress Series* 393: 111-129; Nye et al 2009. *ICES Journal of Marine Science*, 67: 26-40; Transboundary Resources Assessment Committee Status Report 2010/01 for Atlantic Mackerel; Transboundary Resources Assessment Committee Stock Assessment Update for Gulf of Maine/Georges Bank Atlantic Herring - Reference Document 2009/04; Northeast Fisheries Science Center. 2010. 49th Northeast Regional Stock Assessment Workshop (49th SAW) Assessment Report. US Dept Commerce, Northeast Fish Science Center Reference Document 10-01 (Butterfish);

Herring Alliance

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The success of an incidental catch reduction program based on move-along rules depends upon rapid analysis of high quality at-sea observer data and enforced management actions. This requires verifiable sampling of every haul and a prohibition on releasing catch to the sea without sampling. Released catch cannot be assumed to be representative of retained catch due to stratification and sorting. Thus, releasing catch without sampling will introduce error into estimates of catch composition that is based upon sampling of the retained catch.

During the committee discussion of move along rules (17 May 2010), reference was made to a research proposal, by the Sustainable Seafood Coalition and University of Massachusetts at Dartmouth, under consideration for funding by the National Fish and Wildlife Foundation (NFWF). While this proposal has many merits, it is a research proposal and cannot itself be included as an alternative in a draft amendment to a fishery management plan. The Herring Alliance supports good research that can contribute to reducing incidental catch of shad and river herring or anything else. However, the Herring Alliance cannot support an alternative that is based upon voluntary compliance with non-binding rules as suggested in the NFWF proposal. Amendment 5 must include strong regulatory move-along rules that are administered by NMFS and that can be enforced by NMFS, based on reliable data.

Moving along from shad and river herring. The idea of a new incidental catch reduction program based upon move-along rules is predicated on reliable sampling of all catch, rapid analysis and response. This is an excellent goal for reducing incidental catch of river herring and shad. However, there are other incidental catch concerns that have surfaced in the Atlantic herring fishery, for example, haddock and other ground fish and the harvest of spawning Atlantic herring. With a well-developed move-along system in place, it may be appropriate to expand the focus to include these other issues of concern. NMFS-certified observers can sample for adult and juvenile groundfish and they could also classify the spawning status of adult Atlantic herring – at least identifying ripe running females. This is done in the NMFS seasonal bottom trawl survey and thus it should be possible for the NMFS observer program as well. In this manner, trouble spots of a variety of types could be rapidly identified and avoided. Data acquired in such a system could also help to identify times and areas that reoccur from year to year and be used to guide fishing effort.

Use of multispecies Closed Area I rules for midwater-trawl vessels.¹⁰ The Herring Alliance supports the committee's recommendation that the rules proposed to reduce incidental catch of haddock in CA I be applied to hotspot time/areas identified for the catch of shad and river herring. We wish to be clear that we support the application of the proposed rule (September 2009) because it requires that all catch be sampled including catch that is not pumped on board during midwater trawl operations. That is, observers must be allowed to sample all the catch, even catch that is destined to be released to the sea after presorting within the net during pumping operations. The final rule (November 2009) was substantially weakened over the proposed rule because it allowed for such discarding of un-sampled catch, a change which is currently being litigated by ground-fishermen.¹¹ The Herring Alliance also supports adding an alternative with a trip termination clause, requiring return to port when catch is released for the reasons delineated in the proposed rule, including mechanical failure and vessel safety.¹²

¹⁰ Federal Register / Vol. 74, No. 171 / Friday, September 4, 2009 / Proposed Rules pp 45798-801; Federal Register / Vol. 74, No. 210 / Monday, November 2, 2009 / Rules and Regulations pp 56562-8.

¹¹ TAYLOR v. LOCKE, No. 1:09-cv-02289 (D. D.C. filed Dec. 2, 2009).

¹² Federal Register / Vol. 74, No. 171 / Friday, September 4, 2009 / Proposed Rules pp 45800.

termination clause, requiring return to port when catch is released for the reasons delineated in the proposed rule, including mechanical failure and vessel safety.¹²

In addition, the CA I rules are effective for groundfish because they work in concert with an existing regulatory cap.¹³ If these rules were to be applied to hotspots for river herring and shad, an appropriate incidental catch cap would also need to be developed based on the best available biological science for these species. Without such a cap, the CA I rules would serve only to produce new data on catch of these species but would not serve reduce at-sea catch. Thus, the Herring Alliance supports the committee in applying the CA I rules in combination with appropriate incidental catch caps for river herring and shad (see below).

Catch caps. Amendment 5 must provide alternatives for developing an overall annual incidental catch cap for each of the alosine species. Fisheries management should seek to hold the annual incidental catch of these fish under the catch cap, with appropriate fishery closure provisions for components of the fishery exceeding an annual quota.¹⁴ One alternative should be based on the population of the affected species and another, a provisional alternative, should be based on recent catch history as revealed by VTRs.

Annual incidental catch caps should be based on the population biology of these alosine species. Although it may be expedient to define incidental catch caps relative to the amounts of directed catch (e.g., as a percentage of Atlantic herring), this approach is not acceptable because it does not ensure protection of river herring or shad.¹⁵ To define a cap in this manner amounts to saying that the acceptable incidental catch can go up as long as the catch of Atlantic herring increases, even if the status of the river herring or shad remains constant or is declining. In terms of stewardship of these imperiled alosine fishes, this is illogical. It implies a biological relationship between the status of Atlantic herring and alosines that does not exist. Acceptable incidental catch levels must be based upon an analysis of the best available scientific data on the status of river herring and shad species. Such data include assessments and status reports,¹⁶ data from state and federal government sources,¹⁷ and information available from academic reports.¹⁸ Science-based cap analysis should include consideration of the status of river populations within discrete geographic regions and any available information on the migration routes used by each of the alosine species. The available scientific information should be used to determine catch caps that are appropriate for geographic segments of the coastal shelf region, while taking into account any directed or incidental harvest within state waters. This analysis should also identify priorities for new research that will improve the quality of population biology-based incidental catch caps in the future.

¹² Federal Register / Vol. 74, No. 171 / Friday, September 4, 2009 / Proposed Rules pp 45800.

¹³ Regulations specified in CFR Section 648.81 (a)(2)(iii)

¹⁴ See description of *voluntary rolling hotspot system* (VRHS) Federal Register / Vol. 75, No. 55 / Tuesday, March 23, 2010 / Proposed Rules pp 14018-20. This system includes 100% observer coverage and a fishery closure when the incidental catch cap for Chinook Salmon is reached.

¹⁵ See butterfish mortality cap program for the Loligo fishery. Federal Register / Vol. 75, No. 47 / Thursday, March 11, 2010 / Rules and Regulations 11443-44.

¹⁶ 2008 River Herring Stock Status Report, ASMFC Stock Assessment Subcommittee, Gary Nelson, Massachusetts Division of Marine Fisheries, Chair; ASMFC River Herring and Shad Stock Assessment in progress, expected in 2011.

¹⁷ NMFS Seasonal Trawl Surveys, State surveys including landings records and annual river return counts.

¹⁸ For example: Hall CJ (2009) Damming of Maine Watersheds and the Consequences for Coastal Ecosystems with a Focus on the Anadromous River Herring (*Alosa pseudoharengus* and *Alosa aestivalis*): A Four Century Analysis. Masters Thesis, Marine and Atmospheric Science, Stony Brook University; Limburg KE, Waldman JR (2009) Dramatic Declines in North Atlantic Diadromous Fishes. *BioScience* 59(11): 955-965.

Because it is not clear today that the caps can be set with the appropriate methods described above in time for completion of this Amendment, an alternative should be developed to set these caps provisionally based upon recent catch data from VTR reports. However, any such provisional caps must be replaced with caps based on biology within one year of implementation of Amendment 5.

Incidental catch thresholds for move-along rules. To make a system of move-along rules a viable option, alternatives for setting quantitative incidental catch thresholds need to be included in the amendment. The purpose of the threshold is to serve as a trigger for moving fishing effort out of an area based on the rate of incidental catch. Thresholds in terms of incidental catch per unit of fishing effort (CPUE) could be developed based on a statistical examination of CPUE. For example, a threshold might be set at one standard deviation above the mean for a normalized distribution of CPUE. Other approaches may be more appropriate given the available data and its characteristics, and these should be explored in an effort to develop strong alternatives for catch thresholds. If available data preclude a CPUE-based statistical approach, thresholds determined as a simple percentage of annual catch cap might be considered.

Midwater trawl access to closed areas and Atlantic herring spawning grounds. In addition to the important monitoring and incidental catch issues discussed above, we remind the committee of the need to promptly develop alternatives for addressing any future access by midwater trawl vessels to groundfish closed areas and to protect Atlantic herring spawning grounds on Georges Bank and Nantucket Shoals. The Council prioritized midwater trawl access to groundfish closed areas as part of this amendment in 2007¹⁹ and more recently prioritized protection of Atlantic herring while spawning.²⁰ Insufficient attention and analysis has been paid to these issues, yet they are a critical part of ensuring the long term sustainability of groundfish and Atlantic herring resources. The Herring Alliance provided recommendations for alternatives to address access to groundfish closed areas²¹ which have been documented in drafts of this amendment, and we look forward to a comprehensive discussion by the committee of these issues. We also note that the Mid-Atlantic Council is developing a similar amendment (14) to its Squid, Atlantic Mackerel, and Butterfish FMP, and urge the NEFMC to make a concerted effort to coordinate closely as many of the issues and fisheries are shared between the regions.

Sincerely,



John D. Crawford, PhD
Science and Policy Manager
Pew Environment Group

cc: Mr. Paul J. Howard, Executive Director, New England Fisheries Management Council
Mr. John Pappalardo, Chairman, NEFMC
Ms. Lori Steele, Fishery Analyst, NEFMC Staff – Herring FMP

¹⁹ Council Priorities, Thursday, November 20, 2008, NEFMC Motions, Council Meeting, Danvers, MA.

²⁰ NEFMC Council Report November 2009

²¹ Herring Alliance monitoring proposal, submitted 5 December 2008 in response to NEFMC Notice October 16, 2008: *CALL FOR STAKEHOLDER RECOMMENDATIONS for an Atlantic Herring Fishery Catch Monitoring Program*.

Herring Alliance

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

July 16, 2010

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

Dear Paul,

I am writing to you today on behalf of the undersigned CHOIR supporters to comment on the current status of Amendment 5 to the Atlantic herring Fishery Management Plan.

In November of 2007, the NEFMC voted to make herring a workload priority for 2008. It has now been over two and half years since the Council first prioritized herring yet completion of this work is still two years away. We understand that this work is challenging and that progress has been made, but we strongly encourage the Council to strive to avoid any further delays.

What concerns us more is the direction the amendment appears to be going. The Council started work on this amendment to put in place an effective, new monitoring system and address ongoing bycatch concerns. But as time wears on, it appears that some are willing to take the old system, make some minor changes, and call it a new system.

We urge the Council to remember the primary reason for starting work on this amendment back in 2008: build a new, robust monitoring program that is both accurate and credible, and that provides timely information on all catch in the fishery. Such a system would need to be based on high levels of observer coverage, while eliminating both the reliance on self-reporting that plagues the current system and the unaccountable dumping of unsampled catch. Common sense tells us that this dumping undermines all existing observer data on catch and bycatch (including that of unmarketable herring) and this amendment should solve the problem, not just study it.

Lastly, in terms of how to pay for the new program, we believe that NMFS should allocate money specifically to this new program. The cost of this program will be relatively low given their annual budget and, given the importance of the herring resource to such a wide variety of stakeholders, we feel it would be money well spent. In the meantime, the Council should develop a full range of alternatives and not limit the discussion by questions regarding funding.

The concerns about poor monitoring and ongoing bycatch in this fishery have not gone away and we urge you to take advantage of this opportunity to fix the problem.

Thanks for your time,

A handwritten signature in blue ink that reads "Steve Weiner". The signature is written in a cursive, slightly slanted style.

Steve Weiner, Chair

On behalf of the undersigned groups, businesses, and others:

Commercial Fishing Groups and Organizations:

American Bluefin Tuna Association, Executive Director Rich Ruais, Salem, NH
General Category Tuna Association, Executive Director Peter Weiss, Boston, MA
North Shore Community Tuna Association, Pres. Mark Godfried, Saugus, MA
Cape Cod Commercial Hook Fishermen's Association, CEO John Pappalardo, N. Chatham, MA
Northeast Hook Fishermen's Association, President Marc Stettner, Portsmouth, NH
Midcoast Fishermen's Association, Chairman Glen Libby, Port Clyde, ME
Midcoast Draggermen's Co-Op, President Glen Libby, Port Clyde, ME
Downeast Initiative, Project Director Aaron Dority, Stonington, ME
Northeast Fisheries Sector 3, President Richard Burgess, Gloucester, MA
Martha's Vineyard/Dukes County Fishermen's Association, Martha's Vineyard, MA
Commercial Angler's Association, Executive Director Russ Cleary, Maynard, MA

Charter/Party/Recreational Fishing Groups and Organizations:

Recreational Fishing Alliance, Executive Director Jim Donofrio, New Gretna, NJ
Stellwagen Bank Charter Boat Association, President Tom Depersia, Marshfield, MA
Northeast Charterboat Captain's Association, President Rich Milligan, Revere, MA
Maine Association of Charter Captains, Captain Dave Pecci, Bath, ME
Rhode Island Party & Charter Boat Association, President Rick Bellavance, Warwick, RI
Connecticut Charter/Party Boat Association, President Kevin Bentley
Rhode Island Saltwater Anglers Association, President Steve Medeiros, Coventry, RI
New York Sportfishing Federation, Pres. Jim Hutchinson, Jr., Forest Hills, NY
New Inlet Boating Association, President Skip Cornell
Boston Big Game Fishing Club, President Steven James, Marshfield, MA
Coastal Conservation Association- New Hampshire, President J. Jeffrey Barnum
Northeast Tuna Club, Founder Jeremy Johnson
New York Coalition for Recreational Fishing, President William Young
Boothbay Region Fish & Game Association, Boothbay, ME
Freeport Tuna Club, President Capt. Larry Festa, Freeport, NY
League of Essex County Sportsmen's Clubs, Inc., Pres. Tom Mailloux, Hathorne, MA
Plum Island Surfcasters, President Kevin McGrath, Newburyport, MA
Haverhill Ridge Runners Fish and Game Club, President Steve Dimakis, Haverhill, MA
Nantucket Anglers Club, Pres. Kevin Martin, Nantucket, MA
Massachusetts Beach Buggy Association, President Tom Gagnon
Massachusetts Striped Bass Association, President Jim Dow
Falmouth Fishermen's Association, President, George Costello
Weymouth Sportsmens Club, Pres. Joe Fee, Weymouth, MA
Hyannis Anglers Club, Hyannis, MA
Delaware River Shad Fisherman's Association, Pres. Bill McWha

Charter/Party/Guide Companies:

Bunny Clark Deep Sea Fishing, Capt. Tim Tower, Ogunquit, ME
Saco Bay Guide Service, Capt. Cal Robinson, Biddeford, ME
Pritnear Heaven Charters, Capt. Dave Johnson, Biddeford, ME
Bass I Charters, Capt. Dean Kraha, Newcastle, ME
Dantilu Custom Charters, Capt. Chris Peterson, Portland, ME
Charger Marine, Capt. George Warren, Edgecomb, ME
Super Fly Charters, Capt. George Harris, Warren, ME
Portland Guide Service, Capt. John Ford, Portland, ME
Marsh River Charters, Capt. Hank DeRuiter, Newcastle, ME

Sweet Action Charters, Capt. Dan Wolotsky, Boothbay Harbor, ME
 Full Strike Anglers, Capt. George Lemieux, Wells, ME
 Maine River and Sea Charters, Capt. Mike Jancovic, South Portland, ME
 Captain Doug Jowett Charters, Capt. Doug Jowett, Brunswick, ME
 Trina Lyn Fishing Charters, Capt. Todd Stewart, Camp Ellis, ME
 Jillian II Fishing Charters, Capt. Richard Crosby Jr., Buxton, ME
 Morning Flight Charters, Capts. Dave and Ryan Paul, South Portland, ME
 Libreti Rose II Sportfishing Charters, Capt. Bruce Hebert, Kennebunkport, ME
 Lethal Weapon Charters, Capt. Bob Liston, Wells Harbor, ME
 Livewire Sportfishing Charters, Capt. Rick Hanlin, Sabattus, ME
 Obsession Sportfishing Charters, Capt. Dave Pecci, Bath, ME
 Offshore Adventures Sportfishing, Capt. John Pappas, Cape Elizabeth, ME
 Bigger N' Better Charters, Capt. Michael Sosik, York, ME
 Shark Six Charters, Capt. Barry Gibson, Boothbay Harbor, ME
 Asticou Charters, Captian/Owner, Rick Savage, Northeast Harbor, ME
 Boothbay Mariner, Capt. Dan Stevens, Boothbay Harbor, ME
 Captain Bill's Charters, Capt. Bill Wagner, Portsmouth, NH
 Sunrise Adventure Charters, Capt. Jim Flanders, Merrimack, NH
 Shoals Fly Fishing and Light Tackle, Capt. Peter Whelan, Portsmouth, NH
 Sandy B Fishing Charters, Capt. Bruce Bornstein, Gloucester, MA
 Relenteless Charters, Capt. Dave Waldrip, Green Harbor, MA
 Walsh's Deep Sea Fishing, Bob Walsh Jr., Lynn, MA
 North Coast Angler, Capts. Skip Montello, Dave Beshara, Al Montello, Allan Smith and
 Instructor Stephen Papows, Gloucester, MA, Rockport, MA, Newbury, MA and Salem, NH
 Kelly Ann Charters, Capt. Mauro DiBacco, Newburyport, MA
 Little Sister Charters, Capt. Jason Colby, Quincy, MA
 Black Hull Charters, Capt. Ronnie Munafo, Quincy, MA
 Rod's Delight Charters, Capt. Rodney Ratcliffe, Newburyport, MA
 Fish Finder Charters, Capt. Frank O'Connor, Newburyport, MA/Salisbury, MA
 Atlantis Charters, Capt. Norm Boucher, Newburyport, MA
 Can-Do Charters, Capt. Chuck Casella, Georgetown, MA
 North Shore Charters, Capt. Dave Pelletier, Beverly, MA
 Rocky Point Fishing Charters, Capt. Bill Jarman, Newburyport, MA
 Tuna Hunter Fishing Charters, Capt. Gary Cannell, Gloucester, MA
 Southside Charters, Capt. Todd Bialas, Bourne, MA
 Rings Island Charters, Capt. Gary Morin, Salisbury, MA
 Yankee Charters, Capt. Jan Waalewyn, Gloucester, MA
 Off-Shore Charters, Capt. Roland Guyette, Millville, MA
 Karen Lynn Charters, Capts. Collin Mackenzie and Jim Ansara, Essex, MA
 Massachusetts Bay Guides, Capts. Greg, Taylor and Bryan Sears, Dave and Ed Newell,
 Rob Green, Greenbush, MA
 White Cap Charters LLC, President Brad White, Scituate, MA
 Kayman Charters, Capt. Kevin Twombly, Gloucester, MA
 Tailrope Charter Fishing, Capt. Mike Famigliette, Danvers, MA
 Rocky Point Fishing Charters, Capt Bill Jarman, Newburyport, MA
 F/V Erica Lee Charters, Capt. Rob & Lee Yeomans, Newbury, MA
 Ave Maria Charters, Capt. Mike Bousaleh, Boston Harbor, MA
 Merrimack River Charters, Capt. Robert Bump, Newburyport, MA
 Sigler Guide Service, Randy Sigler, Marblehead, MA
 Shadowcaster Charters, Capt. James Goodhart, Newburyport, MA
 Fishy Bizness Sportfishing, Capt. Ed Cloutier, Newburyport, MA
 Reel Pursuit Charters, Capt. Paul Diggins, Boston, MA
 GoFish Sportfishing Charters, Capt. Patrick Helsingius, Boston, MA
 Crimson Tide Charters, LLC., Capt. Fred Lavitman, Marshfield, MA

