

#11

August 2013 Correspondence regarding  
Amendment 5 Partial Approval  
(Cunningham/Bullard)





New England Fishery Management Council

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C. M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

August 1, 2013

Mr. John Bullard  
Regional Administrator, Northeast Region  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

Dear John:

Since our conversation about NERO's response to the submission of Amendment 5 to the Herring Plan, I have been thinking not only about NERO's response, but about the process that lead up to this decision. It feels like I have received more calls about this partial disapproval decision than anything else during my tenure as Chair. I know that Council members and Council staff are very discouraged about the time and effort put into this amendment and the ultimate outcome. It is hard to see approximately 6 years of work essentially disapproved.

My intent is not to focus on the individual issues, but to look at the process that got us to where we are and hopefully try to make it function better. Taking a step back, the request by my predecessor was to have an outside examination of how the Council, NERO and NEFSC interact with the desired outcome to make those interactions more efficient and effective. The Touchstone/Pate report went beyond that, but at the heart of that request was the original intent. Yes, there have been some positive outcomes to the report, but things like the operating agreement do not get at, what seems to many, to still be an issue and that is a sense that the Council and NERO are aiming at two different targets.

During any Amendment process, the NERO participants have many opportunities to be constructive members of the PDT's and Committees. I do not believe it is productive to always simply point out what will not work, but to help craft measures that will move toward the desired result. NERO employees tend to be better versed in the technical and legal aspects of fishery management and should take a more active role in finding solutions to management problems. I sometimes feel that the agency is playing a twenty questions game with the Council, waiting for us to guess the approvable solution rather than working as an equal partner.

It is obvious to me that Council members, in general, are not nuts and bolts people. Their job is to craft the concepts of how measures should work with the support of Council staff. NERO participants are the ones who have to screw the nuts and bolts together. Somewhere in that process things are breaking down. It may be a question of "ownership" of the document at each stage of the process, but must we have failure to prove who was right or wrong? The industry has the perception that NMFS in general, and NERO in particular, wants to push the blame onto the Council. I have and continue to assume that both entities are trying to get to the same place. If I am not completely naive, then how is it that rational people cannot interact in rational ways?

When I ran a business, I managed by walking away, after I made sure that folks had the tools to succeed, knew what success looked like and knew that I expected them to succeed. I did not micro-manage. I did not care if they spent 20 hours a week at the job or 60 hours a week at the job. I wanted the job done and would support that effort however I could. When I left, the business carried 67% of the market share in a very competitive market. People generally want to get the job done, so there has to be a way to do it even in a very arcane government process.

If the goal is to keep the Council process stifled, this letter can be circular filed. If the goal is to energize the Council process and move management to a more functional level, then something needs to be done. I believe that we all want to "get'r done," but the old ways are dysfunctional. My sense is that NERO's top management needs to encourage and empower staff to create and suggest workable solutions.

I know that the Tiger Team is working on some aspects of this, but I also think that there needs to be a shared sense of accomplishment rather than a delineation of responsibility.

To steal a phrase from P.J. O'Rourke, where we are now is "like giving car keys and whiskey to teenagers." There's gonna be a crash.

Sincerely,



C.M. "Rip" Cunningham  
Chairman

cc: Samuel D. Rauch, NOAA Deputy Administrator for Regulatory Programs  
NEFMC Council members  
Regional Fishery Council Chairs

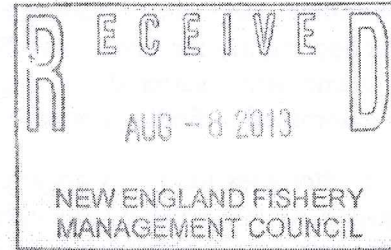
#1



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 - 8 2013

C.M. "Rip" Cunningham, Jr., Chairman  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950



Dear Rip:

I understand you are disappointed with the outcome of Herring Amendment 5, but your August 1, 2013, letter to me misrepresents what happened over the course of Amendment 5's development and it generally and unfairly portrays my staff's participation in the management process. While I agree that the development of Amendment 5 was not perfect, and I am disappointed that we had to disapprove part of it, I must correct the record on the things you described in your letter.

