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CORRESPONDENCE

- A. Choir Coalition – Steve Weiner
- B. ABTA – Rich Ruais
- C. Herring Alliance – Roger Fleming
- D. Herring Alliance – Roger Fleming re: Draft FW 3
- E. CCCFA - John Pappalardo
- F. Katharine Deuel



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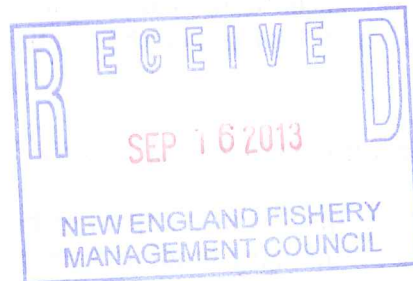
Coalition for the Atlantic Herring Fishery's Orderly, Informed and Responsible Long Term Development

September 16th, 2013

Doug Grout, Chair
NEFMC Herring Committee
50 Water Street, Mill #2
Newburyport, MA 01950

Re: Amendment 5

Dear Doug,



I am writing today on behalf of CHOIR to comment on the recent developments in regards to Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP), and to offer some thoughts on how to proceed from here. CHOIR is an industry coalition made up of over 650 commercial and recreational fishing organizations, fishing and shore side businesses, researchers and eco-tourism companies working to promote proper management of the Atlantic herring fishery.

It would be an understatement to say that we are disappointed with the decision made by NMFS to disapprove some of the most critical aspects of Amendment 5. This amendment was the result of many years of hard work on behalf of the Council, its staff, NMFS staff, and stakeholders from all sides of the issue, and much effort was put in to make sure the measures included in the document would be both effective and approvable. This effort was undertaken as a result of widespread concerns about the practice of midwater trawling—concerns that are just as widespread today.

It is impossible to understand how, after five years of development, overwhelming support from the public, and approval by the Council, NMFS decided to simply throw out measures that form the very backbone of the monitoring program developed in Amendment 5—namely, the measures to implement 100% observer coverage, slippage caps with trip termination, and catch weighing. As we have made clear to NMFS, we strongly disagree with the rationale given for the actions they took, and we do not believe disapproval was the right choice. That said, the purpose of this comment is not to spend two pages voicing frustration, but it is to try and offer some ideas and solutions on how best to move forward from here.

First and foremost, we believe that the solution here is for the Council and NMFS to work together towards revising Amendment 5 with the goal of having it approved by the Secretary of Commerce in a timely fashion. While it will naturally take some

amount of extra time to “fix” the document, such a delay would be acceptable. But in order for this to become a reality, both the Council and NMFS will have to show a high level of leadership and will have to be totally focused on the specific problems that need to be addressed.

Before addressing specific issues here, the natural first step towards revising Amendment 5 will be for NMFS to provide the Council with recommendations on how the Council could address the aspects of the three critical measures mentioned above—100% observer coverage and the its funding program, slippage caps with trip termination, and a catch weighing system—that led to disapproval. That is, NMFS must explain to the Council, in clear language, what needs to be done to make the measures acceptable. This is an avenue outlined clearly in the Magnuson-Stevens Act and represents the quickest path towards a solution in the given situation.

100% Observer Coverage and Funding

In June 2012, the Council approved both 100% observer coverage for A and B vessels and an industry funding mechanism. This funding system was intended to require the industry to pay for whatever amount of the 100% coverage that the government could not cover. While there was a so-called “target” of \$325 included in the motion, this was not intended to be a “maximum” level of funding. Unfortunately, NMFS eventually disapproved 100% coverage because of (in part) what they perceived to be an unfunded mandate, along with the resulting concerns connected to the Anti-deficiency Act.

We would urge the Council to officially clarify its intent in regard to 100% observer and the related funding mechanism. The problems outlined by the agency would be solved if the Council made clear that the intent all along was to have 100% coverage and to have the industry pay the difference between the total cost and available federal funds.