CPF Charters, Capt. Mike Pierdinock, Green Harbor, MA
 Castafari Charters, Capt. Damon Sacco, Falmouth, MA
 CJ Victoria Charters & Rod Builders, Capt. Rob Savino, Boston, MA
 Cape Ann Tuna Charter, Capt. Jules Boudreaux, Gloucester, MA
 Sheila D Charters, Capt. Artie Caissie, Beverly, MA
 Summer Job Charters, Capt. Scott Maguire, Newbury, MA
 Mariner Sportfishing, Capt. Tom Scanlon and Stew Holt, Lynn, MA
 Black Rose Fishing Charters, Capt. Rich Antonino, Green Harbor, MA
 Fin Addiction Charters, Capt. Jeff Smith, Wellfleet, MA
 Capt Tom's Charters, Capts. Tom and Jason Mleczo, Nat Reeder, Corey and
 Cameron Gammill, Adam Rickleff, Carl Danielson and Collin Sykes, Nantucket, MA
 Flashy Lady Charters, Capt. Dick Vincent, Martha Vineyard, MA
 Striper Charters, Capt. Gary Swanson, South Yarmouth, MA
 North Shore Charters, Capt. Scott McDowell, Menemsha, MA
 Cape Cod Charter Fishing, Capt. Art Brosnan, South Orleans, MA
 Slamdance Charters, Capt. Steve Moore, Barnstable, MA
 Laura-Jay Sportfishing, Capt. Don Cianciolo, East Sandwich, MA
 Maverick Charters, Ltd., Capt. Jack Riley, Harwich Port, MA
 Beth Ann Charters, Capt. Rich Wood, Provincetown, MA
 West Wind Charter Fishing, Capt. Robert Rank, Nantucket, MA
 Tomahawk Charters, Capt. Buddy Vanderhoop, Marthas Vineyard, MA
 Capeshores Charters, Capt. Bruce Peters, East Orleans, MA
 Outer Cape Sportfishing, Capt. Jeff Duncan, Provincetown, MA
 Bluefin Charters, Capt. Brian Courville, East Falmouth, MA
 Big Fish II Charters, Capt. Tom Depersia, Marshfield, MA
 Albacore Charters, Capt. Bob DeCosta, Nantucket, MA
 Tide Hunter Charters, Capt. Scott Bradley, Buzzards Bay, MA
 Monomoy Charters, Capt. Josh Eldridge, Nantucket, MA
 Helen H Deep Sea Fishing, Joseph Huckemeyer, Hyannis, MA
 Hindsight Sportfishing, Brett Wilson, Brewster, MA
 Chatham Charters, Capt. Matt Swenson, Chatham, MA
 Herbert T. Sportfishing, Fred Tonkin, Nantucket, MA
 Cross Rip Outfitters, Lynne Heyer, Nantucket, MA
 Snapper Charters, Capt. Doug Lindley, Nantucket, MA
 Topspin Charters, Capt. Karsten Reinemo, Nantucket, MA
 Gaffer Charter's, Capt. Adam Rickleff, Nantucket, MA
 Absolute Sportfishing, LLC., Capt. Brian Borgeson, Nantucket, MA
 Nantucket Sportfishing Co., David Martin, Nantucket, MA
 Got Stryper Charters, Capt. Alan Hastbacka, Chatham MA
 Bill & Jules Fishing Specialists, Capt Bill Bryant, Brockton, MA
 Reel Crazy Sportfishing, LLC., Captain Pat Juliano, West Haven, CT
 After You, Too Sportfishing Charters, Capt. Frank Blume, New London, CT
 Right Hook Fishing Charters, Capt. Bob Veach, New London, CT
 Rock & Roll Charters, Capt. TJ Karbowski, Clinton, CT
 White Ghost Guide Services, Ltd., Capt. Jim White, East Greenwich, RI
 Busy Line Charters, Capt. Norm Bardell, Woonsocket, RI
 Reel to Reel Sportfishing, LLC, Capt. Scott Lundberg, Pt. Judith, RI
 Cherry Pepper Sport Fishing, Capt. Linwood Safford, Charlestown, RI
 Togfather Fishing, Dennis Cataldo, Famingdale, NY
 Double Diamond Charters, Capt. Manual Canales, Brielle, NJ
 DJ Muller Surfcasting, DJ Muller, Manasquan, NJ
 Spunky II Charters, Capt. Bob Egger, Toms River, NJ
 Midcoast Kayak Fishing, Bryan Rusk, Easton MD

Fishing Vessels:

F/V Nightmare, Gregg Gilliam, Small Point, ME
F/V Belly Filla, Alex Notis, South Portland, ME
F/V Bettina H, Tim Virgin, Perkins Cove, ME
F/V Heather Rose, Eugene Thurston, Southwest Harbor, ME
F/V Eliza B, Neil Cunningham, Boothbay Harbor, ME
F/V Kelly Ann, Keith Landrigan, South Portland, ME
F/V Anticipation, Eric Gilliam, Small Point, ME
F/V Kathleen Jean, Stu Fay, Cape Elizabeth, ME
F/V Western Venture, Glenn Robbins, Eliot, ME
F/V Jay-Keel, John Cotton, St. George, ME
F/V Morningstar, Herb Yeaton, Small Point, ME
F/V Vick, Norman Koehling, Sebasco, ME
F/V A. Maria, Sonny McIntire, Perkins Cove, ME
F/V Underdog, Jeff Douglas, Kennebunkport, ME
F/V Empty Pockets II, Michael Stevens, Five Islands, Maine
F/V Three Bells, Matt Jones, Boothbay Harbor, ME
F/V Ella & Sadie, Colin Yentsche, Boothbay Harbor, ME
F/V Ice Princess, Peter Morse, Cape Elizabeth, ME
F/V Arco Felice, Lexi Krausse, Rockport, ME
F/V Josie B, Stephen Merrill, Wells, ME
F/V Pelican, Brett Gilliam, Small Point, ME
F/V Elizabeth Jane, Clay Gilbert, South Bristol, ME
F/V Claudet C, Gary E. and Gary C. Obrien, South Portland, ME
F/V Julia G III, Bradley Simmons, Boothbay Harbor, ME
F/V Scoot Too, Doug Gerry, Perkins Cove, ME
F/V Olympic Lady, Kurt Moses, Kennebunkport, ME
F/V Jazmataz, Don Page, Boothbay Harbor, ME
F/V Heather Kate, Glen Gilliam, Small Point, ME
F/V Mary E, Jeff Norwood, Boothbay Harbor, ME
F/V Eileen K, Mike Parenteau, Cape Neddick, ME
F/V Miss Alex, Steve Hanson, Cape Porpoise, ME
F/V Michelle Anne, Joel Strunk, Camden, ME
F/V Seldom Seen, Matt Webber, Monhegan Island, ME
F/V All In, Michael Lorusso, Wells, ME
F/V Danny & Chad, Jody Murray, Boothbay Harbor, ME
F/V Allie K, Steve Simmons, Southport, ME
F/V Endeavor, Emile Bussiere, Kittery, ME
F/V Don't Ask, Randy Durgin, Boothbay Harbor, ME
F/V Lady Anne, Dave Sinclair, Wayne, ME
F/V Deborah Ann, Chris Clark, Southwest Harbor, ME
F/V Peregrine, David Linney, York, ME
F/V Emily Rachael, Tony Coleman, Wells, ME
F/V Queen of Peace, Bobby & Shane McIntire, Ogunquit, ME
F/V Lion's Den, John Shostak, Boothbay Harbor, ME
F/V Fortunate, Jeremy Reynolds, Kittery, ME
F/V Sally G, Joe Barrone, Kittery, ME
F/V Sandra E, Allan Vitkus, Vinalhaven, ME
F/V Banshee, John Harmon, South Portland, ME
F/V Allyson, Tom Mansfield, Kennebunkport, ME
F/V Kathryn Giles, Matt Forbes, Ogunquit, ME
F/V Buckwacka, Mike Horning, Cape Neddick, ME
F/V Hunter, Vaughn Clark, Southwest Harbor, ME

F/V Zerlina, David Schalit, Brooklin, ME
 F/V Tricia Lee, Luis Tirado, South Portland, ME
 F/V Old Mud, Donald Sproule, ME
 F/V Moxie, Bill Ganske, Cundy's Harbor, ME
 F/V Linda Sea, John Stanley, Mt Desert, ME
 F/V Elizabeth Ames, Steve Weiner, Perkins Cove ME
 F/V Pamala Jean, Capt. Adam Littell, Kennebunkport, ME
 F/V Miss Megan II, Cpts. Shawn and Megan Tibbetts, Wells, ME
 F/V Sally & Alyson, Joe Jancewicz, Kensington, NH
 F/V Michael Kevin, Ralph Pratt, Green Harbor, MA
 F/V Perfect C's, F/V Lisa Marie, Mike Pratt, Green Harbor, MA
 F/V Scotia Boat Too, F/V Heidi & Heather, F/V Julie Ann,
 & F/V Ryan Zackary, Richard Burgess, Gloucester, MA
 F/V Hannah G, Steven Getto, Green Harbor, MA
 F/V Hit & Run, Jim LeBocuf, Wenham, MA
 F/V Freebird, Gregg Swinson, Gloucester, MA
 F/V Katie May, Dean Holt, Newburyport, MA
 F/V Jeanne Marie, Mike Blanchard, Gloucester, MA
 F/V Ella Briggs, Dylan Caldwell, Pigeon Cove, MA
 F/V Family Jules, Tom Libertini, Green Harbor, MA
 F/V Amanda, Peter Atherton, Newburyport, MA
 F/V Mary D, Daniel Dumani, Newburyport, MA
 F/V Coot, Dana Kangas, Gloucester, MA
 F/V Inseine, Mike Lange, New Bedford, MA
 F/V Hookin-Up, Capt. Darin DiNucci, Winthrop, MA
 F/V Sashimi, Doug Amorello, Plymouth, MA
 F/V Hawk, Capt. Dennis Lanzetta, East Dennis, MA
 F/V My Girls, Michael Devine, Humarock, MA
 F/V Shadowline, Putnam Maclean, Marshfield, MA
 F/V Jesse J, John Richardson, Hingham, MA
 F/V Sue Z, Tom Traina, Harwich, MA
 F/V Tobey Ann, Brian Higgins, Gloucester, MA
 F/V Coyote, Scott Brady, Provincetown, MA
 F/V Suzies Riches, Richard Whiteside, Hyannis, MA
 F/V Cityslicker, Capt. John Wallace, Boston, MA
 F/V Tuna.com, Capt. Dave Carraro, Gloucester, MA
 F/V Lorraine B, Capt. Bob Briggs, Hanover, MA
 F/V Mulberry Canyon, Capt. John Galvin, Jr., Falmouth, MA
 F/V Cynthia C, Tyler Macallister, Sandwich, MA
 F/V Back Off, Shawn Sullivan, Sesuit, MA
 F/V Lilly, Billy Muniz, Gloucester, MA
 F/V Gratitude, Eric Swanson, Gloucester, MA
 F/V Merganser, Peter Fyrberg, Rowley, MA
 F/V The Gov, Mark Godfried, Gloucester, MA
 F/V Miss Fitz, John Our, Chatham, MA
 F/V Lori-Ann, Dorwin Allen, Hyannis, MA
 F/V Fish Hawk, Joe Weinberg, Hyannis, MA
 F/V Rachael M, Roy McKenzie, Hyannis, MA
 F/V Magic, Mike Abdow, Chatham, MA
 F/V Sea Wolf, Tom Smith, Orleans, MA
 F/V Triton, Steve Peters, Orleans, MA
 F/V Luau John and Shakliks, Orleans, MA
 F/V Capt. Cook, Jason Hayes and Patrick Wood, Orleans, MA
 F/V Fair Lady, Chuck Catalou, Orleans, MA

F/V Osprey, Da Vipio, Orleans, MA
F/V Gumrappa, Goerge Ramian Jr., Rock Harbor, Orleans
F/V Sooner or Later, John Nichols, Newburyport, MA
F/V Blue Heron, Jonathan Geary, Chatham, MA
F/V Haywire, Chris Pistel, Harwich, MA
F/V Capt Cook, Brett Wilson, Rock Harbor, MA
F/V Frenzy, Ray Kane, Chatham, MA
F/V Horse Mackerel, David Gelfman, Chatham, MA
F/V Justified, Danny Hunter, Plymouth, MA
F/V Arlie X, Thomas Szado, Harwich, MA
F/V Peggy-B II, Ronald Braun, Harwich, MA
F/V Sea Frog, J. Roger Tessier, Harwich, MA
F/V Sea Hook, Earl Legeyt, Harwich, MA
F/V Sea Holly, Mark Leach, Harwich, MA
F/V Sea Win, Tom Luce, Harwich, MA
F/V Time Bandit, Kurt Martin, Chatham, MA
F/V Zackary T, Nick O'Toole, Harwich, MA
F/V Saga, Ben Bergquist, Chatham, MA
F/V Constance, Mike Woods, Chatham, MA
F/V Ouija, Gerald Miszkin, Chatham, MA
F/V Seabag III, Greg Tomasian, Harwich, MA
F/V Sea Chase, Roscoe Chase, Harwich, MA
F/V Beggars Banquet, Bob Keese, Chatham, MA
F/V Miss Rockville, Andrew Keese, Chatham, MA
F/V Wildwood, Nick Hyora, Chatham, MA
F/V Irish Lady, Chris Ripa, Chatham, MA
F/V Bada Bing, Tye Vecchione, Chatham, MA
F/V Yellowbird, James Eldredge, West Chatham, MA
F/V Riena Marie, Ted Ligenza, South Chatham, MA
F/V Great Pumpkin, Jan Margeson, Brewster, MA
F/V Rug Rats, Bob St. Pierre, West Yarmouth, MA
F/V Never Enough, Bruce Kaminski, Chatham, MA
F/V Taint, Mark Liska, Chatham, MA
F/V Morgan I, Glen Legeyt, West Yarmouth, MA
F/V Cuda John Tuttle, North Chatham, MA
F/V Kelly J, Michael Terrenzi, Harwich, MA
F/V Unicorn, Robert Eldredge, South Chatham, MA
F/V Ann Marie, Jim Nash, Chatham, MA
F/V Dawn T, Stuart Tolley, Chatham, MA
F/V Cuda Crew, William Barabe, Chatham, MA
F/V Jack Tar, Dave Murdoch, Chatham, MA
F/V Fishy Business, Dave Maher, Plymouth, MA
F/V Blue Heron, Jonathan Geary, Chatham, MA
F/V Lori B, Matt Linnel, Chatham, MA
F/V Angler, Jason Alger, Hyannis, MA
F/V Isabella H, Patrick Radford, Hyannis, MA
F/V Sea Hawk, Carol Ann Huckemeyer, Hyannis, MA
F/V Machaca, Willy Hatch, North Falmouth, MA
F/V Mudshark, Craig Poosikian, Orleans, MA
F/V Predatuna II, Paul van Steensel, Harwich, MA
F/V Althea K, Pete Kaizer, Nantucket, MA
F/V Monomoy, Capt. Josh Eldredge, Nantucket, MA
F/V Shalako, Jonas Baker, Nantucket, MA
F/V Just Do It Too, Capt. Marc Genthner, Nantucket, MA

F/V Tracey T, Lou Statzer, Nantucket, MA
F/V Bedalia, Mark Williams, Nantucket, MA
F/V Carol Anne, Patrick Taaffe, Nantucket, MA
F/V Starfish Enterprise, Donald Russell, Nantucket, MA
F/V Diggin It II, Dan Zawisza, Old Saybrook, CT
F/V Tuna Tangler Too, Paul Stern, Montauk, NY
F/V Hot Tuna, Timothy Ott, Broad Channel, NY
F/V Lucky Lady, Walter Harmstead, Manasquan, NJ
F/V Susan H, Eric Herbst, Newport, RI
F/V Proud Mary, Chris Brown, Pt.Judith, RI
F/V Mary Kay, Andrew Ditch, Bokeelia, FL

Tackle/Bait Shops & Companies

Hiltons Sport Dock, George Hilton, Newburyport, MA
Tightlines Tackle, Dave Mason, Walpole, ME
Saco Bay Tackle, Peter Mourmouras, Saco, ME
Offshore Marine Outfitters, Tim Greer, York, ME
White Anchor Bait & Tackle Shop, Carl Jordan, Boothbay, ME
Eldredge Bros. Fly Shop, Jim Bernstein, Cape Neddick, ME
Webhannet River Boatyard and Tackle Shop, Wells, ME
First Light Anglers, Nat Moody, Derek Spingler, Chris Comb,
Peter Yukins and Trent Gaffney, Rowley, MA
Fisherman's Outfitter, John White, Gloucester, MA
Offshore Pursuits Premium Tackle, David Dodsworth, MA
Nelson's Bait and Tackle, Rich Wood, Provincetown, MA
Bucko's Parts & Tackle, Michael J. Bucko, Fall River, MA
Offshore Innovations Inc., Pres. Kevin Glynn, Falmouth, MA
Green Harbor Bait and Tackle, Bob Pronk, Marshfield, MA
Belsan Bait and Tackle, Jerry and Pete Belsan, Scituate, MA
Fishing Finatics, Pete Santini, Everett, MA
Rock On Products, Manchester, MA
Sunrise Bait & Tackle, Gerald Armstrong, Harwich Port, MA
Sportsman's Landing, Carl Copenrath, Dennis, MA
Riverview Bait & Tackle, Lee Boisuert, Yarmouth, MA
Nantucket Tackle, Arthur Quinn, Nantucket, MA
Fore River Bait & Tackle, Rick Newcomb, Quincy, MA
Antique Lures, Marty McGovern, Whitman, MA
The Hook-Up Bait and Tackle, Capt. Eric Stewart, Orleans, MA
RonZ Mfg. Co., Ron Poirier, Brewster, MA
Arthur's Custom Rods, Arthur Kaplan, Quincy, MA
Bigfish Tackle Co., Lawrence Wentworth, Hanover, MA
Got Stryper Lure Company, Capt. Alan Hastbacka, Chatham, MA
Line Stretcher Tackle Company, Ray Jussaume, Somerville, MA
The Fisherman's Line, Bob Rogers, Assonet, MA
Powerhorn Outfitters, Hyannis, MA
Wally's Wood Lures, Walt Morris, Sandwich, MA
Point Jude Lures, Joe Martins, Newport, RI
RI Poppers, Armand Tetreault, Woonsocket, RI
Surfcasting Rhode Island, Joe Lyons, Narragansett, RI
Aquaskinz Corp., Kadir Aturk, Lindenhurst, NY
Backlash Sportfishing USA, Capt. Bob Bott, Suffolk, NJ
BFG Tackle, Capt. Chuck Fisher, Dundalk, MD

Whale Watch Companies:

Bar Harbor Whale Watch Co., Naturalist Zack Klyver, Bar Harbor, ME
Newburyport Whale Watch, Capt. Bill Neelon, Newburyport, MA
Portuguese Princess Whale Watch & Excursions, Provincetown, MA
Cape Ann Whale Watch, Jim Douglass, Gloucester, MA
Capt. Bill & Sons Whale Watching, Mark Cunningham, Gloucester, MA
Atlantic Fleet Whale Watch, Capt Brad Cook, Rye Harbor, NH
Granite State Whale Watch, Pete Reynolds, Rye Harbor, NH
Boothbay Whale Watch, Naturalist Mechele Vanderlaan, Boothbay Harbor, ME
Odyssey Whale Watch, Christopher Cutshall, Portland, ME
First Chance Whale Watch, Capt. Gary Grenier, Kennebunk, ME

Ecotourism Companies

Old Quarry Ocean Adventures, Capt Bill Baker, Stonington, ME
LuLu's Lobster Boat Ride, Capt. John Nicolai, Gouldsboro, ME
Midcoast Kayak, Glenn and Erin Mitchell, Damariscotta, ME
Passenger Vessel 'Belle", Capt. Tim Healy, Gloucester, MA
Acadian Nature & New Horizons Tour Company, Captain/Owner Gary Fagan, Bar Harbor, ME
Bar Harbor Whale Watch Co., Naturalist Zack Klyver, Bar Harbor, ME
Ardea Ecoexpeditions, Owner/Guide Darrin Kelly, Gouldsboro, ME
Coastal Kayaking Tours, Owner/Guide Glenn Tucker, Bar Harbor, ME
Downeast Nature Tours, Owner/Guide Michael Good, Bar Harbor, ME
Nantucket Adventures, Capt. Mark Scharwenka, Nantucket, MA

Marine Research, Education and Conservation Organizations:

Penobscot East Resource Center, Director Robin Alden, Stonington, ME
Whale Center of New England, Executive Director Mason Weinrich, Gloucester, MA
Blue Ocean Society, Director Jen Kennedy, Portsmouth, NH
Northwest Atlantic Marine Alliance, Exec. Director Niaz Dorry, Gloucester, MA
Coastal Research and Education Society of Long Island, Pres. Arthur Kopelman
Downeast Salmon Federation, Exec. Director Dwayne Shaw, Columbia Falls, ME
Allied Whale, Director Sean Todd, Bar Harbor, ME
Bar Harbor Whale Museum, Curator Toby Stephenson, Bar Harbor, ME
CETOS Research Organization, Executive Director Ann Zoidis, Bar Harbor, ME
Friends of Maine Seabird Islands, President Jane Hopwood, Rockland, ME

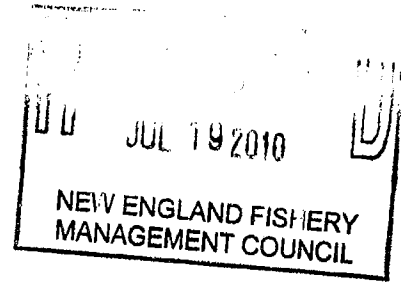
Businesses, publications and others:

Dysart's Great Harbor Marina, Ed Dysart, Southwest Harbor, ME
Estes Oil and Propane, Mike Estes, York, ME
Kittery Point Yacht Yard, Corp., Tom Allen, Kittery Point, ME
Marine Systems Custom Boats, Eric Clark, Southwest Harbor, ME
Barnacle Billy's Inc., Bill Tower, Ogunquit, ME
D&J Fuels, North Berwick, ME
Kittery Point Boatbuilders, LLC., Elliot, ME
MGX, LLC., Kittery Point, ME
Maguro America, Inc., Robert Fitzpatrick, Chatham, MA
Nantucket Fish Co., Inc., President Andrew Baler, South Dennis, MA
North Atlantic Traders, Ltd., Bob Kliss, Lynn, MA
Compass Seafoods, Patrick Mead, Charlestown, RI

Blunas, Inc., Chris and Ben Weiner, Perkins Cove, ME
Poon Harpoons, Kevin Glynn and Chris Godina, West Newton, MA
JC Boat, Jack Cadario, Brookline, NH
Lodestar Water Taxi, Robert Cicerrell, Nantucket, MA
Cap'n Tobey's Native Water Taxi, Tobey Leske, Nantucket, MA
Fred C Church, Inc., Lowell, MA
Bluewater Fish Co., Bob DeCosta, South Norwalk, CT
Navtronics, Tim Greer, York, ME
Redman Marine Fabricators, Noell Redman, York, ME
Blue Sea Fisheries, Inc. Dave Pelletier, Beverly, MA
Sarah-Kate Fisheries Inc., Fave Fyrberg, West Newbury, MA
North Atlantic Marine Service, Steve McNally, Amesbury, MA
On The Water Magazine, Publisher Chris Megan, East Falmouth, MA
NH Precision Metal Fabricators, Mark Poirier, Londonderry, NH
Offshore Pursuits, LLC, David Dodsworth, MA
NewEnglandSharks.com, Capt. Tom King, Scituate, MA
New England Farm Union, President Annie Cheatham, Shelburn Falls, MA
Momomoy Fuel Co., Andy Blanco, Chatham, MA
Cape Island Boats, Eric Johnson, Brewster, MA
Funktional Steel Art, Faye Swenson, Chatham, MA
Roger Carroll Boat Carpenters, Roger Carroll, Chatham, MA
Richardson Marine, Kent Richardson, North Chatham, MA
Radiotelephone Service Co., James Eteson, Orleans, MA
Commercial Marine Co., John Avellar, Orleans, MA
Whiteley Fuel Oil, David Peters, North Chatham, MA
Massachusetts Freedivers Club, Faye Anderson, Chatham, MA
Glyn's Marine, Inc., Roger Stolte, Nantucket, MA
Brant Point Marine, Bill Davidson, Nantucket, MA
Nantucket Ship Chandelry, Ellen Tonkin, Nantucket, MA
Forelle, LLC., Steven Leinbach, Nantucket, MA
Souza's Seafood, Shirley Souza, Nantucket, MA
Nantucket Seafoods, Dan Lemaitre, Nantucket, MA
Nantucket Boat Basin, George Bassett, Jr., Nantucket, MA
Larry Ray Marine, Larry Ray, Nantucket, MA
B&D Enterprises, Bernie Wilson, Ware, MA
Off The Hook Fishing, Roy Leyva, Plymouth, MA
Tri State Fishing Tournaments, Steve Mantia, President, Carver, MA
Fly Rod Striped Bass, Ted Demopoulos, Dover, NH
Stripersonline.com, Tim Surgent, Wall, NJ
DMC Executive Planning, Dennis Cataldo, Farmingdale, NY
www.Striped-Bass.com, John Redmond, Warwick, RI

#66

Buckeye Brook
Protect & Preserve
P.O. Box 9025
Warwick, Rhode Island



July 13, 2010

Mr. Doug Grout, Chairman, Herring Oversight Committee

New England Fishery Management Council

50 Water Street

Newburyport, Massachusetts 01950

RE: Amendment 5 to the Atlantic Herring Fisheries Management Plan

Dear Mr. Grout:

As president of the Buckeye Brook Coalition, I am writing about Amendment 5 to the Atlantic herring fishery management plan and the upcoming Herring Oversight Committee meeting (July 27-28, 2010). Our letter primarily focuses on the alternatives dealing with incidental catch reduction for river herring (blueback and alewife herring) and American shad, and catch monitoring, now being developed for the amendment. The specific concerns about alternatives for inclusion in amendment 5 are summarized here:

- Existing observer and NMFS seasonal bottom trawl data, from previous years, must be used to identify those areas where future incidental catch rates are expected to be high: *hotspots*.
- A set of management alternatives must be developed, based on modifications to the rules for midwater-trawl fishing within ground fish Close Area I, to substantially reduce incidental catch within hotspots as defined above.
- The amendment must include at least one alternative for a new monitoring system to provide the near-real time data and analysis needed for a system incidental catch move along rules: rules that force vessels to move out of a circumscribed area when an established incidental catch threshold is reached.
- One or more alternatives for incidental catch reduction should be based on move along rules, triggered by an established catch threshold, and leading to protection, of sufficient size and duration, to ensure that incidental catch is held to a minimum.

LC: 1/3, tb

- The amendment must develop alternatives for annual incidental catch caps for blueback herring, alewife, and American shad. A meaningful catch reduction plan must be backed-up by an annual catch cap, which leads to closure of any fishery exceeding its portion of the cap. One alternative should be based on the population biology of these species, and a second should be based on recent landings as reported by Vessel Trip Reports (VTR).
- Alternatives should be included that protect spawning Atlantic herring, through time/area closures and / or move along rules for spawning fish.
- The amendment should expand protection of juvenile and adult groundfish from mid-water trawling by applying CA I rules to all of the groundfish closed areas.

The Buckeye Brook Coalition is particularly concerned about the disappearance of river herring and shad from the Eastern seaboard and the contribution of at-sea catch to this problem. This is a matter of great concern to a diversity of stakeholders,¹ and one that the ASMFC requested emergency action on.² This request for emergency action was supported by the NEFMC, and MAFMC.³ The Buckeye Brook Coalition strongly supports inclusion robust alternatives for reducing incidental catch of river herring and shad at-sea.

We support a strong amendment 5 to improve data collection through a comprehensive and rigorous catch monitoring system. This is important for documenting and reducing all incidental catch, both discarded and landed, and will also improve data for stock assessments and help ensure that catch of stocks subjected to directed fisheries does not exceed annual catch limits.

The two motions passed at the 17 May 2010 committee meeting, dealing with defining by catch hotspot areas and move-along rules triggered by incidental catch, represent important steps forward. If properly developed, these motions could lead to a set of strong management alternatives for the draft amendment and EIS. Suggestions for further development are discussed below.

Identification of by catch seasonal hotspots. The first of the 17 May 2010 committee motions directs the Plan Development Team (PDT) to use observer data to identify gear-specific time/areas where the Closed Area I (CA 1) regulations could be applied to reduced incidental catch of shad and river herring.⁵ The concept here is to use observer data from previous years to predict where and when future incidental catch rates are expected to be high, and take management action for those time-areas, or *hotspots*, in the future. The essence of this motion was also put forward in October 2008, when both the Herring Committee and the Council passed similar motions on use of observer data as a basis for time-area closures. The Buckeye Brook Coalition strongly supports basing a set of alternatives on this concept, so long as they are designed to effectively reduce incidental catch.

The spatial and temporal distributions of incidental catch of river herring and shad in the Atlantic herring fishery, as revealed by data from at-sea observers, has been a focus for at least two years and has been presented to the PDT and committee several times.⁶ These data represent the best scientific information available on at-sea catch of these species and must be used to define seasonal hotspots as an important part of any incidental catch reduction program.

We recommend that these observer data be used together with the fishery-independent data provided by the NEFSC seasonal bottom trawl survey to develop a set of alternatives for protection of seasonal hotspots for river herring and shad. These fishery-independent data can be used to provide an independent look at where incidental catch hotspots should be expected, thereby increasing confidence in time/areas identified by observers, and also to identify additional time/areas that could become problematic if fishing effort were to be directed on them in the future. A preliminary analysis of the distribution of shad and river herring as revealed by seasonal bottom trawl survey was already presented to the PDT and Committee.⁷

Although the seasonal bottom trawl survey was originally designed to sample demersal fishes (i.e., bottom dwelling), the survey has proven valuable for a much broader spectrum of species including pelagic species. A number of peer reviewed stock assessments and journal articles dealing with pelagic, or benthopelagic, species are based, at least in part, on seasonal bottom trawl surveys.⁸ Thus, despite being a "bottom trawl," the utility of this survey for pelagic species has endured the test of scientific peer review and its use in this context is well justified.

The Buckeye Brook Coalition encourages the Council to use the best available science to develop a set of alternatives that seeks to reduce the incidental catch of river herring and shad through time/area closures centered on hotspots. Some concerns have been expressed about the possibility that area closures intended to reduce incidental catch may have the unintended consequence of driving fishing effort into new areas where the incidental catch may also be high. There is always the possibility that a management measure like this one will have some undesirable consequences. However, this possibility is no excuse for failing to address problems where they are known to be occurring based on data from recent years. It is incumbent upon the Council and NMFS to maintain a strong monitoring program so that the consequences of new time/area closures are understood and responded to through appropriate adaptive management.

The move-along concept. The Buckeye Brook Coalition strongly supports the concept of reducing incidental catch of shad and river herring through rules that are triggered by near real-time catch data for these species. The second of the two committee motions from 17 May 2010 tasks the PDT with developing this concept for the Atlantic herring fishery. To surmise, a move along rule kicks in when the catch level for the species of concern is observed to exceed a science-based threshold, and requires that the relevant fleet cease fishing within the area (i.e., *move along*) until the risk of further incidental catch falls to an acceptably low level. Analyses suitable for determining an appropriate time period might employ observer data from previous years, information about the

movements of shad and river herring, and future targeted sampling within exclusion areas established through a move-along rule.

The success of an incidental catch reduction program based on move along rules depends upon rapid analysis of high quality at-sea observer data and enforced management actions. This requires verifiable sampling of every haul and a prohibition on releasing catch to the sea without sampling.

During the committee discussion of move along rules (17 May 2010), reference was made to a research proposal, by the Sustainable Seafood Coalition and University of Massachusetts at Dartmouth, under consideration for funding by the National Fish and Wildlife Foundation (NFWF). While this proposal has many merits, it is a research proposal and can not itself be included as an alternative in a draft amendment to a fishery management plan. The Buckeye Brook Coalition supports good research that can contribute to reducing incidental catch of shad and river herring or anything else. However, the Buckeye Brook Coalition can not support an Alternative that is based upon voluntary compliance with non-binding rules as suggested in the NFWF proposal. Amendment 5 must include strong regulatory move along rules that are administered by NMFS and that can be enforced by NMFS based on reliable data.

Moving along from shad and river herring. The idea of a new incidental catch reduction program based upon move-along rules is predicated on reliable sampling of all catch, rapid analysis and response. This is an excellent goal for reducing incidental catch of river herring and shad. However, there are other incidental catch concerns that have surfaced in the Atlantic herring fishery, for example, haddock and other ground fish, and the harvest of spawning Atlantic herring. With a well developed move-along system in place, it may be appropriate to expand the focus to include these other issues of concern. NMFS certified observers can sample for adult and juvenile groundfish and they could also classify the spawning status of adult Atlantic herring – at least identifying ripe running females. This is done in the NMFS seasonal bottom trawl survey and thus it should be possible for the NMFS observer program as well. In this manner, trouble spots of a variety of types could be rapidly identified and avoided. Data acquired in such a system could also help to identify times and areas that reoccur from year to year and be used to guide fishing effort.

Use of multispecies Closed Area I rules for midwater-trawl vessels.⁹ The Buckeye Brook Coalition supports the committee's recommendation that the rules proposed to reduce incidental catch of haddock in CA I be applied to hotspot time/areas identified for the catch of shad and river herring. We wish to be clear that we support the application of the proposed rule (September 2009) because it requires that all catch be sampled including catch that is not pumped on board during midwater trawl operations. That is, observers must be allowed to sample all the catch, even catch that is destined to be released to the sea after presorting within the net during pumping operations. The final rule (November 2009) was substantially weakened over the proposed rule because it allowed for such discarding of un-sampled catch, a change which is currently being litigated by ground-fishermen.¹⁰ The Buckeye Brook Coalition also supports adding an

alternative that with a trip termination clause, requiring return to port when catch is released for the reasons delineated in the proposed rule, including mechanical failure, and vessel safety.¹¹

In addition, the CA I rules are effective for groundfish because they work in concert with an existing regulatory cap.¹² If these rules were to be applied to hotspots for river herring and shad, an appropriate incidental catch cap would also need to be developed based on the best available biological science for these species. Without such a cap, the CA I rules would serve only to produce new data on catch of these species but would not serve to reduce at sea catch. Thus, the Buckeye Brook Coalition supports the committee in applying the CA I rules in combination with appropriate incidental catch caps for river herring and shad (see below).

Catch Caps. Amendment 5 must provide alternatives for developing an overall annual incidental catch cap for each of the Alosine species. Fisheries management should seek to hold the annual incidental catch of these fish under the catch cap, with appropriate fishery closure provisions for components of the fishery exceeding an annual quota.¹³ One alternative should be based on the population of the effected species and another, a provisional alternative, should be based on recent catch history as revealed by VTRs.

Annual incidental catch caps for river herring and shad based on population biology.
Annual incidental catch caps should be based on the population biology of these alosine species. Although it may be expedient to define incidental catch caps relative to the amounts of directed catch (e.g., as a percentage of Atlantic herring), this approach is not acceptable because it does not ensure protection of river herring or shad.¹⁴ To define a cap in this manner amounts to saying that the acceptable incidental catch can go up as long as the catch of Atlantic herring increases, even if the status of the river herring or shad remains constant or is declining. In terms of stewardship of these imperiled alosine fishes, this is illogical. It implies a biological relationship between the status and/or catch of Atlantic mackerel and alosines that does not exist. Acceptable incidental catch levels must be based upon an analysis of the best available scientific data on the status of river herring and shad species. Such data include assessments and status reports,¹⁵ data from state and federal government sources,¹⁶ and information available from academic reports.¹⁷ Science-based cap analysis should include consideration of the status of river populations within discrete geographic regions and any available information on the migration routes used by each of the alosine species. The available scientific information should be used to determine catch caps that are appropriate for geographic segments of the coastal shelf region, while taking into account any directed or incidental harvest within state waters. This analysis should also identify priorities for new research that will improve the quality of population biology-based incidental catch caps in the future.

Annual incidental catch caps for river herring and shad based on recent catch.
Because it is not clear today that the caps can be set with the appropriate methods described above in time for completion of this Amendment, an alternative should be developed to set these caps provisionally based upon recent catch data from VTR reports.

However, any such provisional caps must be replaced with caps based on biology within one year of implementation of Amendment 5.

Incidental catch thresholds for move-along rules. To make a system of move along rules a viable option, alternatives for setting quantitative incidental catch thresholds need to be included in the amendment. The purpose of the threshold is to serve as a trigger for moving fishing effort out of an area based on the rate of incidental catch. Thresholds, in terms of incidental catch per unit of fishing effort (CPUE), could be developed based on a statistical examination of CPUE. For example, a threshold could be set at one standard deviation above the mean for a normalized distribution of CPUE. Other approaches may be more appropriate given the available data and its characteristics, and these should be explored in an effort to develop strong alternatives for catch thresholds. If available data preclude a CPUE-based statistical approach, thresholds determined as a simple percentage of annual catch cap might be considered.

Closing remarks: In addition to the important monitoring and incidental catch issues discussed above, we remind the committee of the need to promptly develop alternatives for addressing any future access by midwater trawl vessels to groundfish closed areas and to protect Atlantic herring spawning grounds on Georges Bank and Nantucket Shoals. The Council prioritized midwater trawl access to groundfish closed areas as part of this amendment in 2007¹⁸ and, more recently, prioritized protection of Atlantic herring while spawning.¹⁹ Insufficient attention and analysis has been paid to these issues, yet they are a critical part of ensuring the long term sustainability of groundfish and Atlantic herring resources. The Buckeye Brook Coalition looks forward to a comprehensive discussion by the committee of these issues. We also note that the Mid-Atlantic Council is developing a similar amendment (14) to its Squid, Atlantic Mackerel, and Butterfish FMP, and urge the NEFMC to make a concerted effort to coordinate closely as the many of the issues and fisheries are shared between the regions, to which the Buckeye Brook Coalition has expressed its concerns to that oversight body also.