As you know, I was not here during the development of Amendment 5, but if you review the record, as I have, you will see a much different process than the one you describe in your letter. We sent the Council four letters, over a period of 3 years, about the development of Amendment 5, its goals, and our caution against new monitoring requirements that had no funding source. Here is a summary of those letters (and I have attached them as well):

March 22, 2010 – We expressed concerns about the development of new monitoring provisions without funding sources and offered suggestions for changing some of the reporting requirements being developed in Amendment 5.

August 25, 2010 – We urged the Council to take a wide range of alternatives to public hearings and offered our continued assistance with the action.

December 13, 2010 – We again offered our assistance to develop monitoring measures, urging the use of a more diverse group of participants from the Northeast Region. We asked the Council to do more work to clearly identify the intent and purpose of the monitoring measures.

June 5, 2012 – We expressed serious concern with the three measures we ultimately disapproved, and we also explained what the Council could do to alleviate our concerns.

These letters demonstrate that, as the Council proceeded with the action, we were providing constructive input. We sent each of the letters when we did because critical decisions were about to be made and our verbal input at Plan Development Team meetings was not being heeded. The Council's record, including Plan Development Team meeting summaries, and Committee and Council meeting minutes, show that my staff provided input all along the way. Again, based on the record, it is unclear why you think that the Regional Office was not engaged throughout the development of Amendment 5, and why it came as a surprise that we disapproved parts of Amendment 5.



cc: Council, CBK, LS, PMF (8/9)

You might also recall that the development of Amendment 5 was difficult at times. There was lack of clear direction by the Council (which we addressed in letters in 2010 and offered our support). The Herring Committee did not meet from December 2010 to June 2012, a period that should have been the most critical time for Committee development. The Advisory Panel, Committee, and Council made substantive changes at their final meetings, but this provided very little opportunity for anyone to offer viable solutions. Ultimately, three of the measures adopted in Amendment 5 suffered from legal deficiencies that we could not overcome. Nevertheless, I am committed to finding a way forward on observer coverage and the slippage measures.

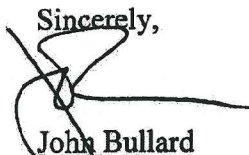
Your letter goes further by apparently taking issue with all of my staff and our overall engagement in the fishery management process. In the time I have been here, I have seen my staff work exceedingly hard to solve problems with the Council and to make things work after the Council has made its recommendations. My staff is constantly in the very difficult position of expressing legal and policy concerns that no one likes hear. Many times, the Committees and the Council simply disregard the comments and move on. To suggest that my staff do not participate and are the root of the problems with the Council making progress is completely unfair and not at all supported by the record on any of the Council's actions.

I agree with you that the Council and the Northeast Region can improve how we work together, and it is imperative to improve that, and soon. I will be seeking ways that we can provide the Council with an earlier and stronger indication if we are very likely to disapprove a measure. We will continue to provide constructive solutions when we have concerns, but we all need to realize how difficult this is when alternatives and solutions are crafted on the fly and late in the process. As I have already clearly told the Council, there are increasing constraints on our resources, and that must be taken into consideration as well. We are willing to work hard to these ends and I hope the Council and Council staff are willing as well.

The Council and NMFS are faced with some very daunting challenges, but we both have very dedicated and capable teams that strive to bring resources back to, or keep them at, sustainable levels to ensure that fishermen can keep fishing for generations to come. Now is the time to look forward to what we can do collaboratively to resolve our differences and solve our problems.

I wish you luck in your endeavors outside of the Council.

Sincerely,

A handwritten signature in black ink, appearing to be "John Bullard", written over a circular stamp or mark.