Additionally, it is our belief that the intent of the Council was to require the industry to contract with third party providers and then pay them as necessary, and not to have money being exchanged between the government and the industry. But this exchange of money, and the legal issues surrounding such an exchange, is another reason NMFS disapproved the measure. If the Council were to clarify that the goal was to have the industry pay for the costs not covered by the federal government, it would remove one of the major hurdles in the way of approval.

Lastly, we would add that, in our view, the issue of cost sharing is hardly a major obstacle. There are numerous methods that could be devised to coordinate such a program. The FMAT was developed specifically to answer these questions, but the problem has been a lack of urgency and leadership that has essentially crippled the FMAT. Therefore, it is important that the Council push for the clock to begin running on the FMAT timeline, and to both help fill the leadership void and to urge NMFS to do its part, as well.

Slippage Caps with Trip Termination

Along with 100% coverage, the measure to implement slippage caps with trip termination represents the very core of any effective monitoring system in this fishery. After disapproving the Council's preferred alternative, what was left was nothing of substance. As such, it is absolutely necessary to revise the measure to ensure its eventual approval.

We recommend that the Council modify its original language slightly to address the concerns outlined by NMFS, despite our belief that these concerns are unfounded. Originally, the measure called for a vessel to terminate its trip completely if it slipped its net in an area whose cap had been met for the gear type in question. As a way to revise the measure to allow for approval, the Council should make require a vessel in this situation to simply exit just the area in question for the duration of that trip. Not only would such a revision alleviate the concerns voiced by NMFS pertaining to fairness and safety, but it would also align the measure more closely to the system in place currently in Closed Area I.

Catch Weighing

After spending enormous amounts of time on the development of a new and effective catch weighing system, it should have been clear to NMFS that the Council was not asking for status quo. Yet, unfortunately, this is how the agency interpreted the measure. In order to address this glaring deficiency, we would urge the Council to add language into the measure to make clear that some level of verification was intended. This will clarify the Council's intent and will signal to NMFS that something well beyond the current practice of estimation is acceptable. As was the goal all along, by requiring verification, the industry members will devise effective systems that will allow for accurate accounting of what is being brought to shore.

All parties involved spent a great deal of time and effort making Amendment 5 into the document that it is today. We believe that if the Council and NMFS were to focus on the problems at hand, provide much needed leadership, and make some of the changes and clarifications outlined above, that the rules could be on the water in a timely fashion. We urge you to work with the agency to find a way to make this happen. These rules were developed because of real concerns, and these concerns have not gone away. It is unacceptable to either weaken this document any more than is mentioned above, or to proceed in such a manner that causes needless delays.

Thanks for your time,



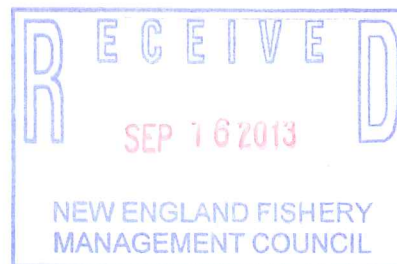
Steve Weiner, Chair

B.



September 16th, 2013

Doug Grout, Chair
NEFMC Herring Committee
50 Water Street, Mill #2
Newburyport, MA 01950



Re: Amendment 5

Dear Doug,

We are writing today on behalf The American Bluefin Tuna Association (ABTA) to comment on the recent developments in regards to Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP), and to offer some thoughts on how to proceed from here. ABTA is the largest industry association protecting both recreational and commercial bluefin tuna interests. ABTA represents thousands of fishermen and shore side businesses. ABTA has been at the forefront of supporting bluefin tuna scientific research.

It would be an understatement to say that we are disappointed with the decision made by NMFS to disapprove some of the most critical aspects of Amendment 5. This amendment was the result of many years of hard work on behalf of the Council, its staff, NMFS staff, and stakeholders from all sides of the issue, and much effort was put in to make sure the measures included in the document would be both effective and approvable. This effort was undertaken as a result of widespread concerns about the practice of midwater trawling—concerns that are just as widespread today.