Sincerely,

Paul H. Earnshaw

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

President
Buckeye Brook Coalition



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration #61
 NATIONAL MARINE FISHERIES SERVICE
 1315 East-West Highway
 Silver Spring, Maryland 20910
 THE DIRECTOR

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JUN 23 2010

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



Dear Mr. Howard:

Thank you for your letter dated June 26, 2009, requesting that the Secretary of Commerce implement an information program under the authority of Section 402(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act to assess bycatch of shad and river herring in small-mesh fisheries. Under §402(a)(1), the Secretary has the authority to implement, by regulation, an information collection or observer program at the request of a Council if the Secretary determines that the need is justified. If the Secretary finds the action is justified the information program shall be implemented within 60 days. I apologize that I am just now responding to this letter, but your original letter did not reach my office until recently.

As you are aware, in December 2009 NOAA's National Marine Fisheries Service (NMFS) denied a similar request under sections §305 (c) and §402(a)(1) of the Magnuson-Stevens Act. These petitions were in response to the Atlantic States Marine Fisheries Commission (ASMFC) request that the Secretary take emergency action to effectively monitor bycatch of river herring in small-mesh fisheries, and to provide additional resources to support the cooperative efforts between the ASMFC and the New England and Mid-Atlantic Fishery Management Councils (NEFMC and MAFMC) to better manage anadromous fisheries. The ASMFC stated that, while the status of the river herring stock is unknown, low commercial landings have caused four states to implement a total moratorium on river herring harvest. The ASMFC believes that river herring bycatch in the Atlantic herring fishery could exceed the directed river herring commercial landings in state waters and requested that sea sampling be increased to identify the magnitude of river herring bycatch and the location of high bycatch areas.

Under its current legal authority, NMFS may increase observer coverage in any fishery without promulgating additional regulations. Currently, the Northeast Standardized Bycatch Reporting Methodology (SBRM) aims to achieve a precision goal of 30% coefficient of variance (CV) for estimates of total discards (aggregated over all species) for a fishery. In order to obtain better bycatch data, the NEFMC, as part of the development of Amendment 5 to the Atlantic Herring FMP, is evaluating a proposed program for sampling/observer coverage that is intended to achieve a 20% CV on river herring catch that would include a dockside monitoring program. NMFS has increased observer coverage in the herring fishery, and when able to redirect funds for sea-days, small-mesh fisheries receive priority. NMFS has also formally expanded sampling protocols to systematically characterize the unique fishing practices of high-volume fisheries

THE ASSISTANT ADMINISTRATOR
 FOR FISHERIES

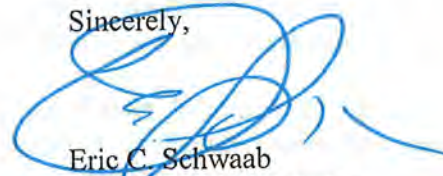


(e.g., the Atlantic herring fishery, mackerel fishery, and Loligo squid fishery). Beginning in 2010, information on and associated with fish pumping, use of sorting grates at the pump entrance and on deck, and net release will be collected. These data may be useful in the quantification of river herring discards. In a recent analysis by the NMFS Northeast Fisheries Science Center, the existing SBRM recommended coverage, if fully funded, would be sufficient to provide sufficient observer coverage for those fleets that discard river herring.

Additionally, as you note in your letter, the NEFMC is developing Amendment 5 to the Herring FMP to specifically address bycatch issues in the Atlantic herring fishery. The MAFMC voted at its August meeting to develop Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish FMP, which will also specifically address river herring bycatch mortality in small-mesh fisheries. The ASMFC is also managing river herring in State waters through Amendment 2 to the Interstate Fisheries Management Plan for River Herring. This Amendment will require States to implement needed fisheries-dependent and fisheries-independent monitoring programs to support sustainable management plans. This is important as there are small-mesh fisheries, such as the menhaden fishery, that are prosecuted almost exclusively in State waters, and may also have bycatch of river herring. The monitoring programs specified in Amendment 2 are expected to consider the need for better bycatch information from such fisheries, which could then be used to develop appropriate management measures. Such fisheries, particularly if conducted near major rivers during spawning runs, may have substantial impacts on river herring returns. Amendment 2 also contains recommendations on conservation, restoration, and protection of important river herring habitat. Additionally, since the key to successful reproduction of these anadromous species is access to the spawning areas within the river systems, NMFS encourages the States with river herring runs to assess the accessibility of these fish to spawning areas, and has supported river restoration projects under the NMFS Habitat Restoration Program and as part of the American Recovery and Reinvestment Act of 2009.

Based on the information and reasons discussed above, including the ongoing efforts and proposals by the NEFMC and the MAFMC, I have determined that Secretarial rulemaking under section 402(a)(1) of the Magnuson-Stevens Act to increase monitoring or observer coverage of river herring bycatch in small-mesh fisheries in New England and the Mid-Atlantic is not warranted or justified at this time. I look forward to our continued communication regarding our efforts to rebuild and restore our Nation's marine living resources.

Sincerely,



Eric C. Schwaab
Assistant Administrator
for Fisheries

Received from CHOIR, May 2010

#6m

**Herring Amendment 5 Monitoring Alternatives Discussion Material
Additional Options to Maximize Sampling and Address Net Slippage
(Including Trip Termination Options)**

Introduction:

The NEFMC has spent considerable time discussing the issue of net slippage in the herring fishery. Slippage, also referred to as dumping, is the practice of discarding fish straight from the net while it is still in the water, without bringing the fish aboard for inspection, and may refer to the dumping of all or part of the contents of a net. It is widely acknowledged that it is not possible to collect accurate and complete third-party catch estimates (quantity and species composition) on these discards. This is basic common sense: the only way to really know what is in the net is to bring the fish aboard for inspection so an onboard observer can estimate the volume and composition of the catch.

Fish can be brought aboard permanently i.e. they are pumped from the net, sampled, and then put in the hold and retained. Or, they can be brought aboard temporarily i.e. they are pumped or otherwise removed from the net, sampled, and then diverted or discarded over the rail. The only other option is to allow the captain to estimate what is in the net prior to dumping, which is not an acceptable option. There are serious stakeholder concerns over the unknown impacts of this un-quantified dumping on both the target species (Atlantic herring) and various bycatch species.

Furthermore, if we simply allow fishermen to dump without penalty then there is no incentive to fish clean or to provide all the fish to the observer for inspection. If, on the other hand, we require vessels to terminate their trip if unobserved fish are dumped then the boats will have an incentive to try to avoid tows that need to be dumped (by applying precautionary measures like test tows, sampling by jigging, sharing info with other boats in the area etc.) and an incentive to show the observer the contents of the net by either putting the catch in the hold or pumping it over the rail and back into the water so as to avoid the trip termination.

Exceptions can and should be available: dogfish are un-pumpable in high-enough concentrations, mechanical failures can occur, and safety could be an issue; but, at the same time, all these exceptions can also be used as excuses to just dump. Therefore, any meaningful solution to the dumping problem must include accountability measures to ensure that exceptions are not abused.

Solution:

This basic regulatory framework has already been discussed, developed and approved for parts of the herring fishery in the form of new regulations for midwater and midwater pair trawl access to groundfish Closed Area I (CAI). Amendment 5 should include this important foundational work in the form of monitoring alternatives that consider expansion of the CAI model to other parts of the herring fishery.

Recent Background:

At its meeting in Portland, ME on 3/30 and 3/31, the NEFMC Herring Oversight Committee (OSC) discussed measures to maximize sampling and address net slippage, including potential application of measures that would require herring vessels to terminate a trip and return to port in the event of a slippage event. The OSC voted to task the Plan Development Team (PDT) to “develop trip termination options for slippage events, applicable to different gear types, vessel sizes, and observer rates.” (NEFMC, DRAFT Herring Committee Meeting Summary, 3/30-31/2010)

At its meeting on 4/8 in Mansfield, MA the PDT discussed this directive from the OSC and was unable to develop options. The PDT, while acknowledging that trip termination may have utility for trips with observers onboard, also expressed a need for further clarification and guidance from the OSC regarding the following elements of any suite of measures based on trip termination: objective(s) of those measures, role of observers, definition of a slippage event, impact on test tows, impacts on discard survivability, and relation of trip termination to any maximized retention provisions. (NEFMC, Final Herring PDT Report 4/8/10).

Document Purpose:

- Provide the requested clarifications and guidance to the PDT
- Outline a set of options for addressing net slippage and maximizing sampling to be added to those already in Am 5
- Describe the measures in sufficient detail to facilitate analysis by the PDT, including suggested angles of analysis.
- This suite of management measures should include trip termination in the context of the CAI rulemaking, and should include options to apply the measures to different gear types, vessel sizes, and observer rates.

Clarifications/Guidance:

- Objective(s):
 - The objective of a trip termination measure is to maximize sampling, as evidenced by the appropriate placement of the trip termination placeholder in the maximized sampling section of the Am 5 document i.e. Section 1.6.3.2 (NEFMC, Draft Am 5 Catch Monitoring Alts, 3/30-31/2010).
 - In other words this measure is intended to minimize the amount of fish dumped (slipped) directly from the net into the ocean without being first brought aboard for inspection.
 - The intent is not punitive, it is preventive. It is meant to function as a disincentive to prevent unnecessary slippage events in the first place, as well as any others on the same trip. It is essentially an accountability measure.
- Role of Observers
 - Trip termination measures, especially if meant to maximize sampling, have little utility on non-observed trips and as such should probably only be applied to observed trips
 - The role of observers will not change and will not cross any line into the enforcement arena.

- As they do now, observers would simply record what they observe during fishing operations. Any decision about whether to terminate a trip in order to comply with any trip termination regulation will lie with the vessel captain. Observer data and other trip documentation would be used in subsequent analyses and/or investigations to determine whether all regulations were complied with, for instance in the same manner as will take place under the new regulations in Closed Area I
- Definition of a Slippage Event
 - Slippage is already defined in the Am 5 document as “the dumping of catch directly from the codend without it being brought onboard.” (NEFMC, Draft Am 5 Catch Monitoring Alts, 3/30-31/2010, Section 1.6)
 - For the purposes of a trip termination accountability measure, additional detail should be developed to flesh out this definition including gear-specific components and provisions to ensure appropriate sampling of operational discards (small amounts of fish left in the net at the conclusion of pumping operations)
 - The Closed Area I rules offer some preliminary work on such definitions, although they are incomplete especially with respect to operational discards.
 - Additional discussion below under suggested management options
- Impact on Test Tows
 - NMFS has previously acknowledged, in the Closed Area I rule, that test tows can and should be either a) brought aboard for sampling or b) set back without any release of net contents insuring that the test tow catch is eventually sampled.
 - As such, test tows would be neither prohibited nor compromised under any measures to require trip termination.
- Impacts on Discard Survivability
 - Requirements to bring all catch aboard, either permanently (i.e. for sampling and retention) or temporarily (i.e. for sampling only), necessarily contemplate a trade-off between the desire to acquire complete and accurate data (i.e. to maximize sampling) and the desire to release fish that might live (i.e. maximize discard survivability)
 - Analyses of any and all available discard survivability information relative to proposed maximized sampling objectives and trip termination measures will be necessary and valuable
- Relation to Maximized Retention Provisions
 - Trip termination, while originally incorporated into the document as a component of a maximized retention program, has since been moved through the Am 5 monitoring restructuring, to a separate section on maximized sampling and slippage. This move is highly appropriate as trip termination clearly has broad utility beyond the narrow application within a maximized retention program.
 - This utility is demonstrated by the inclusion of trip termination options in the Closed Area I rulemaking, which did not address maximized retention in any way.

Suggested Management Options for Trip Termination:

General design of options to address slippage that would include trip termination:

Option 1: Develop and analyze options, including differential applications for different gears, vessel sizes and observer rates, for the prohibition of slippage, and associated exceptions and accountability measures, that are based on the 2009 Closed Area I rulemaking and that include trip termination as an accountability measure.

This option would clarify that trip termination would be considered as part of an overall consideration of the CAI rulemaking framework rather than just as a stand-alone measure or just as part of a maximized retention program. It would also not preclude consideration of other measures to maximize sampling and address slippage such as net handling requirements, slippage caps etc.

Definition of a herring trip with regards to slippage

Option 1: Trips which land 2,000 pounds or more of Atlantic herring

This is the typical definition used in most data summaries and analyses to date

Option 2: Trips by Limited Access herring vessels which may harvest, possess, and land Atlantic herring

This is the definition of a herring trip for the purposes of trip declaration and pre-trip notification to the observer program found in Section 2.3.3.1

Option 3: Trips by Category A and B herring vessels with pelagic gear

This is a modification of Option 2 which may effectively ensure that over 95% of herring fishery catch is included in a program to minimize slippage

Definition of a slippage event with regards to trip termination

Option 1: Define slippage as the dumping of catch directly from the codend without it being brought on board

This is the definition from Section 1.6 of the current catch monitoring alternatives document. Note that it may be useful to also clarify this definition by modifying it slightly, to define slippage in a manner such that terminology is consistent with all pelagic gears. This could be done by adjusting terminology to be consistent with all gears, for instance by substituting “net” for “codend” in Option 1.

Option 2: Expand upon the definition in Option 1 by defining slippage in a manner based on the 2009 Closed Area I rulemaking

This option would examine the various definitions of slippage in the Proposed and Final Rules for CAI recently promulgated including the pros and cons of each. It would also consider the definitions of the various exceptions which would allow slippage under the CAI framework.

For instance, this option can and should be fleshed out to address concerns about bycatch, including pre-sorted bycatch (i.e. large-bodied fish or mammals prevented from entering the pump by the pump-intake guard, or stratified net contents, or both) that may be discarded through slippage **after some pumping has occurred**. This slippage of partial net contents after pumping is sometimes called operational discards, especially when it refers to small amounts of fish that are left in the net at the conclusion of normal pumping operations.

Measures for consideration under this option should define slippage as all release of unsampled catch, both whole and partial slippage including operational discards. These measures should specify that all catch that cannot be brought aboard using the fish pump must be brought aboard for sampling through means other than the fish pump, unless the estimated weight is too high to allow it to be brought aboard. In the latter case, the discard event would be classified as slippage and trip termination would apply. Preliminary conversations with herring fishermen indicate that except in the case of spiny dogfish or other hard-to-pump species such as scup, under normal pumping operations the net can be pumped down as low as approximately 500 pounds, an amount that can easily be lifted or dragged aboard for sampling.

Gear related application of slippage accountability measures including trip termination:

Option: Consider slippage prohibitions and slippage accountability measures including trip termination, and other management measures based on the CAI rulemaking for all gear types in the herring fishery

Option: Consider exemptions from slippage prohibitions for purse seine gear

This option would limit the scope of maximized sampling measures in a manner that recognizes a) the greater discard survivability of purse seine discards and thus the different cost to benefit ratio of maximized sampling, and b) the greater bycatch concerns associated with the midwater trawl and pair trawl fishery. These options would enable managers to assess the costs and benefits of maximized sampling for different gear types in terms of different bycatch rates and specific bycatch species of concern, different discard survivability rates, different operational impacts, and different rates of slippage.

Vessel size related application of slippage accountability measures including trip termination:

Option 1: Consider slippage prohibitions and slippage accountability measures including trip termination, and other management measures based on the CAI rulemaking to all vessel sizes in the herring fishery

Option 2: Consider slippage prohibitions and slippage accountability measures including trip termination, and other management measures based on the CAI rulemaking to vessel sizes in the herring fishery differentially based on vessel size bins to be determined

Option 3: Consider slippage prohibitions and slippage accountability measures including trip termination, and other management measures based on the CAI rulemaking to vessel sizes in the herring fishery using permit category as a proxy for vessel size

Observer rate related application of a slippage accountability measures including trip termination:

Option 1: Consider slippage prohibitions and slippage accountability measures including trip termination, and other management measures based on the CAI rulemaking to all trips in the herring fishery

Option 2: Consider slippage prohibitions and slippage accountability measures including trip termination, and other management measures based on the CAI rulemaking to only observed trips in the herring fishery

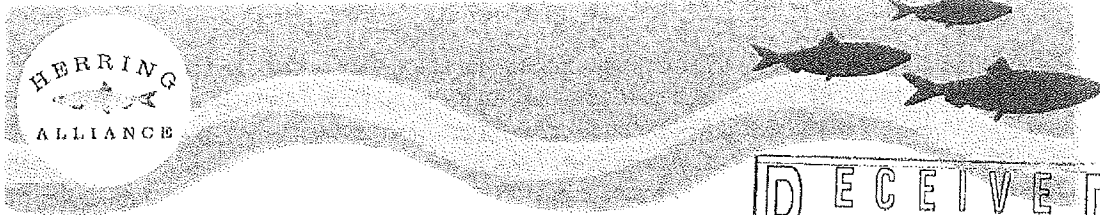
This option recognizes a) the intent of trip termination, which is to ensure accurate and complete sampling by ensuring access to all catch for onboard observers and b) the futility of requiring trip termination when there is only fisherman self-reporting upon which to base any compliance analysis

Analysis suggestions:

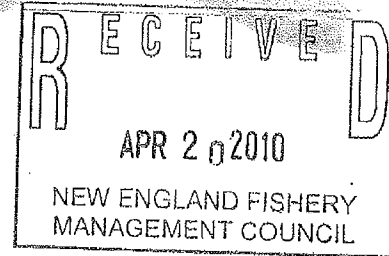
PDT analysis should focus on all available past slippage data to determine how many trips might potentially be terminated under the various scenarios described above. Data collected by NEFOP observers since approximately 2005 include basic information that has allowed for past analyses that describe slippage events in terms of estimated size, estimated stock composition, and reported reasons. Careful examinations of this data including a) any catch on tows with slippage that was actually brought aboard, b) observer comment fields, c) catch on any subsequent tows on the trip etc. should help derive rough projections of potential impacts.

Such analysis would need to also consider that some past slippage events would presumably not occur under these measures because they were unnecessary in the first place and the disincentive of trip termination would likely prevent the event from taking place. For instance, a tow slipped due to high-grading or other subjective market driven considerations might not be replicated in the future under these measures. Slippage events resulting from test tows will not likely be replicated since fishermen would either retain or bring aboard for sampling the catch on these tows. Likewise slippage events that occur because the vessel's capacity was filled would not result in any additional trip terminations, since these trips would by necessity terminate anyway.

#62



April 20, 2010
Paul J. Howard, Executive Director
New England Fishery Management Council
50 Water Street
Newburyport, Massachusetts 01950



RE: Amendment 5 to the Atlantic Herring Fisheries Management Plan

Dear Mr. Howard:

I am writing to you on behalf of the Herring Alliance concerning the Atlantic herring fishery management plan, Amendment 5 to this FMP and several related issues discussed at the recent meetings of the Herring Oversight Committee (30-31 April 2010) and Plan Development Team meeting (8 April 2010). As you know, Amendment 5 was created by removing the catch monitoring provisions from Amendment 4, with the promise that Amendment 5 would be developed and moved ahead expeditiously. Improvements to catch monitoring are critical for the success of the Annual Catch Limit (ACL) provisions required by law and included in Amendment 4, and they are essential for addressing widespread concerns about accounting of all catch in this fishery including at-sea discards and landings of non-target species such as river herring and groundfish. With Amendment 4 near implementation and widespread concerns about incidental catch of groundfish and river herring, completion of a robust monitoring amendment is urgent.

The Herring Alliance consists of 15 regional, national and international organizations each with a particular interest in the Atlantic herring fishery and desire for a strong new amendment that will improve data collection and assessments through monitoring, and that will document and reduce all catch, including non-target species whether discarded or landed.

Due to its critical role as a source of food for a great many other animals in the ecosystem, the management of Atlantic herring impacts a particularly diverse group of stakeholders, including those whose livelihoods depend upon groundfish, game fish such as striped bass and tuna, and those involved in whale watching and other wildlife dependent activities. River herring was also once a more important source of forage than it is today making the Council's efforts to reduce impacts on these species in at-sea fisheries particularly important.