John Bullard  
Regional Administrator

Cc: Tom Nies, Executive Director, NEFMC



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
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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
<b>VMS Declaration</b>	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).
<b>Limited Access Notification Requirements</b>	For Category A and B midwater and purse seine trips: <ul style="list-style-type: none"> <li>• Notify NMFS OLE via VMS 6 hrs prior to landing;</li> <li>• Obtain an LOA;</li> <li>• Notify observer program 72 hrs before departure;</li> <li>• Carry observer if requested.</li> </ul>	Extend both observer and OLE notification requirement to all limited access vessels.
<b>Limited Access Catch Reporting</b>	<b>IVR:</b> Limited access vessels must submit a catch report via IVR each week by midnight on Tuesday (for the preceding week).	<b>VMS:</b> Herring landings and discards reported through VMS either <i>daily</i> or <i>at each offloading</i> , including: <ul style="list-style-type: none"> <li>• Herring lbs kept and discarded;</li> <li>• Date and stat area where fish were caught; and</li> <li>• Trip identifier number.</li> </ul>
	<b>VTR:</b> Monthly.	<b>VTR:</b> Weekly (vessels that also have groundfish permits will begin this in May 2010).
<b>Open Access Catch Reporting</b>	<b>IVR:</b> 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).	Eliminate IVR reporting requirement.
	<b>VTR:</b> Monthly.	<b>VTR:</b> Weekly.
<b>Carrier Reporting Requirements***</b>	<ul style="list-style-type: none"> <li>• LOA</li> <li>• Monthly VTR;</li> <li>• Carry an observer if requested;</li> </ul>	<ul style="list-style-type: none"> <li>• LOA or at-sea dealer permit</li> <li>• Carrier declaration through VMS</li> <li>• No VTR reporting</li> <li>• Observer and OLE notification requirements</li> </ul>

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





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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





UNITED STATES DEPARTMENT OF COMMERCE  
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John Pappalardo, Chairman  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950

Dear John:

I have spoken with my staff about the ongoing work on Amendment 5 to the Atlantic Herring Fishery Management Plan (Amendment 5). I understand the complexity of the issues being discussed and the challenges involved in fully developing some aspects of new monitoring alternatives. My staff has provided advice at Plan Development Team (PDT) and Committee meetings, and has also discussed these issues in meetings with your staff.

I would like to continue to provide assistance in developing implementation details for each alternative and one approach to help advance these discussions may be to draw on the staff in the Northeast Regional Office and the Northeast Fisheries Science with monitoring expertise developed during their work on the implementation of the NE Multispecies Amendment 16 monitoring programs. I believe that including these staffers in PDT discussions focused on monitoring programs could aid in the full development of the alternatives.

However, it has been difficult for my staff to provide the necessary advice on monitoring programs because the intent of some of the approaches is not entirely clear. In order for additional staff involvement to be productive, I suggest that the Committee should review the current range of alternatives, and develop a more explicit description of the purpose of each data collection. It is necessary to understand the intent of the collections in order to consider which of the new data collections would be absorbed into existing agency programs, and which would require the establishment of new programs, perhaps including programs run by third-party service providers.

For instance, there is currently an alternative under development that would require vessel holds to be certified, so that the total landed catch could be verified by a dockside monitor. It is not clear, however, how that information would be used to improve monitoring. Presumably, herring vessel reports would still be the primary source of herring catch by management area. Is the portside information intended as a tool to enable vessel owners and dealers to improve the accuracy of their herring reports? Or is it intended to provide another cross-check for identification of data anomalies?



I recognize all of the time and effort being put into the development of these alternatives by members of the Committee and PDT, and am making these suggestions in the hope you will find them constructive. If you would like to discuss them further, or have additional ideas about how we can assist, I am happy to discuss them.