It is impossible to understand how, after five years of development, overwhelming support from the public, and approval by the Council, NMFS decided to simply throw out measures that form the very backbone of the monitoring program developed in Amendment 5—namely, the measures to implement 100% observer coverage, slippage caps with trip termination, and catch weighing. As we have made clear to NMFS, we strongly disagree with the rationale given for the actions they took, and we do not believe disapproval was the right choice. That said, the purpose of this comment is not to spend two pages voicing frustration, but it is to try and offer some ideas and solutions on how best to move forward from here.

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by the Secretary of Commerce in a timely fashion. While it will naturally take some amount of extra time to “fix” the document, such a delay would be acceptable. But in order for this to become a reality, both the Council and NMFS will have to show a high level of leadership and will have to be totally focused on the specific problems that need to be addressed.

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Lastly, we would add that, in our view, the issue of cost sharing is hardly a major obstacle. There are numerous methods that could be devised to coordinate such a program. The FMAT was developed specifically to answer these questions, but the problem has been a lack of urgency and leadership that has essentially crippled the FMAT. Therefore, it is important that the Council push for the clock to begin running on the FMAT timeline, and to both help fill the leadership void and to urge NMFS to do its part, as well.

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Catch Weighing

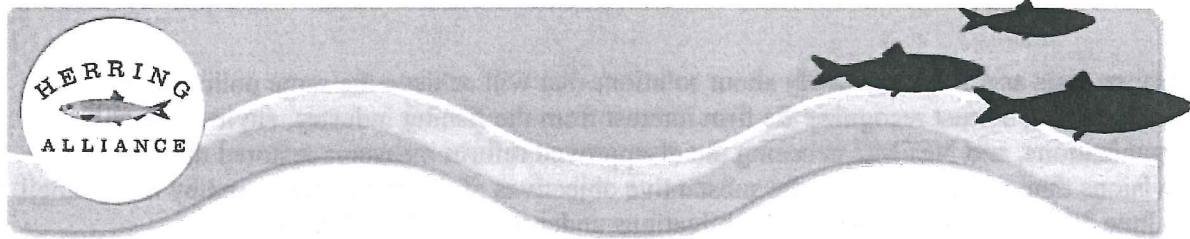
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Thanks for your time,

Rich Ruais

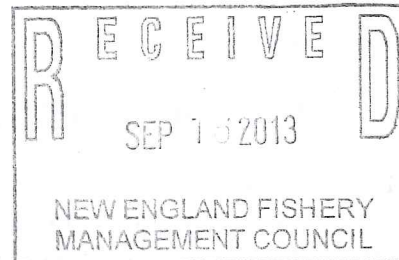
Executive Director ABTA



C

September 16, 2013

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



Terry Stockwell, Acting Chairman
Doug Grout, Herring Committee Chairman
Tom Nies, Executive Director
New England Fishery Management Council
50 Water Street
Newburyport, Massachusetts 01950

Dear Mr. Bullard, Mr. Stockwell, Mr. Grout, and Mr. Nies:

We are writing on behalf of the Herring Alliance¹ to express our disappointment at the disapproval of the core fishery reform measures adopted by the New England Fishery Management Council (NEFMC) in Amendment 5 to the Atlantic Herring Fishery Management Plan. We urge you to work together to find solutions through a revised Amendment 5 that can be approved and implemented by the Secretary in as short a time frame as possible.

The midwater trawl fishery must be reformed if it is to continue to operate in New England and Mid-Atlantic waters. The sensible and necessary measures NMFS disapproved in Amendment 5 were worked on diligently by stakeholders, the NEFMC, and NMFS staff for many years. We disagree that disapproval was necessary under applicable law. The disapprovals were also inconsistent with both the analysis in the FEIS and the overwhelming body of public comment from New England's fishing industry and the public. This letter, however, is intended to provide recommendations for moving forward with actions by NMFS and the NEFMC that would "fix" the disapproved Amendment 5 measures related to 100 percent observer coverage, slippage caps and trip termination, and mandatory catch weighing, consistent with the process for resubmittal of disapproved measures outlined in the Magnuson-Stevens Act.