Though the prosecution of the Atlantic herring fishery involves a variety of gear types, single and paired midwater trawling makes up a major component of this fishery. The tows used are of long duration and the nets have relatively enormous capacity. Because of this high volume, even low rates of incidental catch of struggling stocks such as river herring, shad and some groundfish can be significant when viewed in context of the biology of these non-target stocks. Assessing

these impacts is also difficult because some incidental catch may remain mixed with landed catch and thus may not be captured in discard estimates (e.g., river herring mixed with Atlantic herring). Additionally, discard estimates for non-target species are likely low due to the release of catch to the sea in the form of *slipped bags* for a number of stated reasons including “not the desired species.”¹ As concluded in a recent NMFS analysis of at-sea river herring discards, “The low number of observed trips in the Mid-Atlantic gillnet fleets and the limitations of observing all discards associated with the fishing practices of the high-volume fisheries are two sources of uncertainty in this analysis.”² It is particularly important that Amendment 5 be developed with a full complement of alternatives that will allow effected monitoring in the face of the challenges presented by the high-volume components of this fishery.

With this letter we request the following, as detailed below:

- Keep Amendment 5 on track, without further delays.
- Keep options open for a range of monitoring alternatives and funding mechanisms.
- Do not rush the benchmark assessment for Atlantic herring.
- Keep midwater herring trawl vessels out of closed areas for groundfish.
- Retain 100% at-sea observation as one alternative for monitoring the herring fishery.
- Retain options that will allow for maximized retention as an alternative for the herring fishery.
- Include alternatives that deter at-sea discharge of un-sampled catch (i.e., an incentive to sample all catch).
- Utilize NOAA’s proposed rule (Federal Register Vol. 74, No. 171, September 2009) to craft alternatives for managing midwater herring trawling.
- Include time-areas closures to reduce bycatch of river herring as an alternative.
- Require VMS reporting for all vessels involved in offloading or transfer of Atlantic herring.
- Require observers on any vessel involved in at-sea transfers of Atlantic herring.

Keep Amendment 5 on Track

In November 2007, the Council identified improved catch monitoring and measures to reduce bycatch as priorities³. After 18 months and extensive public comment about the herring fishery, during the June 2009 meeting, the Council split the Amendment 4 action into two amendments, removing catch monitoring and measures to reduce bycatch from Amendment 4. In order to meet its legal obligation to develop ACLs and Accountability Measures (AMs) for the 2010 fishing year, the Council had to split off monitoring to a future amendment (i.e., Amendment 5). Insufficient progress had been made on the original components of Amendment 4.

¹ A. van Atten Presentation to the Herring Oversight Committee 22 May 2008; A. van Atten Presentation to the Herring PDT 12 November 2008.

² SE Wigley, J Blaylock, and PJ Rago (2009) River Herring Discard Estimation, Precision, and Sample Size Analysis. Northeast Fisheries Science Center Reference Document 09-20.

³ *Council Report* - An update published by the New England Fishery Management Council – November 2007: “The Council delayed a whiting amendment and included herring as a 2008 priority based on the amount of fishery information that is still lacking --- principally catch and bycatch versus landings and the associated need for better monitoring through more comprehensive observer coverage.”

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Nearly a year ago in June 2009, the Council wrote “Because of the importance of a catch monitoring program for tracking ACLs and generating better information about bycatch, the Council formally committed to continuing work on this issue through a series of Herring Committee meetings over the next several months... Because of increasing concern about the status of river herring, and in light of the recent Atlantic States Marine Fisheries Commission request for Emergency Action to monitor river herring bycatch, the Council also agreed to request that the Secretary of Commerce initiate a program to collect additional information about bycatch in all small mesh fisheries throughout the range of river herring and shad.”⁴ Thus, the Council recognized the urgency of completing a monitoring amendment quickly, committing to moving this work ahead within *several months* as of last June (2009).

This month (March 31, 2010) the Herring Oversight Committee again proposed a revised timeline, shifting Council approval of alternatives for Amendment 5 out to next fall (September 2010). Improved monitoring is essential to operating within Annual Catch Limits; it is crucial for a successful benchmark assessment for Atlantic herring and needed to better understand the impacts of Atlantic herring fishing on river herring and groundfish. For these reasons, among others, a number of groups and individuals, including the Herring Alliance, vigorously opposed splitting Amendment 4 into two parts last summer.

The emerging history of delay on data acquisition for this fishery poses an unacceptable risk to the community. It is a disservice to the public, to the industry, and to all those who indirectly depend upon the health of the Atlantic herring and the other resources that the fishery impacts. We strongly urge you to increase staffing, schedule additional meetings, or do whatever is required to keep this amendment on the time line that was promised last June (2009) when splitting the amendment was contemplated and approved.

Keep options open for monitoring and funding.

The alternatives included in Amendment 5 for catch reporting and monitoring should be designed to achieve clear goals and objectives. That is, the alternatives should be developed so that essential questions about all catch can be reliably answered based on the data that will be generated by monitoring program built from the available alternatives. Prior to the split of Amendment 4, the document included a robust set of alternatives from which a number of different monitoring programs could have been crafted, including use of electronic monitoring, portside sampling, full at-sea observer coverage, and systems based on maximized retention and sampling. Unfortunately, last week the committee moved to eliminate a number of important alternatives apparently due in part to industry concerns about funding.

The funding concerns were heightened by a communication from NMFS to the Council urging the Council to identify funding sources beyond NMFS for any proposed major expansion of the monitoring program.⁵ While the Herring Alliance does not recommend developing Amendment 5 blind to costs, we urge the Council to ensure that the Amendment includes a robust set of alternatives that are suited to obtaining the data that are needed for this fishery even if resources beyond those now in the NMFS budget are required.

⁴ *ibid* – June 2009

⁵ Letter from Patricia Kurkul to John Pappalardo, 22 May 2010.

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The Council should not be eliminating good alternatives at this stage, without careful analysis and prior to the DEIS, on the basis of anticipated costs and budget projections. A good monitoring plan designed to obtain essential information will be an asset in the quest to secure funding. NOAA has already provided unanticipated funds to New England fisheries and may be able to do so again.⁶ The Amendment should include a full range of non-NMFS options for support of monitoring, including research set-aside funding and industry-supported monitoring. Groundfish sectors are supporting some of their own observer coverage in New England,⁷ and fisheries in other regions also pay for their own observers as an expense incurred while harvesting public resources.⁸

We urge the Council to craft language for Amendment 5 that allows for securing the funding needed for an effective monitoring program above and beyond those available through the NMFS budget. It is better to have the mechanisms for a good monitoring in place and ready to go when funds are available than to produce a weak amendment on the speculation that funds will not be available. In this context, the Council should adopt the motion introduced by the Herring Oversight Committee for developing monitoring set-aside alternatives.

Do not rush the benchmark assessment for Atlantic herring.

The schedule for the next benchmark stock assessment for Atlantic herring should continue as planned for June 2012. While all concerned, including the Herring Alliance, would like to see an improved assessment for herring, accelerating the schedule is not the best way to achieve this. The outcome of this assessment, or any assessment, depends not only on the details of model formulation but importantly on the quality of the data going into the model. If the assessment is rushed, it will come at the expense of new data that are essential to determining stock status. The Northeast Science Center has detailed the consequences of shifting the schedule in terms of data availability and opportunities for model improvements.⁹ The Herring Oversight Committee wisely moved to adhere to the original schedule and the Council should support this.

Exclude midwater trawling from areas closed for groundfish protection.

Midwater trawling was originally permitted inside groundfish closed areas on the belief that trawls through the midwater would not impact the groundfish that the closed areas are intended to protect. Recent history has shown that there is bycatch of groundfish in the closed areas.¹⁰

⁶ FY 2010 NOAA BUDGET HIGHLIGHTS

(http://www.corporateservices.noaa.gov/nbo/FY10_BlueBook/MSRA_OnePager050609.pdf);

NOAA Provides \$10 Million to Support New England Groundfish Fishery, March 2010

(http://www.noaanews.noaa.gov/stories2010/20100301_support.html)

⁷ Northeast Multispecies FMP Amendment 16, dated October 16, 2009, page 109: *Proposed Action - Fishery Program Administration*

⁸ William A. Karp and Howard McElderry (1998) Catch monitoring by fisheries observers in the United States and Canada. *Proceedings of the International Conference on Integrated Fisheries Monitoring; Electronic Fisheries Monitoring Workshop Proceedings Alaska Fisheries Science Center Seattle Washington July 29-30, 2008* (http://www.fakr.noaa.gov/npfmc/misc_pub/EMproceedings.pdf)

⁹ Letter from Nancy Thompson to Paul Howard dated 20 January 2010.

¹⁰ NMFS (2009): *Observed Haddock Bycatch in the Closed Areas in the Midwater Trawl Herring Fishery. Report based on NEFOP data at the request of the Council. Regional Administration Kurkul reported that more than half of the observed midwater trawl herring hauls (55%) in Closed Area 1 included haddock and 20% of observed hauls*

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This is not surprising since groundfish are not always on the bottom and because “midwater” trawls are not always in the midwater as herring may be near the bottom.¹¹ No herring or other pelagic fishery gear capable of catching groundfish should be permitted to access groundfish closed areas. These areas are critical to groundfish rebuilding programs and should not be compromised.

Include monitoring alternatives based on full at-sea observer coverage (i.e., 100% coverage). Amendment 5 should include, as one of its alternatives, the option of having a NMFS-certified observer on every vessel. This is an approach that has been used successfully in other fisheries.¹² Arguments put forth by representatives of the herring industry that 100% coverage is not feasible are without merit. This option may not be convenient or desirable for those monitored, but it is feasible and has some clear advantages. Full at-sea observer coverage can reduce the costs of shore-side monitoring, level the playing field (i.e., everyone monitored equally) and eliminate any concern that observed trips are somehow different from those without observers (i.e., *observer effects*). Full observer coverage should be an option particularly for the larger vessels in the fishery (categories A and B).

Ensure that the alternatives necessary for a well designed maximized retention plan are retained in Amendment 5.

Maximized retention is a management policy that requires that all or most fish caught are retained and brought to port. This is an approach that minimizes discarding and waste, and which allows for comprehensive sampling and data collection on shore. The Council has examined this approach as it is being interpreted in fisheries throughout the world and produced an excellent white paper on this subject by Alan Lovewell.¹³ The success or failure of this approach rests on strong incentives to retain all catch, including electronic monitoring or other methods to detect discarding. Advantages include the sampling all the catch instead of discarding unhealthy or dead fish to the sea, conducting catch sampling on solid ground, and the potential for reduced need for human observers on board.

Maximized retention type systems will be disastrous if retention is incomplete, however. The Herring Oversight Committee has recommended removing a number of at-sea monitoring options from Amendment 5 that are necessary components of an effective maximized retention system. These should not be eliminated. The revised Amendment should include a clearly-presented package of options that could be used for a maximized retention system. We also encourage the Council to involve the interspecies committee in an analysis of the interactions between such a system and other FMPs.

exceeded the actionable 1% bycatch limit for groundfish; there have also various verbal reports from fishermen relating their observations of bycatch at sea in the closed areas as reported in the media.

¹¹ Makris et al (2009) Critical Population Density Triggers Rapid Formation of Vast Oceanic Fish Shoals. *Science* 323, 1734 (2009); Collette BB, Klein-MacPhee G (2002) Bigelow and Schroeder's Fishes of the Gulf of Maine. Second edition, Smithsonian Press (e.g., see chapters on Gadids Atlantic Cod, Pollock, Haddock).

¹² Pacific shore side whiting fishery and other examples....

¹³ Lovewell MA (2009) Case studies in maximized retention and monitoring for the New England herring fishery. Meeting materials, Herring Oversight Committee meeting 30-31 March 2010.

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Maximized retention management is not without its challenges. Nonetheless, the alternative of discarding non-target species at sea leaves important problems unsolved. The survival of river herring and other fish, after being discharged from a midwater trawl net is expected to be low, though this is a subject that would benefit from quantitative study. When the mortality expected for released fish is taken into account along with the long-term benefits of incentives to fish more selectively and improved data for stock assessments, the potential benefits of maximized retention may be greater than some have conjectured. A careful analysis of maximized retention for the herring FMP is warranted, and a full suite of appropriate alternatives included in Amendment 5.

Include management alternatives for midwater trawl vessels based on NOAA'S proposed rules (Federal Register Vol. 74, No. 171, September 2009).

The midwater trawl fishing operations for Atlantic herring (single and paired) represent a distinct class based upon the large scale of their operations, the potential to impact many components of the marine ecosystem and the challenges those operations pose for catch monitoring.

Last September NOAA published a proposed rule on *Modification to the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Authorization Letter* in the Federal Register.¹⁴ This proposed rule included a well-developed set of management measures for midwater trawl gear, originally developed to address concerns about the use of this gear in groundfish closed areas (Area I: CA I). With some additional development, the measures outlined in the proposed rule could be incorporated into Amendment 5 as alternatives pertaining to midwater trawling throughout the region (i.e., not just in the closed areas).

The Herring Alliance recommends that the following eight elements be added to Amendment 5 before it goes out for public comment:

1. All catch taken by midwater trawl vessels must be systematically sampled by NMFS-certified observers.
2. At least one independent NMFS-certified observer required on each midwater trawl vessel, on every fishing trip (i.e., mandatory 100% observer coverage). In paired trawls, both vessels must carry at least one observer.
3. At least one independent NMFS-certified observer on each vessel that will receive fish caught by a midwater trawler.
4. Any vessel that receives catch from a midwater trawl vessel must have at least one NMFS-certified observer if the catch has not already been systematically sampled by NMFS-certified observers.
5. Midwater trawl vessels are prohibited from releasing catch to the sea without systematic sampling by NMFS-certified observers except under exceptional circumstances arising from mechanical failure or other situations jeopardizing vessel safety.
6. If exceptional circumstances arise from mechanical failure or other situations jeopardizing vessel safety and catch is released to the sea without systematic sampling by NMFS-certified observers, vessels are required to return to port following discharge of the net to the water. This provision serves as a deterrent to unnecessary release of catch.

¹⁴ Federal Register / Vol. 74, No. 171 / Friday, September 4, 2009 / Proposed Rules pp 45798-45801.
Herring Alliance

If there is a true safety issue with a vessel requiring release, then trip termination would also be expected to contribute to safety.

7. All catch remaining in the net at the conclusion of pumping herring from the net to the vessel hold (i.e., *operational discards*) must be systematically sampled by NMFS-certified observers. This residual catch has been pre-sorted due to the use a fish-pump intake grate and catch stratification within the cod end. It is therefore particularly important to sample this catch in order to make reliable bycatch estimates. Release of the cod-end without systematic sampling by NMFS-certified observers is a violation that requires trip termination (see #5 and #6 above).
8. Cod-ends of trawl nets must be brought on board for systematic sampling by NMFS-certified observers at the completion of pumping, and/or to verify that the net is empty.

Amendment 5 should include alternatives for time-areas closures to reduce bycatch of river herring

The reduction of bycatch has been a Council priority for this fishery since the earliest discussions of Amendment 4 and not Amendment 5. River herring bycatch in the Atlantic herring and mackerel fisheries has been a major concern for the public and the Council and Amendment 5 should include additional alternatives to address this specific issue. Last spring, the Council wrote to the Secretary of Commerce in support of an ASMFC call for emergency action on this issue, expressing concerns about bycatch in small mesh fisheries.¹⁵ The Council and its committees (Herring Oversight Committee and Plan Development Team) have seen presentations of observer data on river herring bycatch in the Atlantic herring and other fisheries on several occasions. After a presentation from Dr. Matt Cieri (Maine DMR) to the Herring Oversight Committee, committee member Dr. Mark Gibson introduced a motion calling on the herring PDT to craft alternatives for time-area closures to protect river herring (1 October 2008). Shortly thereafter (8 October 2008), the Council moved this forward, asking the PDT to carry out the needed analysis.

Concerns have been raised about whether data from the NEFOP program are sufficiently strong to support management actions to reduce encounters with river herring in particular areas. However, at the most recent PDT meeting new data were presented showing the at-sea distribution of river herring based upon NMFS fishery-independent seasonal trawl surveys.¹⁶ These data corroborate the picture that emerged from the observer program: areas where the most catch of river herring was observed by NEFOP are among those areas where the NMFS surveys picked up river herring at sea. That is, the problem areas revealed by the observer data are where one would expect them to be based upon a new and independent source of information.

It is clear that additional research could be done to further pin-point the times and areas where the at-sea capture of river herring is greatest. However, the best available data do provide a basis for a management response now in the form of time-area closures. The observer data that

¹⁵ Letter from Paul Howard to Secretary of Commerce Locke, 26 June 2009: "The Council believes that recent and significant concern about the status of river herring and speculation about river herring bycatch in many fisheries warrants the establishment of an information collection program to determine the nature and extent of bycatch occurring in all small mesh fisheries throughout the range of river herring and shad."

¹⁶ Presentation of preliminary results by PDT member Dr. Jamie Cournane, 8 April 2010, Mansfield, MA.

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formed the basis of the Council's 8 October 2008 motion to develop time-area options has now been augmented by fishery-independent data.

Observer data show that single trawls in the herring fishery can take hundreds of thousands of river herring – more than an entire healthy herring run – even if small compared to the catch of Atlantic herring. Meanwhile, on-shore fishing for river herring is now prohibited in many coastal states because the states recognize the serious trouble that many runs face.

We urge the Council to use the available data to craft targeted time-area closure alternatives based upon the best available scientific information. As new data and studies become available, management can be improved and refined. Additionally, an alternative should also be developed that establishes a simple near shore trawl exclusion zone as detailed in a previous correspondence from the Herring Alliance to the Herring Oversight Committee (26 March 2010).

VMS reporting should be a requirement for all vessels involved in offloading or transfer of Atlantic herring.

VMS reporting equipment is in place on many vessel involved in the Atlantic herring fishery,¹⁷ and VMS reporting must be required for all offloads and transfers to enhance data on all catch in this fishery. We urge the Council include this as an alternative in Amendment 5. The draft Amendment 5 alternatives discussed at the recent Herring Oversight Committee meetings (30-31 March 2010) included such an alternative (Option 1.3.2.5) but the committee voted to remove it from the draft Amendment. Together with observers, VMS is an essential data acquisition tool that must be used. Full accounting of catch is essential to adhering to the annual catch limits and to the success of future stock assessments. We ask that the Council retain a strong VMS reporting alternative for offloading and transfers of herring.

Require observers on any vessel involved in at-sea transfers of Atlantic herring.

Any vessel that receives or is in any way involved in at-sea transfer of Atlantic herring must have a NMFS-certified observer on board, and Amendment 5 should include an alternative for this. As NMFS has cautioned,¹⁸ monitoring of herring transfers and carriers is essential to ensure that all catch is accurately recorded. The draft Amendment 5 alternatives discussed at the recent Herring Oversight Committee meetings (30-31 March 2010) included such an alternative (Option 1.3.4.7) but the committee voted to remove it from the draft Amendment. We again urge the Council to retain this important alternative since it is essential to ensuring that the catch in this fishery is well-known. Full accounting of catch is essential to adhering to the annual catch limits and to the success of future stock assessments. Together with VMS reporting, observers offer a critical data acquisition approach that must be used.

¹⁷ Discussion at 30-31 March 2010 meeting of the Herring Oversight Committee, Portland, Maine.