Sincerely,

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

Patricia A. Kurkul  
Regional Administrator

Cc: Nancy Thompson, NEFSC  
Frank Almeida, NEFSC  
Dan Morris, NERO



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JUN - 5 2012

C.M. "Rip" Cunningham, Jr., Chairman  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950

Dear Rip:

We have reviewed the Draft Environmental Impact Statement (DEIS) for Amendment 5 to the Atlantic Herring Fishery Management Plan (Herring FMP) and have evaluated the potential effectiveness and feasibility of the alternatives under consideration. The New England Fishery Management Council (Council) has spent years developing this amendment, and there are many alternatives that offer clear improvements to the Herring FMP and can be implemented by NOAA Fisheries Service.

We support the consideration of the following alternatives in Amendment 5:

- Modifying the herring transfer at-sea and offload definitions to better document the transfer of fish;
- Expanding the possession limit restrictions to all vessels working cooperatively, consistent with requirements for pair trawl requirements;
- Eliminating the vessel monitoring system (VMS) power down provision for limited access herring vessels, consistent with VMS provisions for other fisheries;
- Establishing an "At-Sea Herring Dealer" permit to better document the transfer and purchase of herring;
- Allowing vessels to enroll as herring carriers with either a VMS declaration or letter of authorization;
- Expanding pre-trip and pre-landing notification requirements, as well as adding a VMS gear declaration, to all limited access herring vessels to help facilitate monitoring;
- Reducing the advance notice requirement for the pre-trip notification from 72 hours to 48 hours;
- Expanding vessel requirements related to at-sea sampling to help ensure safe sampling and improve data quality;
- Establishing a river herring catch cap in a future framework to directly control river herring fishing mortality; and
- Allowing the joint Sustainable Fisheries Coalition/University of Massachusetts School for Marine Science and Technology/Massachusetts Department of Marine Fisheries bycatch avoidance program to investigate providing real-time, cost-effective information on river herring distribution and fishery encounters.

Several issues that are considered in Amendment 5 have been the subject of much debate and public comment. These issues include: Increasing observer coverage; addressing net slippage;



improving dealer data; addressing river herring bycatch; and addressing midwater trawling in groundfish closed areas. NOAA Fisheries Service supports improvements to fishery dependent data collections, be it through expansion of monitoring at sea or greater quality assurance of the dealer data. We also share the Council's concern for reducing bycatch and unnecessary discarding, and appreciate the Council's work on addressing these issues.

However, some specific alternatives in Amendment 5, if adopted, would require still more thought, more robust rationale, and further justification by the Council. As we have commented previously, we share the Council's desire/need to have better data about the fishery, and we support the motive and concept of the alternatives that aim to do this. However, we must be mindful of the burden and technical details of implementing the alternatives. Additionally, we cannot give our full support for alternatives for which the agency is not likely to have sufficient resources to execute.

The following sections detail our concerns with the specified alternatives. I have noted in this section which alternatives we believe require further justification by the Council and those that we believe have serious implementation issues that we cannot overcome.

#### **Alternatives to Allocate Observer Coverage**

Amendment 5 includes alternatives that increase the level of observer coverage in the herring fishery using NOAA Fisheries Service or industry funds to support the additional coverage. While we share the Council's interest in improving fishery-dependent data, our current and anticipated budgets do not provide support for expanded levels of observer coverage. The available funds must be distributed for observers in all of our Northeast fisheries, and we are under increasing pressure to increase observer coverage in all fisheries. We simply cannot afford to support any alternatives that increase the observer coverage level in the herring fishery under agency funding. We acknowledge that the analysis in Amendment 5 demonstrates that an industry-funded observer program would put substantial financial burden on the herring industry. If the Council proceeds with an industry-funded observer program, it must carefully weigh the benefits of such a program against the costs to the industry.

Under the industry-funded observer program alternative, Amendment 5 contains a Sub-Option that would exempt states from observer service provider requirements. To ensure data quality standards, we believe that all observer service providers should be held to the same requirements. The requirements include such things as standards of conduct, reporting requirements, conflict of interest statements, and emergency action plans. I therefore recommend that the Council adopt the alternative that requires states to comply with all observer service provider requirements.