In moving forward, NOAA Fisheries must demonstrate leadership, and all interested parties must work together to address the reasons for disapproval and get the intended fishery reforms implemented in a timely way. First, reform-minded stakeholders must move past these specific

¹ The Herring Alliance includes 71 organizations representing nearly 2.5 million individuals. The Herring Alliance is concerned about the Atlantic coast's forage fish, such as Atlantic herring, river herring and shad, and the impacts of forage fish fisheries on the ecosystem through food web depletion and bycatch of non-target species.

disapprovals and think creatively about solutions that will achieve the same policy goals. Second, NMFS must recognize the firm interest from the fishing industry, environmental organizations, and NEFMC in seeing the disapproved reform measures restored through revisions that continue to meet the substantive objectives of the measures passed by the Council in June 2012. Consistent with their obligations under the Act, NMFS must make recommendations, including for clarifications of intent, modifications, or other actions which will facilitate approval and implementation of the disapproved measures. NMFS must also be prepared to quickly respond to any resubmitted Amendment 5 with a Final Rule that gets the measures on the water as quickly as possible. Finally, the Council must be prepared to take swift and decisive action in September to clarify or revise certain elements of Amendment 5 to meet NMFS's recommendations, and request that NMFS quickly approve and implement the revised Amendment 5 measures.

RECOMMENDATIONS FOR REVISION OF AMENDMENT 5

The Magnuson-Stevens Act is clear that when disapproving all or part of a Council FMP amendment, NMFS is required to make "*recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.*"² Such recommendations were not made as part of the disapproval notice NMFS sent to the NEFMC on Amendment 5.³ The NEFMC may then resubmit a revised amendment for review and approval.⁴

The Herring Alliance requests that NMFS immediately prepare and send to the NEFMC a set of recommendations for actions to be taken to address the specific inconsistencies with the law found by NMFS as a basis for its disapproval of the 100 percent observer coverage, the slippage caps and trip termination, and the catch weighing measures in Amendment 5. In order to facilitate this process and address NMFS's concerns about the funding sources and mechanisms for the 100 percent observer coverage, the fairness, safety, and practicability of the slippage caps and slippage accountability measures, and to distinguish between the status quo catch weighing regime and the more accountable one passed by the NEFMC in June 2012, we suggest NMFS make recommendations, and the NEFMC take actions, consistent with the following:⁵

Remedial Action #1:

The Council should clarify to NMFS its intent that its June 2012 final Amendment 5 action adopted as its highest priority 100 percent observer coverage on Category A and B herring vessels, even if federal appropriations fall short and industry must pay more than the \$325 per day cost target. This could result in the vessel paying as much as 100 percent of the costs of an at-sea observer in order for the vessel to fish.

² See 16 U.S.C. § 1854 at 304(a)(3)(C).

³ See July 19, 2013, Letter from NMFS Regional Administrator John Bullard to former NEFMC Chairman Rip Cunningham.

⁴ See 16 U.S.C. § 1854 at 304(a)(4).

⁵ The Herring Alliance recognizes that there may be different or additional remedial actions that could address NMFS's legal concerns leading to disapproval.

Rationale: NMFS disapproved the 100 percent observer coverage measure due to its concern the measure established an unfunded mandate, and as a result conflicted with the Anti-Deficiency Act. This remedial action would reiterate the Council's June 2012 intent, making it clear to NMFS that industry funds at up to 100 percent of the at-sea observer costs are to be used in the event of a federal funding shortfall. This action would therefore address NMFS's stated legal concerns.

Remedial Action #2:

The Council should clarify to NMFS that under the Amendment 5 industry-funded observer program there is no intent, or need, for funds to be transferred from industry to the federal government. Instead, Amendment 5 is intended to require 100 percent observer coverage, with vessels taking responsibility for contracting for coverage with third-party service providers, and paying these providers directly for all costs not covered by any other source.