¹⁸ Comments of Hannah Goodale, NMFS – NERO, to Herring Oversight Committee, September 17, 2009, Warwick, RI; *NERO staff comments on at-sea transfer provisions*, dated September 14, 2009, appended to meeting summary for September 17, 2009 and available at the following URL: http://nefmc.org/herring/cte%20mtg%20docs/100330-31/Transfers_at_Sea_Ltrs_Authorization.pdf

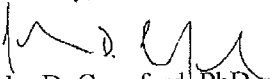
Closing comments.

There are many benefits associated with the kinds of management improvements a strong Amendment 5 can bring. For example, improvements in catch monitoring will lead to reduced uncertainty in stock assessments which should have a measurable impact on resource availability to the industry. Reduced uncertainty about stock status should be desirable for all concerned. Improved data will also help to clear the air on contentious debates about various kinds of bycatch and at-sea release of undesirable catch.

The Atlantic herring belong to all of us – a public resource – and, perhaps more than any other stock in the Northeast, the health of this stock influences a great many other fisheries and ecosystem-dependent industries and activities. The Magnuson Act is clear about the requirement to reduce bycatch and the waste of fish through FMPs.¹⁹ In addition, the Guidelines for National Standard 1 make clear the importance of addressing the role of forage species such as Atlantic herring in the ecosystem and ensuring management that is directed toward precautionary management of these species. Amendment 5 must be developed to meet the letter and spirit of the law.

On behalf of the Herring Alliance and all of its concerned members, I thank you, the Council and committees, for your efforts to address these important issues and to produce a strong monitoring amendment for the Atlantic herring fishery.

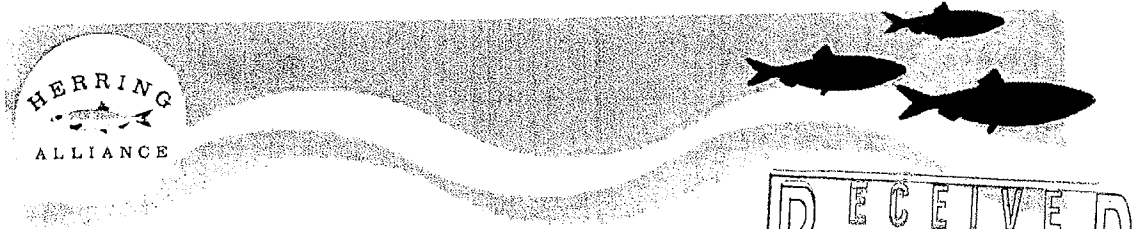
Sincerely,


John D. Crawford, PhD
Science and Policy Manager
Pew Environment Group

cc: Mr. Doug Grout, Chairman, Herring Oversight Committee
Mr. John Pappalardo, Chairman, New England Fisheries Management Council
Ms. Lori Steel, Fishery Analyst, Council Staff – Herring FMP

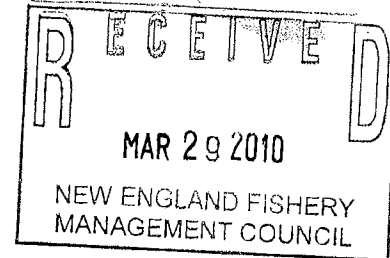
¹⁹ 16 U.S.C. 1853 MSA § 303 74 SEC. 303.

#60



March 26, 2010

Doug Grout, Chairman
Herring Oversight Committee
New England Fishery Management Council
50 Water St, Mill 2
Newburyport, MA 01950



Re: Amendment 5 to the Herring Fishery Management Plan (FMP)

Dear Mr. Grout,

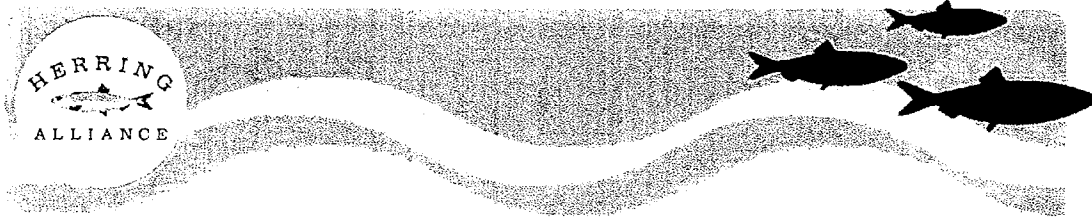
I am writing on behalf of the *Herring Alliance* to clarify and update our priorities for Amendment 5 to the Atlantic Herring Fishery Management Plan. The Herring Alliance consists of 15 regional, national and international organizations each with a particular interest in the Atlantic herring fishery and a strong new amendment that will improve data collection and assessments through monitoring, and help to reduce bycatch. Due to its critical role as a forage species for a great many other animals in the ecosystem, the management of Atlantic herring impacts a particularly diverse group of stakeholders, including those whose livelihoods depend upon groundfish, game fish such as striped bass and tuna, and those involved in whale watching and other wildlife dependent activities.

In November 2007, the Council made reforms to the Atlantic herring fishery a priority, including improved catch monitoring and measures to reduce bycatch. Eighteen months later, during 2009, the Herring Alliance opposed a Council decision to remove these critical issues from Amendment 4, placing them in a subsequent Amendment (Amendment 5). We opposed the decision to split the amendment because catch monitoring is essential to achieving the goals of Amendment 4 on annual catch limits and accountability.

That said, the Herring Committee is to be commended for persevering and continuing to pursue an enhanced monitoring program. The Herring Alliance and a number of other groups and individuals have put considerable effort into providing substantive comments over the past two years and we hope you will keep these efforts in mind as you work to complete Amendment 5.

We wish to emphasize that all of the issues currently prioritized in Amendment 5 are of critical importance and all must be addressed thoroughly yet expeditiously in order to achieve the goals identified by the Council and reinforced by public comments. In addition to monitoring this includes addressing river herring bycatch, herring vessel access to groundfish closed areas, interactions with the directed mackerel fishery, and protection of spawning herring aggregations.

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As work resumes on Amendment 5, The Herring Alliance wishes to provide the Herring Oversight Committee with:

(1) **Educational video on midwater trawl monitoring challenges.** The Herring Alliance commissioned the production of a video animation to educate interested members of the public about midwater and paired midwater trawl fishing for Atlantic herring and the monitoring challenges associated with it. The video (*Tip of the Iceberg*) can be viewed at:
<http://www.herringalliance.org/images/stories/animationindex.html>

This video was created based on an analysis of the monitoring program and was carefully reviewed by fishermen who have used the gear featured in the video (see sources for video appended).

The Herring Alliance requests that the committee allow for the viewing of the 5 minute educational video during the meeting as part of our public comments on the Amendment 5 Discussion Document. Additionally, we are providing the video in electronic form as a formal part of our comments and request that it be placed on the Council web site together with this letter along with the other comments under the NEFMC's meeting materials link on the website.

(2) **Amendment 5 priorities for the Herring Alliance.** Below we outline our priorities and specific recommendations for Amendment 5. Reforms to the monitoring program for Atlantic herring is clearly a critical focus for next week's meeting. However, additional measures must be included in Amendment 5 to protect groundfish closed areas, reduce fishing impacts on river herring, and protect inshore and offshore spawning grounds for Atlantic herring. These matters are of great concern to the Herring Alliance and many stakeholders throughout the region.

The Herring Oversight Committee has been working at reviewing alternative measures and developing an adequate monitoring program for midwater trawl vessels for two years. The industry has not availed itself to making the needed improvements so far and we see no indication that this will happen any time soon. Indeed, all indications are that the midwater trawl fishery for Atlantic herring is essentially unobservable. This is not acceptable and we have outlined a series of measures that will allow progress beyond this current situation. The package of measures set forth below not only enhances at-sea monitoring but establishes a suite of measures designed to protect critical areas of the ocean from depletion and bycatch. These measures will allow Atlantic herring to be caught within the established catch limits through a combination of purse seine gear and midwater trawl gear that is limited to offshore areas, thereby continuing to supply New England's important bait and food markets.

1) **Monitoring program – requirements for midwater trawl fishing**

The midwater trawl fishing operations for Atlantic herring (single and paired) represent a distinct class based upon the scale of their operations, the potential to impact many components of the marine ecosystem, and the challenges those operations pose for catch monitoring.



The recent Proposed Rule (<http://edocket.access.gpo.gov/2009/pdf/E9-21404.pdf>) for new requirements for midwater trawl vessels to access Groundfish Closed Area I provides a strong framework for reforms across the entire fishery, and with additional development should be incorporated into Amendment 5. NMFS has stated it believes the Council should further develop the concepts in the Proposed Rule in the Am 5 process.

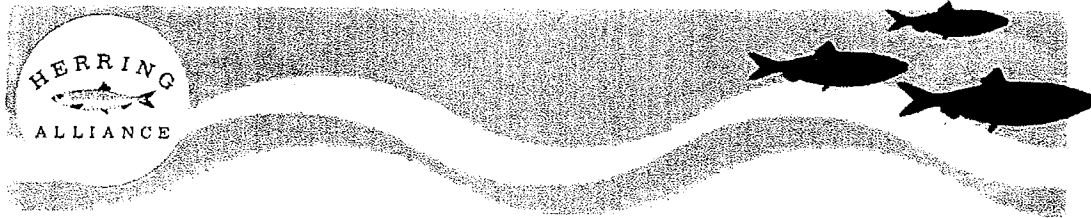
Therefore Amendment 5 should include an alternative for the whole fishery based closely on the following provisions:

- At least one independent NMFS certified observer on each midwater trawl vessel on every fishing trip (i.e., mandatory 100% observer coverage), or on any vessel that will take aboard fish caught by a midwater trawler. For instance, in paired trawls, both vessels must be observed; and carrier vessels taking aboard unsampled midwater trawl catch must also carry an observer
- No dumping of unobserved catch by midwater trawl vessels except under exceptional circumstances arising from mechanical failure or other situations jeopardizing vessel safety. If these situations arise, vessels are required to return to port following discharge of the net to the water;
- Operational discards (small amounts of fish remaining in the net at the conclusion of pumping operations) should not qualify for a dumping exception. This catch has been pre-sorted by the fish-pump intake grate and/or cod-end content stratification and is therefore of particular importance to bycatch estimates.¹
- Cod-ends of trawl nets must be brought on board for observer inspection and sampling of any remaining contents, or verification that the net is empty.

2) Coastal midwater trawl exclusion zone – 75 miles from shore line.

There is widespread support for protection of river herring. Most hotspots for river herring bycatch, as revealed by mapping of data from at-sea observers and shore side sampling, indicate that it is in the near-shore waters where most bycatch events are occurring. However, some have argued that it is too difficult to reliably identify river herring hotspots for long-term protection due to data limitations. A 75 mile buffer along the shore (i.e., *midwater trawl exclusion zone*) would address the major concerns with river herring bycatch. Additionally, such a buffer would help to mitigate known groundfish interactions and also serve to protect most known Atlantic herring spawning areas close to shore that are currently subject to heavy fishing effort, such as the Nantucket Shoals spawning event that is the subject of emerging concern. Such an exclusion zone is also likely to benefit the fishery in the same fashion as the inshore gulf of Maine purse seine/fixed-gear only area, which has proven to be a great success. In short, this proposed coast-wide buffer against midwater trawling provides the most effective solution to the conservation and bycatch reduction priorities of Am 5.

¹ See *Changes for Midwater Trawl Vessels Fishing in Groundfish Closed Area I*, dated November 3, 2009 <http://www.nero.noaa.gov/nero/nr/nrdoc/09/09MultiCAIHerringMidwaterTrawl2.pdf>



3) Off-shore protection of spawning areas for Atlantic Herring.

As a complement to the resource protections offered by an inshore exclusion zone (#2 above), known Atlantic herring spawning areas outside 75 miles, i.e. on offshore Georges Bank, must also receive protection through appropriate time-area closures.

4) Groundfish closed areas closed to midwater trawling.

Midwater trawling was permitted inside groundfish closed area on the mistaken belief that these fishing operations would not impact the groundfish that the closed areas are designed to protect. Recent history has shown that there is bycatch of groundfish in the closed areas – both because groundfish are not always on the bottom and because “midwater” trawls are not always in the midwater (i.e., they are near the bottom when the herring are). No herring or other pelagic fishery gear capable of catching groundfish should be permitted to access groundfish closed areas that are biologically critical to groundfish recovery. Thus, midwater trawl gear that clearly is capable of groundfish bycatch should not be allowed any access to groundfish closed areas.

5) Prohibition on pair-trawling

Paired midwater trawling has never undergone the rigorous analysis that is necessary for gear approval in New England; paired midwater trawling is therefore inappropriately classified as an approved gear in this region. Pair trawling should be prohibited through Am 5 until a careful, deliberate examination of whether the gear is compatible with the sensitive ecosystem of New England is completed, and the Council and NMFS, based on said analysis and if appropriate, approve the gear for use in the region. Such an analysis would establish that paired midwater trawling is too big and too powerful to be appropriate in New England waters because paired midwater trawling tows are of enormous capacity, they are conducted over long periods of time (i.e., several hours) and are not selective. Reliable monitoring of catch (kept and discarded) of these operations has proven to be effectively impossible. Due to their high volume (100 mt or more per tow), these methods disrupt schools of herring and leave local areas more depleted than traditional methods. The bycatch events can include marine mammals and not infrequently include hundreds of thousands of discarded dead fish. For all of these reasons, the Herring Alliance calls for consideration in Amendment 5 of a moratorium on paired-trawling until or unless it is approved through an appropriate analysis of its impacts.

6) Measures to regulate seafloor and other impacts of all pelagic gears

The following measures should be taken to ensure that the fishing practices minimize impact on sensitive resources:

- Establish appropriate limits on the maximum size of all pelagic gears
- Establish appropriate and enforceable restrictions on bottom contact for all pelagic gears

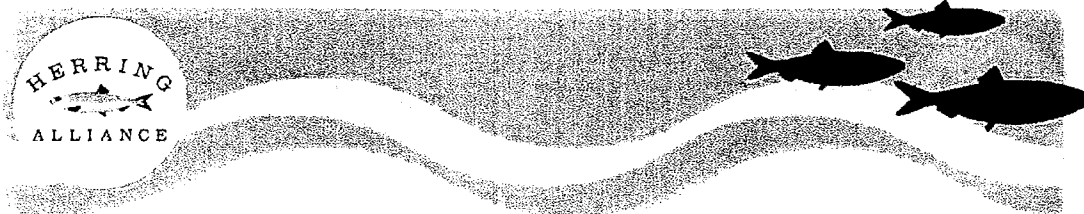


We look forward to continuing to work with the Committee to develop an appropriate set of alternatives for Amendment 5. The Herring Alliance has provided many documents with information in support of these measures and we are happy to provide any additional information upon request. Should you have any questions, please do not hesitate to ask.

Sincerely Yours,

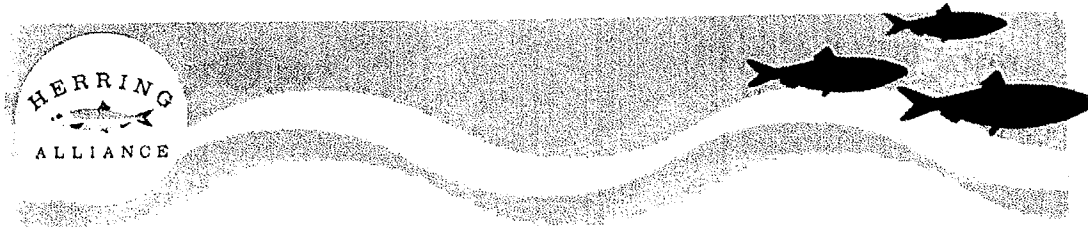
A handwritten signature in black ink, appearing to read "Roger Fleming".

Roger Fleming Esq
EarthJustice

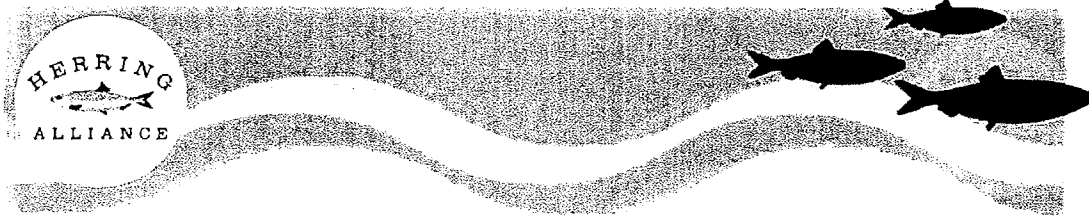


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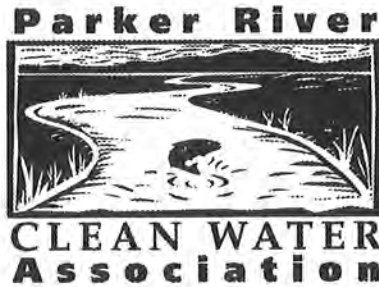
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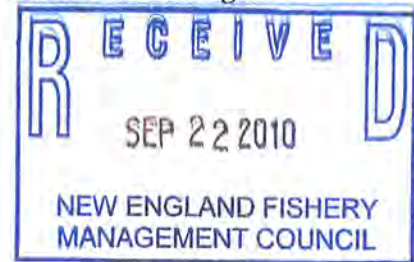
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#6p

PO Box 798 • Byfield, MA 01922



www.Parker-River.org • 978-462-2551



Paul Howard
 New England Fishery Management Council
 50 Water Street - Mill 2
 Newburyport, MA, 01950

September 22, 2010

Dear Council Members,

The Parker River Clean Water Association (PRCWA) is a community-based non-profit watershed organization whose mission is to, "restore and protect the Parker River, its watershed, and Plum Island Sound." Our annual fish count survey of migrating river herring returning to spawn in the Parker River is an important activity to fulfill our mission. (See attached photo of fish count volunteer at Central Street fish ladder, Newbury, MA). The data has yielded a dramatic illustration of the plight of river herring since the advent of midwater trawling.

Since 1997, during the spawning season, our dedicated PRCWA volunteer fish count monitors make hourly observations, using the same counting methodology that was used when a University of Massachusetts survey of migrating herring in the Parker was done from 1972-1978. Together, these two sets of survey observations represent the most extensive data available for any of the Massachusetts coastal streams. (See attached graph of survey results).

For more than 10,000 years humans in the Parker River watershed have utilized the river herring for food as well as recreational fishing. Now, in just a few years, this resource has crashed and the legacy of millennia is disappearing. Further, the importance of river herring extends beyond the mouth of the river to the mouths of fish that prey upon river herring for their food, and in turn connects to human mouths who consume those fish on their dinner table. We are truly "biting the hand that feeds us" if we fail to take significant steps to end the destruction of river herring as unmonitored bycatch.

The public wants to see real improvements in how the fishery is managed to protect depleted river herring. This can be accomplished through a cap on incidental take, prohibition of midwater trawling in protected groundfish closed areas, protections for spawning herring, reliable catch monitoring programs. All of these would be helpful, but the most important action should be an overall bycatch cap to limit the amount of river herring that can be taken from Federal waters each year.

It's time for the Federal fishery managers to provide river herring this protection while there is still hope for a viable population of river herring. Parker River Clean Water Association urges the Council to include a bycatch cap as a strong option in Amendment 5 to the Atlantic Herring Fishery Management Plan.