#### **Alternatives to Address River Herring Bycatch**

Analyses in the DEISs for Herring Amendment 5 and the Mid-Atlantic Fishery Management Council's Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish FMP (MSB FMP) suggest that time/area management alternatives considered in Amendment 5 are unlikely to effectively minimize the bycatch of river herring due to the variable distribution of river herring. Analyses in Amendment 14 suggest that time/area management for river herring would require the use of large areas to ensure that time/area management was not just redistributing fishing effort, possibly in a way that increased river herring catch. Maps of Northeast Fisheries Science

Center spring and fall survey catches indicate that the seasonal and inter-annual distribution of river herring is highly variable in time and space. River herring distribution is highly variable because river herring undergo extensive coast-wide migrations, largely influenced by water temperature. In addition, the incidental catch of river herring and effort pattern of fleets encountering river herring (i.e., midwater trawl, small-mesh bottom trawl) are also highly variable in time and space because those fleets target species that are highly migratory (e.g., herring, mackerel, squid, whiting).

To address our concern about time/area management, a river herring catch cap, implemented through a future framework, would be the most effective alternative in Amendment 5 at controlling the catch of river herring. Further, due to the mixed nature of the herring and mackerel fisheries, especially during January through April in Herring Management Area 2, the potential for the greatest river herring catch reduction would come from the implementation of a joint river herring catch cap for both the herring and mackerel fisheries. A catch cap has the potential to directly control river herring fishing mortality with less compliance and administrative burden than time/area management.

#### **Alternatives to Address Net Slippage**

I am concerned about the effectiveness and legal justification for the alternatives designed to reduce slippage events in the herring fishery. Alternatives that require trip termination and/or catch deduction lack a well explained basis for the threshold to trigger trip termination (i.e., either 5 or 10 slippage events in a management area) and the amount of catch deduction (i.e., 100,000 lb). Both the termination trigger and the catch deduction require clear and supportable rationale and justification. Once the threshold to trigger trip termination has been reached, all vessels that slip catch, regardless of the reason for slipping (including safety or mechanical failure), would be required to return to port. The Council must provide sufficient rationale for requiring vessels to terminate a trip after the trigger while allowing the specified number of slippage events prior to the trigger without consequence. Further, the trip termination alternatives may create the situation of the vessel operator having to choose between trip termination or bringing catch aboard the vessel despite a safety concern or mechanical failure. Such a provision must be consistent with National Standard 10 of the Magnuson-Stevens Fishery Conservation and Management Act and requires additional detailed explanation from the Council. For NOAA Fisheries Service to approve a measure like this, the Council must provide a rational basis that we can support in relation to requirements of the Magnuson-Stevens Act, the Administrative Procedure Act, and other applicable law. Additionally, we are concerned that slippage requirements are triggered when an observer is aboard the vessel. Requirements for a vessel to terminate a trip or report a slippage deduction (i.e., 100,000 lb) should not depend on the presence of an observer. NOAA Fisheries Service acknowledges that observers are helpful when evaluating compliance with slippage requirements, but implementing requirements contingent on the presence of an observer unduly places the observer in a compliance/enforcement role and creates the potential for conflict between the vessel's crew and the observer.

We also do not believe there is utility in requiring released catch affidavits for slippage events, as the affidavit will not provide any new information that is not currently collected by NEFOP. NEFOP recently implemented protocols for observers to collect detailed information on discard,

including slippage, in the herring and mackerel fisheries, such as why catch was discarded, the estimated amount of discarded catch, and estimated composition of discarded catch. For 2010, NOAA Fisheries Service determined the amount of discards in the herring fishery by extrapolating observer data to the entire herring fishery. The amount of observed herring discards ("Atlantic herring" and "herring not known") was divided by the amount of observed fish landed. That discard ratio was then multiplied by the amount of all fish landed for each trip to calculate total amount of herring discards in 2010. The amount of discards was determined for each management area and gear type. Given this new data collection, requiring vessel operators to complete a slipped catch affidavit whenever catch is slipped and an observer is aboard is an unnecessary reporting burden for the industry. As we strive to improve management of the herring fishery, observer data, both on discards and slipped catch, are the best information to understand and account for discarding.