Rationale: NMFS also indicated that it had legal concerns based on the Miscellaneous Receipts Act, and that no current "mechanism" exists for the Amendment 5 industry-funded observer program or for NMFS to contribute to this coverage should funds be available (i.e. cost-sharing). It was not the Council's intent that NMFS would collect the industry contribution from the vessel owners and contract for or provide the observer coverage. NMFS should simply require the coverage, and vessels would contract with certified third party service providers. There are diverse solutions available for sharing costs. For example, NMFS could reimburse service providers and/or vessel owners for part of the cost, either directly or through a third party as they do under the West Coast groundfish trawl observer program. NMFS could also simply fund in full the number of observer days their budget can accommodate, and require that industry contract with and pay service providers in full for the rest, in essence converting the industry contribution into a different "currency" with the same end result, similar to the structure established for New England Groundfish sectors.

Remedial Action #3:

The Council should clarify that any federal contribution is subject to Congressional appropriations and the availability of funds under the NMFS budget.

Rationale: This would further assure NMFS and the Department of Commerce Office of General Counsel that there are no Anti-Deficiency Act concerns warranting disapproval of the observer coverage measures.

Remedial Action #4:

The Council should modify the slippage accountability measures triggered once the slippage caps are reached. Specifically, the Council should revise this measure to require any vessel slipping catch after the slippage cap for that gear type and management area has been reached to exit that management area and not fish in that management area for the duration of that trip.

Rationale: This modification from the original Amendment 5 final measure, that would have required the vessel to terminate its trip, represents a significant concession to concerns about the safety, legality, fairness, and practicability of these measures, while still maintaining the critical three-part structure of the Council's approach to addressing slippage. Those three parts include a

prohibition on the practice of dumping, limited exceptions to ensure vessel and human safety, and a system of accountability measures to prevent their abuse. In disapproving the slippage caps and trip termination, NMFS cut out one of the legs of this three-legged stool, undermining the Council's work. In addition, this modification would make these measures hew more closely to the successful model on which they are based- the pilot program currently in place in Georges Bank Closed Area I, since instead of trip termination, a herring vessel would only be required to leave the herring management area.

Remedial Action #5:

The Council should clarify its intent for robust, mandatory catch weighing in the herring fishery and make it clear that the measures it passed are, contrary to NMFS's interpretation, not the same as status quo. This could most easily be accomplished by adding the words "and verifiably" to the council motion on catch weighing from June 2012. Thus the motion would read "*require dealers to accurately **and verifiably** weigh all fish and require documentation for individual landings submissions on how species composition of mixed catch is estimated.*"

Rationale: This action would clarify the Council's intent to end the current practice allowing many fishing operations to report unverified, visual estimates of the overall landed weight. The Council intended for herring vessel owners and dealers to be allowed to design and utilize the most effective and efficient weighing methodology and technology possible for their unique operations. Any such approach, however, must be accurate and verifiable by both parties involved in the landing and sale, and by a third party such as law enforcement, observer, or port sampler.

Thank you for considering these recommendations.

Sincerely yours,

/s/Roger Fleming

Roger Fleming
Erica Fuller
Attorneys
Earthjustice

On behalf of the Herring Alliance

Herring Alliance Member List

Alewives Anonymous
Rochester, Massachusetts
www.plumblibrary.com/alewives.html

Blue Ocean Institute
Cold Spring Harbor, New York
www.blueocean.org

Buckeye Brook Coalition
Warwick, Rhode Island
www.buckeyebrook.org

Chesapeake Bay Foundation
Annapolis, Maryland
www.cbf.org

Conservation Law Foundation
Boston, Massachusetts
www.clf.org

Delaware Audubon Society
Christiana, Delaware
www.delawareaudubon.org

Delaware River Shad Fishermen's Association
Hellertown, Pennsylvania
www.drfsa.org