Yours truly,

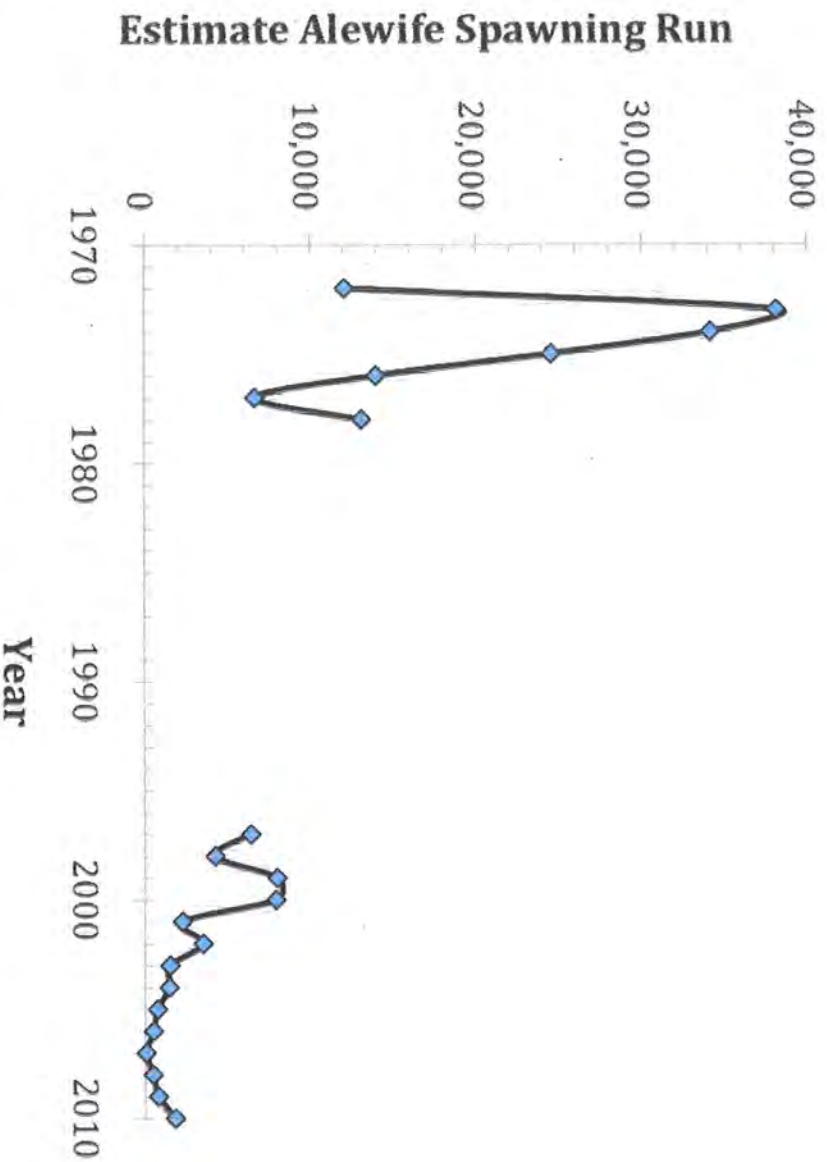
Marlene Schroeder, President
 Parker River Clean Water Association

3 enclosures



Fish Count Volunteer River Herring Annual Survey

Parker River Clean Water Association Annual River Herring Herring Fish Count Results



The chart shows the estimated number of adult alewives returning to spawn in the Parker River from 1972 to 1978 using data from a study by the University of Massachusetts. In 1998 The Parker River Clean Water Association was formed and resumed the annual survey using the same counting methodology as the UMass study, yielding the results from 1998 to 2010. The size of the reproductive migration has been much smaller in the last eight years.

PARKER RIVER CLEAN WATER ASSOCIATION

Migrating River Herring Fish Counts - 1972-1978 and 1997-2010

Year Estimated Alewife passage

1972 12,097

1973 38,163

1974 34,163

1975 24,539

1976 13,998

1977 6,654

1978 1,116

1997 6,396

1998 4,242

1999 7,965

2000 7,894

2001 2,244

2002 3,500

2003 1,500

2004 1,447

2005 747

2006 500

2007 60

2008 485

2009 800

2010 1,800

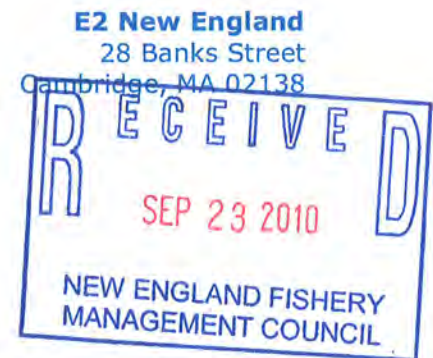
#69



**ENVIRONMENTAL
ENTREPRENEURS**

September 23, 2010

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



Re: Amendment 5 to the Atlantic Herring Fisheries Management Plan

We are writing on behalf of the business group, Environmental Entrepreneurs (E2) (www.e2.org) in support of a comprehensive Atlantic herring fisheries management plan. This crucial plan needs to offer a wide range of alternatives to ensure the survival and growth of the Atlantic herring fishery which is so vital to the health of the North Atlantic food chain and ecosystem.

E2 represents a national community of over 850 business leaders - over 90 of them in New England - who promote strong environmental policies to grow the economy. E2 is widely recognized as a sound resource and an independent voice for understanding the business perspective on environmental issues. We are entrepreneurs, investors and professionals who collectively manage over \$20 billion of venture capital and private equity, and have started well over 1200 businesses, which in turn have created over 400,000 jobs. In Massachusetts alone our members have started over 250 companies that have and created tens of thousands of jobs.

Economic Importance of Herring

As you no doubt know, herring play a truly vital role in the marine food chain and the entire North Atlantic ecosystem. Landings in this industry total about \$20M. However, there is even greater economic value in their role as food for many of our regions' most important species: tuna, cod, striped bass, seabirds, dolphins and whales and as bait for the \$306M lobster fishery. Therefore, ensuring the future of herring stocks is imperative to the New England economy.

Recent research reveals that predators can consume 300,000 tons of herring a year—roughly three times the amount caught by fishermen annually.¹ Given the major role herring play in the food chain, managers need to take into account the needs of predators when setting fishing limits for herring.

These predators are among the most important species in our region and they are either overfished or endangered, partially because one of their primary food sources -- herring -- is not sufficiently protected. For example, one of the ocean's top predators, giant bluefin tuna migrate thousands of miles to feed on herring in New England waters. Declines in landings of bluefin tuna and in the health of those tuna caught, coincided with the arrival of an industrial-scale midwater trawl fleet that depleted herring schools in our inshore waters.

¹ Source: Overholtz, W.J., and J.S. Link. 2007. *ICES Journal of Marine Science* 64:83-96.

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Atlantic cod are also a top predator of herring. However, the abundance of adult Georges Bank cod has tragically dropped by more than 80 percent in the last three decades. With recovery plans in place, cod populations are expected to increase, but only if they have enough food, including herring, to support their growth.

Herring Must Be Protected from Industrial Scale Trawlers

Herring and their predators are threatened by industrial-scale, midwater trawlers often with 2 ships working in tandem called pair trawling. Up to 165 feet in length, these ships are the largest fishing vessels on the East Coast, capable of netting 500,000 pounds of sea life in one tow. Although these vessels fish for Atlantic herring, the fish, birds and marine mammals that feed on herring schools are also vulnerable to accidental capture, injury or death in the trawlers' massive nets.

Pair trawling has contributed to stock declines globally, and has recently been banned in European and African countries. Evidence of negative ecosystem impacts, and the uncertain validity of herring stock assessments, suggests that precautionary management would include stopping pair trawling in New England.

To make matters worse, since 1998, these massive trawlers have been allowed to fish in otherwise closed areas under the assumption that their gear was not catching groundfish. But studies and actual monitoring have shown that assumption to be flawed because these trawlers are indeed catching groundfish. Though they have now been excluded from some areas, midwater trawlers are still endangering both herring and fragile groundfish populations.

The results are obvious. While herring may appear abundant, their numbers have declined dramatically in the last decade.



Herring abundance fell 24 percent between 2000 and 2008, according to the 2009 stock assessment update.

Source: Shepherd, G., et al., 2009. TRAC Reference Document 2009/04, Table 19, p. 26.

E2 supports the Herring Alliance's position on Amendment 5 and the Draft Environmental Impact Statement (DEIS). In particular:

- The council must ensure that a comprehensive range of management alternatives is available for public comment and analysis
- Amendment 5 must include at least two alternatives for annual catch caps from river herring
- All catch in the Atlantic herring fishery must be subject to high levels of at-sea sampling allowing accurate estimates of all key species catches

- River herring incidental catch hotspots must be protected
- Amendment 5 must protect adult spawning herring with alternatives that include time/area fishery exclusion and a system of rules supported by a cap and sampling administered by NMFS
- All groundfish closed areas must be protected from midwater herring vessels

Thank you for consideration of the E2 business perspective on these crucial issues. Please contact Berl Hartman at 617 497-0393 or berl@berlhartman.com to discuss these matters further.

Sincerely,

The E2 New England Directors, on behalf of our business leader membership:

Jay Baldwin
Principal
Wind River Capital Partners

David S. Miller
Executive Managing Director,
Clean Energy Venture Group

Dan Goldman
Executive Vice President & CFO
GreatPoint Energy

Tedd Saunders
Executive Vice President,
Saunders Hotel Group

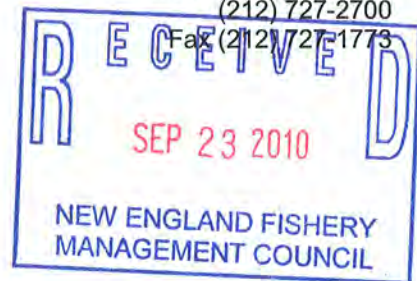
Berl Hartman
Principal
Hartman Consulting

cc: Mr. John Pappalardo, Chairman, New England Fisheries Management Council
Ms. Lori Steele, Fishery Analyst, NEFMC Staff - Herring FMP
Ms. Karen Roy, NEFMC Office Manager

#67



40 West 20th Street
New York, NY 10011
(212) 727-2700



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

RE: Amendment 5 to the Atlantic Herring Fishery Management Plan

Dear Mr. Howard:

On behalf of Natural Resources Defense Council (NRDC), I write with respect to the New England Fishery Management Council's development of Amendment 5 to the Atlantic Herring Fishery Management Plan. As a member of the Herring Alliance, NRDC supports the concerns and recommendations detailed in the letter that the Alliance sent to yesterday. We write separately to reinforce how critical it is that Amendment 5 includes a careful evaluation of a robust array of management alternatives. As you know, the bycatch problem in this fishery is significant, complex and far-reaching. It is important that the public be able to review and comment on a wide range of possible management responses. To this end, we ask that the amendment evaluate a meaningful set of alternatives with respect to:

- catch caps for river herring and shad and related monitoring systems;
- at-sea and dockside monitoring, including different types of monitoring systems and different levels of monitoring;
- management of river herring incidental catch "hotspots";
- protection of Atlantic herring spawning areas; and
- prohibitions against midwater trawling in groundfish closed areas.

NRDC appreciates the opportunity to comment on this important amendment at this juncture.

Sincerely,

Bradford H. Sewell
Senior Attorney

cc: Karen Roy (kroy@nefmc.org).



*Conserving Ocean Fish and Their Environment
Since 1973*



September 23, 2010

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

RE: AMENDMENT 5 ALTERNATIVES

Dear Mr. Howard,

On behalf of the National Coalition for Marine Conservation (NCMC), I respectfully submit the following comments for the Council to consider when it meets on September 28th to select alternatives for analysis in Amendment 5 to the Atlantic Herring Fishery Management Plan.

NCMC advocates for management policies that prioritize protecting the ecological role of forage fish in the ecosystem. If measures designed to achieve Amendment 5 objectives are effective, management of Atlantic herring and river herring will significantly improve through greatly enhanced catch monitoring and accountability and through substantial reduction of incidental catch and discards, ensuring more of these important forage fish remain in the water for the predators that need them.

The Herring Plan Development Team (PDT) and the Herring Oversight Committee (OC) should be commended for their work to date on Amendment 5. However, there remain a number of outstanding issues to be investigated and addressed before the Council moves forward with approving alternatives for analysis. Specifically, we urge the Council to direct the Herring OC and PDT to fully develop a range of alternatives for the following issues:

- Protection for spawning Atlantic herring
- Shad bycatch monitoring and reduction (as requested by the ASMFC in May 2010)
- Bycatch limits for alewife, blueback herring and American shad

Protections for Spawning Herring

In November of last year, the Council voted to make protections for aggregations of spawning herring a priority in Amendment 5. In the most recent version of the Amendment 5 Draft Discussion Document (p.129), alternatives remain “to be determined.” Stakeholders have expressed serious concern over herring spawning in Area 3 in particular, noting that Amendment 1 changed the Area 3 demarcation line to include sensitive near shore spawning grounds even though this area is often regarded as “offshore” and is afforded a generous portion of the annual

quota. **A suite of well-developed alternatives for protecting spawning herring should be added to the Amendment 5 document before the Council moves ahead. These alternatives must include robust measures for monitoring, reducing *and* limiting the catch of spawning herring.** Catch reduction measures could feasibly be modeled after those proposed for river herring under Section 3 (e.g., move-along rules or time/area closures), which we strongly support.

Shad Bycatch Monitoring and Reduction

In 2007, an Atlantic States Marine Fisheries Commission (ASMFC) stock assessment found American shad stocks at historic lows and not recovering.¹ Coast-wide declining trends raised flags that ocean mortality was having a serious impact, and the stock assessment peer review team, noting the limited data on ocean bycatch in particular, listed bycatch monitoring as a high priority for future action.² The Gulf of Maine, where the Atlantic herring fishery operates, is an important summer feeding ground for mixed stock aggregations of American shad.³

In February 2010, the ASMFC Shad & River Herring Management Board took action to close all unsustainable recreational and commercial American shad fisheries.⁴ At the same meeting, the Board voted unanimously to work with the New England and Mid-Atlantic Fishery Management Councils to address river herring *and shad* bycatch in Amendment 5 to the Atlantic Herring Plan and Amendment 14 to the Atlantic Mackerel, Squid and Butterfish Plan.⁵

In May 2010, a letter was sent from the ASMFC to the New England Council specifically requesting shad be considered (in addition to river herring) for increased portside and at-sea monitoring,⁶ yet no action has been taken to date to include shad in Amendment 5 bycatch reduction and monitoring alternatives. **At minimum, the Council should include American shad as a target species (with a CV of .2 or less) for determining levels of observer coverage and portside sampling, and should implement move-along rules that are triggered by a threshold of shad bycatch. Hot spot analyses for American shad should also be undertaken.** If, however, bycatch data for American shad is too limited for analysis or if resources cannot be made available, the PDT should make use of American shad ocean

¹ ASMFC. August 2007. Stock Assessment Report No. 07-01 (Supplement) of the Atlantic States Marine Fisheries Commission: American Shad Stock Assessment for Peer Review, Volume 1.

² ASMFC American Shad Stock Assessment Peer Review Panel. Stock Assessment Report No. 07-01 of the Atlantic States Marine Fisheries Commission, *Terms of Reference & Advisory Report to the American Shad Stock Assessment Peer Review*. Conducted on July 16-20, 2007, Alexandria, Virginia.

³ ASMFC. January 2009. Atlantic Coast Diadromous Fish Habitat: A Review of Utilization, Threats, Recommendations for Conservation, and Research Needs. ASMFC Habitat Management Series #9. (http://www.asmf.org/publications/habitat/diadromousSpeciesSourceDocByChapter/HMS9_Diadromous_Habitat_2009.pdf)

⁴ Amendment 3 to the Interstate Fishery Management Plan for Shad & River Herring. February 2010.

⁵ ASMFC Shad & River Herring Management Board Motions from February 4, 2010: "Motion to recommend that board and states collaborate with shad and river herring bycatch reduction efforts of the New England Fishery Management Council Amendment 5 and the Mid-Atlantic Fishery Management Council Amendment 14 ongoing FMPs. Motion by Terry Stockwell; second by Michelle Duval. Motion carried."

⁶ Letter from John V. O'Shea, Executive Director of the ASMFC to Paul Howard, Executive Director of the NEFMC. 17 May 2010.

migration patterns, which are well documented,⁷ to analyze the proposed river herring hotspot alternatives for their potential to protect American shad, and this should be considered in the Council's selection of final alternatives.

Bycatch Limits for Alewife, Blueback Herring and American Shad

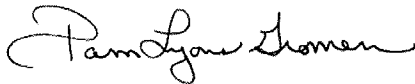
The PDT's work to identify river herring bycatch hotspots is exemplary, and we are greatly encouraged by the suite of bycatch reduction alternatives presented in the discussion document. Yet, the alternatives lack teeth because they exclude hard bycatch caps to ensure bycatch mortality is effectively constrained. As pointed out in the Amendment 5 Discussion Document (p.70) area-based fishing closures can have the unintended effect of increasing bycatch in areas that remain open.

The Council must ensure that operation of the Atlantic herring fishery does not impede ASMFC's efforts to restore river herring and American shad runs. While pollution, habitat loss, dams and hydropower facilities all impact these anadromous stocks, the ASMFC decided to close *directed fishing* in cases where fishing in addition to other sources of mortality would cause stock collapse.⁸ The ASMFC took this course of action because fishery managers can only control fishing mortality. Unfortunately, the consequence of ASMFC's actions is that the burden is placed solely on river herring fishermen, and we are likely to see several other states close recreational and commercial fisheries as a result. We now know that bycatch mortality in federal fisheries can equal to exceed directed fishing for these depleted stocks. Reining in fishing mortality to maximize the potential for successful stock rebuilding must be a shared responsibility between state and federal management authorities.

A minimum starting point would be to establish incidental catch caps for alewife, blueback herring and American shad based on recent levels to make sure bycatch does not increase as states work to halt declines and rebuild river herring and shad stocks. As another alternative, once the ASMFC sustainable fishery plans go into effect in 2012 (river herring) and 2013 (American shad), the Council could cap bycatch at a level well below the allowable in-river fishery landings.

Thank you for considering our comments. We strongly support Amendment 5 objectives and hope that you will provide adequate time for addressing these important unresolved issues so that the objectives can be fully met.

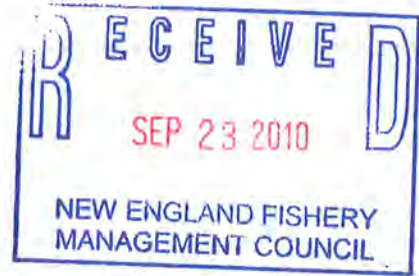
Sincerely,



Pam Lyons Gromen
Executive Director

⁷ See note 2.

⁸ A recent decision of the ASMFC's policy board specifically excludes bycatch fisheries from state sustainable fishery plan requirements. [ASMFC 2010 Summer Meeting Summary and Motions]
http://www.asmfc.org/press_releases/meetingWkSummaries/2010/2010SummerMeetingSummary.pdf



Mr. Paul Howard, Executive Director
New England Fisheries Management Council
50 Water Street
Newburyport, Massachusetts 01950

Dr. Bill Leavenworth and Karen Alexander
Gulf of Maine Cod Project
Ocean Process Analysis Lab
Institute for the Study of Earth, Oceans and Space
112 Morse Hall, 8 College Rd., University of New Hampshire
Durham, New Hampshire 03824

RE: Amendment 5 to the Atlantic Herring Fishery Management Plan

September 23, 2010

Dear Mr. Howard,

We are historical marine ecologists in the Ocean Process Analysis Lab at the University of New Hampshire. Since 2001 we've been investigating the history of New England's ocean resources, with quantitative datasets starting in the early 19th century. We've gained a long-term perspective on marine ecosystems, fisheries, and coastal communities that is rarely represented in Council debates. We are also long-time New England residents who enjoy fresh seafood, and who care about New England's quality of life. Dr. Leavenworth is an experienced mariner who seined herring off Seabrook, NH in 1980. Ms. Alexander has been active in a grass roots effort to extend conservation protection to the Lamprey River watershed, the most important alewife run entirely within New Hampshire's borders. We have attended Herring SSC meetings in Portland and Portsmouth, and will be in Newport on September 28th because we have a personal, as well as a professional, interest in the outcome of the vote on Amendment 5 to the Atlantic Herring Fishery Management Plan.