#### **Reporting Requirements for Dealers**

Dealers are currently required to report the weight of purchased fish. A variety of methods are used by dealers to determine the weight of fish, including weighing fish on scales and estimating weights, based on volumetric measures. Because Option 2 allows dealers to continue using scales and/or volumetric estimates to determine the weight of fish, there is no appreciable difference between Option 2 and status quo.

Sub-Options 2A and 2B require dealers to document how they estimate the relative composition of mixed catch in order to facilitate quota monitoring. However, this qualitative information cannot be incorporated into quota monitoring because we use the weights provided by the dealers, regardless of the methods used to determine weights. Additionally, we are unable to evaluate, either annually or for individual transactions, the sufficiency of the information submitted.

Sub-Option 2C requires vessel owners/operators to review and validate catch data for their vessels in Fish-On-Line. This Sub-Option has the potential to improve quota monitoring and year-end catch determinations by highlighting data reporting issues. However, vessels are currently able to review both vessel and dealer reported data via Fish-On-Line and discover data issues. The Council should consider whether the utility of Sub-Option 2C outweighs the additional reporting and administrative burden associated with the requirement.

The Council should also be aware that if any of these Sub-Options become requirements, they would also become compliance measures that would affect future vessel permit issuance (similar to vessel trip report and VMS compliance).

#### **Alternatives to Address Midwater Trawl Access to Groundfish Closed Areas**

Amendment 5 considers an alternative that would prohibit midwater trawling in groundfish closed areas, unless the vessel has an experimental fishing permit. Analyses in the DEIS suggest that midwater trawl vessels are not catching significant amounts of groundfish either inside or outside the groundfish closed areas. Additionally, the majority of groundfish bycatch by midwater trawl vessels is haddock, and the catch of haddock by midwater trawl vessels is already managed through a haddock catch cap. The data do not indicate that prohibiting midwater trawling in groundfish closed areas is necessary for groundfish conservation.

In summary, I urge the Council to select alternatives that effectively monitor herring, minimize bycatch in the herring fishery, and do not significantly expand the compliance and administrative burden of the herring fishery without a commensurate benefit to data quality. Alternatives in Amendment 5 have complimentary alternatives in the Amendment 14 to the MSB FMP. Given the significant overlap between the herring and mackerel fisheries, I also encourage the Council to consider the recommendations by the Mid-Atlantic Fishery Management Council on Amendment 14 to the MSB FMP when recommending monitoring and bycatch measures for Amendment 5.

Finally, various reviewers noted technical issues with the DEIS that will need to be addressed in the final EIS. My staff will provide those comments directly to Council staff. I appreciate the time and effort that the Council and Council staff have put into this amendment and I look forward to working with the Council to complete this action.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Morris', with a long horizontal flourish extending to the right.

Daniel S. Morris  
Acting Regional Administrator



①



New England Fishery Management Council

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C. M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

August 9, 2013

Mr. John Bullard  
Regional Administrator, Northeast Region  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

Dear John:

Thank you for your extensive response to my letter. Your response shows some misrepresentations in my comments to you. I apologize to you and your staff that felt slighted by those comments. My intent was not to insult people, but to get the process to a better place.

What I will reiterate is that I received more comment on this decision than any other. It was not from just one user group. I heard from industry, ENGO's and Council members. Most expressed the same sentiment. So where does that leave us? I am not sure.

The Council does need to think about how it interacts with NERO. The fact that so many diverse folks had issues with the Amendment 5 decision indicates a breakdown in the process.

Again, my hope is that the process can be improved. If the NERO/Council relationship appears to have been damaged, it was my decision not the Council's to write the letter. I still feel the intent was good, but it could have been better executed.

I agree with you that we should move on from here.

Sincerely,

C.M. "Rip" Cunningham  
Chairman