Earthjustice
Washington, DC
www.earthjustice.org

Eightmile River Wild & Scenic Coordinating
Committee
Haddam, Connecticut
www.eightmileriver.org

Environmental Entrepreneurs (E2)
Boston, Massachusetts
www.e2.org

Environment America
Washington, DC
www.environmentamerica.org

Environment Connecticut
West Hartford, Connecticut
www.environmentconnecticut.org

Environment Maine
Portland, Maine
www.environmentmaine.org

Environment Massachusetts
Boston, Massachusetts
www.environmentmassachusetts.org

Environment New Hampshire
Concord, New Hampshire
www.environmentnewhampshire.org

Environment New Jersey
Trenton, New Jersey
www.environmentnewjersey.org

Environment New York
New York, New York
www.environmentnewyork.org

Environment North Carolina
Raleigh, North Carolina
www.environmentnorthcarolina.org

Environment Rhode Island
Providence, Rhode Island
www.environmentrhodeisland.org

Environment Virginia
Washington, DC
www.environmentvirginia.org

Farmington River Watershed Association
Simsbury, Connecticut
www.frwa.org

Float Fishermen of Virginia
Roanoke, Virginia
www.floatfishermen.org

Friends of the Bay
Oyster, NY
www.friendsofthebay.org

Friends of the Rappahannock
Fredericksburg, Virginia
www.riverfriends.org

Herring Alliance Member List

Friends of the Rivers of Virginia
Roanoke, Virginia
www.forva.giving.officelive.com

Gateway Striper Club
Maspeth, NY

Great Egg Harbor National Scenic and Recreational
River Council
Newtonville, New Jersey
www.gehwa.org/river.html

Greater Boston Trout Unlimited
Boston, Massachusetts
www.gbtu.org

Greenpeace
Washington, DC
www.greenpeace.org

Hackensack Riverkeeper
Hackensack, New Jersey
www.hackensackriverkeeper.org

Hudson River Fishermen's Association
Ridgefield Park, New Jersey
www.hrfanj.org

Ipswich River Watershed Association
Ipswich, Massachusetts
www.ipswichriver.org

Huntington-Oyster Bay Audubon Society
Huntington, NY
www.huntingtonaudubon.org

Island Institute
Rockland, Maine
www.islandinstitute.org

James River Association
Richmond, Virginia
www.jamesriverassociation.org

Jones River Watershed Association
Kingston, Massachusetts
www.jonesriver.org

Juniata Valley Audubon
Hollidaysburg, Pennsylvania
www.jvas.org

Long Island Chapter of Trout Unlimited
Lowell
Long Island, New York
www.longislandtu.org

Parks & Conservation Trust
Lowell, Massachusetts
www.lowelllandtrust.org

Massachusetts Baykeeper
Watertown, Massachusetts
www.massbaykeeper.org

Midshore Riverkeeper Conservancy
Easton, Maryland
www.midshoreriverkeeper.org

Mystic River Watershed Association
Arlington, Massachusetts
www.mysticriver.org

National Audubon Society
Washington, DC
www.audubon.org

Natural Resources Defense Council
Washington, DC
www.nrdc.org

Neponset River Watershed Association
Canton, Massachusetts
www.neponset.org

Neuse Riverkeeper Foundation
New Bern, North Carolina
www.neuseriver.org

New England Coastal Wildlife Alliance
Middleboro, Massachusetts
www.necwa.org

North Fork Environmental Council
Mattituck, New York
www.nfec1.org

Herring Alliance Member List

North and South River Watershed Association
Norwell, Massachusetts
www.nsrwa.org

NY/NJ Baykeeper
Keyport, New Jersey
www.nynjbaykeeper.org

Oceana
Washington, DC
www.oceana.org

Ocean River Institute
Cambridge, Massachusetts
www.oceanriver.org

Operation SPLASH
Freeport, New York
www.operationsplash.org

Pamlico-Tar River Foundation
Washington, North Carolina
www.ptrf.org

Parker River Clean Water Association
Byfield, Massachusetts
www.businessvision.info/parker_river