Atlantic herring (also called sea herring) are common in the New England waters, and are eaten by the groundfish and striped bass that support important commercial and recreational fisheries, and the whales, seals and seabirds that bring tourists to our coasts. Sea herring came into New England's estuaries by the millions from the 1600s to the 1950s, and provided seasonal employment for thousands of New England fishermen and cannery workers every year for a century and a half. In 1902 the fisheries of Maine, New Hampshire and Massachusetts landed 162 million pounds of sea herring, all caught inshore in 974 weirs, along with stop seines in coves, and haul seines set from whaleboats near shore. With plenty of baitfish in the water, other commercial Gulf of Maine fisheries also flourished, catching 306 million lbs. of finfish, including 28 million lbs of cod, 25 million lbs of hake, 24 million lbs of haddock, 1.3 million lbs of swordfish, 1 million lbs of halibut, and 75 thousand lbs of tuna.

When sea herring spawned on nearly every suitable ground from Georges Bank to coastal estuaries, the Gulf of Maine teemed with fish. But herring are currently vulnerable to over-efficient harvesting methods, and the effect is visible in the quantity and distribution of catch. Dr. Leavenworth seined spawning herring off of Seabrook in 1980, but that was already the last gasp of the inshore herring population. In 1902, 84% of the herring were taken in coastal waters. Now 90% come from offshore in a fishery dominated by large mid-water and pair trawlers, which may take 150,000 pounds of fish in one haul. Today, few sea herring are able to reach historic coastal spawning grounds, and this reduces stock recruitment and resilience. Population estimates show a significant decline in the herring stocks since 2000, and this has reverberated ecologically and economically. It threatens not only herring stocks, but also estuaries and coastal oceans that suffer a decline in biocomplexity, as well as predators like cod that feed on herring, and fishermen who depend on these fish for a living.

Alewives, blueback herring and shad, collectively called "river herring," are also important forage species, but coming into fresh water to spawn makes them vulnerable to additional threats. Their numbers were decimated by dam building in historical times and by fishing in the 20th century. More than 200 years ago fishermen knew that both river herring and sea herring were essential forage for the most valuable inshore fisheries. Cod, haddock, hake, halibut, striped bass and pollock fed on them in season, and alewife fisheries were regulated to protect stocks. As late as 1880, the total alewife catch from Barnstable County, Massachusetts, was 1,150,295 lbs. In 1902 12 million river herring catch were caught along the entire New England coast from Eastport, Maine to the New York border.

River herring are now depleted to less than 10% of their 19th century numbers. They school with sea herring part of the year, and are vulnerable to large-scale bycatch by mid-water trawlers and pair trawlers targeting sea herring. In 2007, river herring bycatch in New England alone totaled almost 1.7 million pounds. Recent dam removal has spurred the recovery of alewives, bluebacks and shad on many New England rivers and streams. However this hard won success is imperiled by bycatch. Large vessels can easily destroy an entire river's stock of alewives as bycatch in one tow. If the spawning schools of sea herring are now depleted, and river herring endangered in most New England waters, we can never recover the shore fisheries that once supplied over 37 thousand New Englanders with jobs, and millions of Americans with healthy protein.

The Council will discuss new management measures to solve these problems. Their decisions will affect the seafood supply, ecosystem health and quality of life in New England, and it should be of interest to everyone. As citizen observers at the last two meetings, we've become concerned that the science is being watered down for the sake of expedience and expense when it comes to spawning closures for sea herring and bycatch caps for river herring. These need to be put in place for Amendment 5 to be effective.

We recommend 100% monitoring of industrial midwater trawlers to match compliance of similar fleets on the West Coast. Additional observers are needed to collect reliable trip data. This is a burden to the industry, however graduate students

could be trained to do this as interns or for credit. All data need to be available to researchers and the public. The fishery should be closed seasonally to protect spawning sea herring and "hot spots" where river and sea herring school together, especially at times when river herring gather to make their spawning runs. Bycatch caps for river herring need to be set and strictly enforced. Loopholes that permit sorting or dumping without examination should be closed so accurate estimates of bycatch can be made, and pumps should be stopped periodically to identify bycatch. All catch should be accounted for. Finally, no mid-water trawlers should be permitted in groundfish closed areas. As evidence we submit an observation from Paul Crowley, a personal acquaintance who once skippered a mid-water trawler in the north Pacific before taking a law degree:

By the way, having done a lot of so-called 'midwater' trawling for cod and pollack in Alaska, I can tell you that the midwater trawls were towed hard on the bottom during daylight hours (that's where the fish are during daylight hours) and those "midwater trawls" were the most effective flounder nets I've ever seen.

When a net has a designed vertical opening of 40 fathoms, but you're towing it in 40 fathoms of water and its only opening to 5 fathoms and scooping up 1000 lb crab pots that's a pretty good indication its hard on the bottom. I'll never know how so many supposedly smart and effective North Pacific fisheries managers were taken in by the big 'midwater trawl' lie."

If we impose restrictions on the indiscriminate harvest of sea and river herring, and work to recover the natural bounty of our fisheries, several thousand New Englanders will again earn a living on the water, vacationers will be able to visit healthy New England coastlines and witness the drama of spawning alewives, migrating birds, or feeding whales, and millions of Americans will again be able to eat healthy wild-caught fish from New England's waters. We think the choice is obvious.

Very truly yours,

Dr. William B. Leavenworth
Ms. Karen E. Alexander

#6u

John Pappalardo, Chairman
 New England Fishery Management Council
 50 Water Street, Mill 2
 Newburyport, MA 01950



September 22, 2010

Dear Chairman Pappalardo,

I am writing you today regarding the continued development of Atlantic Herring Amendment 5. As a groundfish fisherman out of Cape Cod, I have some concerns about how the herring industry is being regulated in our waters and I hope that you and the rest of the New England Fishery Management Council will take strong action to protect the New England groundfish stocks through this amendment. Specifically, there are three issues that are of the utmost importance to groundfish fishermen and I would like to ask for your support in the development of viable options for these issues in this document. They include:

Groundfish bycatch- The herring midwater trawl fleet is supposedly fishing in the "midwater," yet these boats have been known time and again to catch massive amounts of the groundfish stocks that live close to the ocean floor. These giant nets need to be kept off the ocean bottom. I would like to see a prohibition on bottom contact included in this amendment, which would be monitored by bottom contact sensors on the midwater nets. If these nets are fishing where they are supposed to be, the addition of this sensor shouldn't be overly burdensome on the herring industry, but will protect our important groundfish stocks.

Protect the Georges Bank/Nantucket Shoals Herring Spawning Stock- The inshore Georges Bank herring resource is in trouble. All summer, we hardly saw any herring and the majority of the herring we did see were very young. What is even more concerning is that the herring boats were targeting spawning herring all last fall (2009) on Nantucket Shoals, which is a sure way to collapse any fish stock. The Council needs to ensure that this spawning stock is protected and that it happens now before it is too late. Please include monitoring measures and effort controls for spawning fish modeled on the provisions in the amendment already developed for river herring (hotspots, move-along rules etc.)

Groundfish Closed Areas- Continuing to allow the herring midwater trawl boats into the groundfish closed areas essentially undermines the gains made through sacrifices of other fisheries. This is especially true for groundfish fishermen who have been banned from the areas or allowed in only after extensive research has proved that sustainable harvesting can take place. The herring midwater trawl fleet should not be allowed into groundfish closed areas until it can be proven that they can fish cleanly with no groundfish bycatch. It is unreasonable to let this fleet continue to fish in the closed areas as other stakeholders watch their future livelihoods go down the drain.

Thank you for your close attention to these matters. Fishermen throughout New England have high hopes that the monitoring program being designed in Amendment 5 will hold this fishery accountable to the same standards as numerous other fisheries throughout New England.

Sincerely,

John Pappalardo, Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950



Dear Chairman Pappalardo,

I would like to express my concern over the outcome of Atlantic Herring Amendment 5 and the potential affects a weak monitoring program could have on the commercial and recreational striped bass fishery. These fisheries are an important source of revenue for many fishermen who target striped bass commercially and captain charter boat trips in the waters off of Cape Cod.

This summer, days after the commercial striped bass season closed, the midwater trawl boats that fish for herring specifically targeted an area known to be populated by striped bass off the coast of Chatham, Mass. It is naive to think that those boats, with their huge small-mesh nets, didn't catch striped bass as they towed --within eyesight of the coast -- looking for herring. Because of inadequate monitoring, however, we will never know what actually happened out there and those striped bass will never be accounted for. It is time that we understand what is happening to those fish, and the herring that they rely on for food, and require that these boats have 100% observer coverage, no longer be allowed to dump their unwanted catch, and be held accountable for the bycatch they haul aboard.

This summer, we watched midwater trawlers target inshore herring stocks, which are important for drawing striped bass into shallow waters and allowing me to stay in business. In Herring Area 1B, the boats exceeded their total allowable catch by 14 percent, further damaging the inshore herring population. Potentially with better monitoring, that area could have been closed before the catch limit was overshot.

In addition to the need for monitoring, I am very concerned about two other aspects of this fishery that Amendment 5 does not currently address. If we want to ensure a continued striped bass fishery, protecting herring spawning grounds on Nantucket Shoals is absolutely critical. Targeting spawning stock totally undermines any potential population growth and that's what these herring boats were doing last fall. River herring bycatch is also a huge concern for many striped bass fishermen, we are not allowed to use river herring for bait any longer yet these boats are allowed to catch and sell as much as they want. A cap needs be put into place for river herring bycatch so that these stocks can finally return to our waters. I hope that the council will addresses these issues before Amendment 5 is put out for public comment.

Thank you for your time in considering these comments. There has been more than one occasion when fishermen have found rafts of floating dead striped bass after a midwater trawler has towed through an area. In order to ensure that the Atlantic herring population doesn't collapse -- again -- we need to protect the spawning stocks and make sure we know what is happening out on these boats.

Sincerely,

Capt. Earl LeGeyt Sr.

John Pappalardo, Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950



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Sincerely,



DARREN SALBITA
F/V FREE MONKEY

John Pappalardo, Chairman
 New England Fishery Management Council
 50 Water Street, Mill 2
 Newburyport, MA 01950



Dear Chairman Pappalardo,

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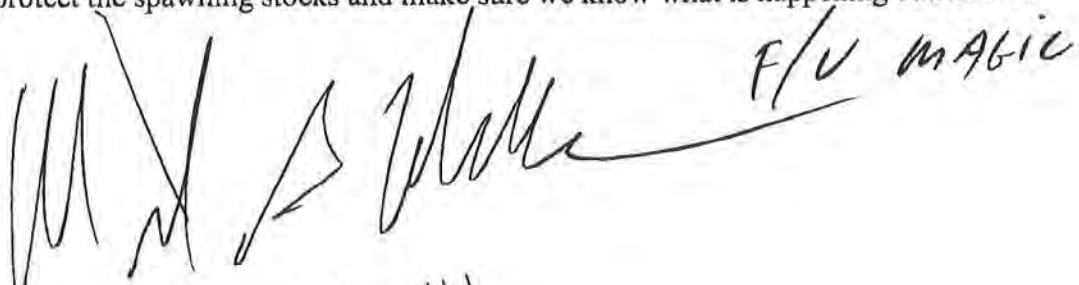
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Sincerely,


 Capt. Mike Abdou *F/U MAGIC*

John Pappalardo, Chairman
 New England Fishery Management Council
 50 Water Street, Mill 2
 Newburyport, MA 01950



September 22, 2010

Dear Chairman Pappalardo,

I would like to express my concern over the outcome of Atlantic Herring Amendment 5 and the potential affects a weak monitoring program could have on the commercial and recreational striped bass fishery. These fisheries are an important source of revenue for many fishermen who target striped bass commercially and captain charter boat trips in the waters off of Cape Cod.

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Sincerely,

Bruce A. Peters F/V MARILYN S

Capt. Bruce Peters

John Pappalardo, Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950



Dear Chairman Pappalardo,

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Sincerely,

Capt. David Maher

#6W



CONSERVATION LAW FOUNDATION

September 23, 2010

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

Dear Ms. Kurkul,

The Conservation Law Foundation is committed to ensuring a sustainable Atlantic herring fishery that addresses not only appropriate catch limits for the target stock but also protects non-target species such as river herring, shad and groundfish. As a member of the Herring Alliance, CLF joins in the comments submitted by the Herring Alliance on September 21, 2010. We write today to focus on two issues associated with Amendment 5 and the Council's consideration of the current Amendment 5 document and associated draft environmental impact statement – bycatch of river herring and shad and protection of spawning areas. We also write to support the proposed changes to the rule governing access to Closed Area 1 by mid-water trawl vessels.

First, it is beyond argument that the river herring and American shad stocks are in dire straits. Bycatch of these species by the Atlantic herring fleet, and particularly mid-water trawl vessels is a significant contributing factor to this situation. To date, this issue has not been addressed by either the Atlantic States Marine Fisheries Commission or the existing Atlantic herring fishery management plan and its Amendment 4 approved by the Council earlier this year. As set forth in the September 21, 2010 comments of the Herring Alliance, it is critical that this issue be addressed in Amendment 5, including the inclusion of a specified annual cap on river herring catch.

We write to address some confusion that appears to have arisen concerning the Council's ability to include such a catch cap measure. Specifically, whether or not the ASMFC ultimately addresses this issue in its jurisdiction has no bearing on the Council's and ultimately the Service's ability to address the issue in Amendment 5. Under their authorizing statutes, the Council and the ASMFC have the authority and obligation to develop plans for the conservation and management of fisheries – the Council in federal waters from 3 to 200 miles offshore of the United States and the ASMFC for migratory stocks that cross state boundaries. See Magnuson-Stevens Act, 16 U.S.C. §§ 1851-1854 and the Atlantic Coast Fisheries Act, 16 U.S.C. §§ 5101-5104. Plans developed by the ASMFC are required to be complementary of plans developed by the Council, *id.* at § 5104(a)(1) but are in no way preclusive of the Council's authority and obligation. More practically, the fact is that there are no ASMFC plans or regulations in place or pending that would monitor, reduce or limit the catch of river herring (incidental or bycatch) in the federal

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62 Summer Street, Boston, MA 02110-1016 Phone: 617-350-0990 Fax: 617-350-4030
 27 North Main Street, Concord, NH 03301-4930 Phone: 603-225-3060 Fax: 603-225-3059
 55 Dorrance Street, Providence, RI 02903-2221 Phone: 401-351-1102 Fax: 401-351-1130
 15 East State Street, Suite 4, Montpelier, VT 05602 Phone: 802-223-5992 Fax: 802-223-0060

CONSERVATION LAW FOUNDATION

waters that are under the jurisdiction of the Council and the National Marine Fisheries Service. Indeed, the ASMFC specifically deferred to the Council on this issue at its May 2009 meeting. The simple fact is that there is an unregulated federal river herring fishery within the herring mid-water trawl fleet with considerable discards and even more considerable incidental catch of river herring. Consistent with the provisions of the Magnuson-Stevens Act and Atlantic Coast Fisheries Act discussed above, the broad direction of National Standards 1 and 9, and the Council's past action of setting caps for a non-target species (haddock) in the Atlantic herring's existing FMP, at a minimum the Council and the Service have the clear legal authority, and obligation, to set annual catch limits for river herring in Amendment 5.


Whether the Council and Service should exercise such authority is another question – one that we believe is self-evident in light of the importance of river herring to a whole host of other species and communities, the dire straits the river herring fishery is in, the complete failure of ASMFC to address the issue and the demonstrated impact that the bycatch or incidental catch of river herring by mid-water trawl vessels is having. Catch caps are a common tool to protect a stock not in the fishery (e.g., yellowtail flounder), would complement other tools currently proposed (e.g., move along measures) and must be included as a management tool in Amendment 5.

Second, the protection of spawning herring is critical if the Atlantic herring is to recover. Continued extraction of spawning Atlantic herring will lead not only to lower ACL's in the fishery but, as the key forage fish for groundfish, tuna and other species, will retard the recovery of those species as well. It was recently estimated that up to 80% of the Atlantic herring caught in Area 3 were spawning. This level of harvest of spawning fish is clearly unsustainable and unacceptable. CLF strongly supports the alternatives laid out by the Herring Alliance in its September 21, 2010 letter to address this issue.

Finally, with respect to the proposed rule governing mid-water trawl herring boats access to Closed Area 1, 75 FR 54292, September 7, 2010, CLF strongly supports the proposed alternatives, and particularly that first alternative that would remove the provision at § 648.80(d)(7)(ii)(D). See 75 FR 54293.¹ Indeed, the first alternative is the only one that will actually achieve the ends sought – to ensure that mid-water trawl vessels allowed in CA1 are not catching groundfish – while also providing certain limited exceptions to protect the safety and security of the boats and their crew.

Thank you for your attention to these issues.

Very truly yours,



¹ It is worth noting for clarification that just as the Council and Service can address the bycatch of a non-target species (river herring) in the Atlantic herring FMP, so too can they address the bycatch of groundfish through mid-water trawl permits without having to go through an amendment to the groundfish FMP.

CONSERVATION LAW FOUNDATION

Sean Mahoney
Vice President and Director
Maine Advocacy Center

**This email is an example of 168 received after the deadline for correspondence.
The mailbox for each was from CLF.org**

#6x

From: Site Administrator [mailto:info@clf.org] On Behalf Of Beth De Voe
Sent: Friday, September 24, 2010 12:37 PM
To: Karen Roy
Subject: Advance a Strong Amendment 5

Sep 24, 2010

Karen Roy

Dear Roy,

Greatly encouraged at the Northwest's protection of salmon and the comeback of the bald eagle, I know we can make a better future. With careful planning and a little self-restraint we could have a great return on our investments.

I am concerned about the growth of industrial herring trawling in New England and the threat it poses to the balance and health of the marine ecosystem and wildlife populations. Millions of pounds of Atlantic herring and other marine life are captured and dumped by midwater trawl vessels each year - including alarming amounts of depleted river herring and shad, and commercially valuable species such as haddock and other groundfish.

At your September meeting, please ensure the Council advances a strong Amendment 5 to the Atlantic Herring Fishery Management Plan that includes a full range of management alternatives, including:

***100% at-sea monitoring on all midwater trawl fishing trips (i.e., one observer per vessel to sample all catch) to ensure accurate estimates of herring catch and bycatch of other species

***Rules that require herring vessels to temporarily (leave and) avoid areas where the catch of river herring, shad and/or spawning sea herring exceeds acceptable levels (i.e., "move along" rules)

***No herring fishing within areas designated as "hotspots," where river herring, shad and/or spawning herring are caught in large numbers

***An annual catch cap for river herring and shad and measures to ensure limits are not exceeded

***No herring midwater trawling in areas established to protect rebuilding groundfish populations

***No release or dumping of any unsampled catch except under exceptional circumstances, such as mechanical failure or when safety is a concern

The problems in this industrialized fishery are too important to ignore. I urge you to demonstrate your commitment and responsibility to addressing these critical issues in order to protect the long-term health of Atlantic herring populations and the marine ecosystem as a whole.

Sincerely,

Ms. Beth De Voe
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Williamstown, MA 01267-2755