Peconic Baykeeper
Quogue, New York
www.peconicbaykeeper.org

PennEnvironment
Philadelphia, Pennsylvania
www.pennenvironment.org

Pennsylvania Organization for Watersheds and Rivers
Harrisburg, Pennsylvania
www.pawatersheds.org

The Pew Charitable Trusts
Washington, DC
www.pewenvironment.org

Riverkeeper
Ossining, New York
www.riverkeeper.org

Rivers Alliance of Connecticut
Litchfield, Connecticut
www.riversalliance.org

Seatuck Environmental Association
Islip, New York
www.seatuck.org

Shark Angels
New York, New York
www.sharkangels.org

Shenandoah Riverkeeper
Washington, DC
www.shenandoahriverkeeper.org

South River Federation
Edgewater, Maryland
www.southernriverfederation.net

Spruill Farm Conservation Project
Roper, North Carolina
www.spruillfarm.org

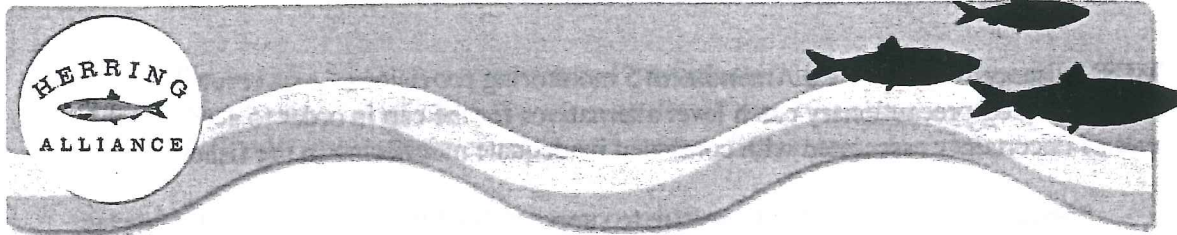
West and Rhode Riverkeeper
Shady Side, Maryland
www.westrhoderiverkeeper.org

Waterkeepers Carolina
Washington, North Carolina
www.waterkeeperscarolina.org

Waterkeepers Chesapeake
Washington, DC
www.waterkeeperschesapeake.org

Watershed Action Alliance of Southeastern Massachusetts
Plymouth, MA
www.watershedaction.org

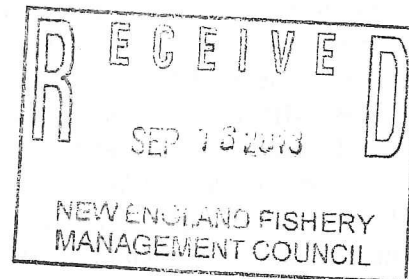
Wild Oceans
Leesburg, Virginia
www.savethefish.org



August, 16, 2013

Douglas Grout
Herring Committee Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950
douglas.grout@wildlife.nh.gov

Lori Steele
Herring Plan Coordinator
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950
lsteel@nefmc.org



RE: Draft Framework 3 to the Atlantic Herring FMP (to establish catch caps for river herring/shad in the herring fishery)

Dear Mr. Grout and Ms. Steele:

We are writing on behalf of the Herring Alliance¹ regarding Draft Framework 3 to the Atlantic Herring Fishery Management Plan (FMP). The Herring Alliance previously commented on the need to implement effective catch caps for river herring and shad² in New England and the Mid-Atlantic that are based on the best available science and consistent with National Standard 9.³ We support your development and implementation of a catch cap as quickly as possible,⁴ along with your efforts to coordinate the Atlantic Herring FMP river herring and shad cap with the Mackerel, Squid and Butterfish FMP river herring and shad cap recently developed by the Mid-Atlantic Council. We are concerned, however, that the caps will be undermined by

¹ The Herring Alliance includes 71 organizations representing nearly 2.5 million individuals. The Herring Alliance is concerned about the Atlantic coast's forage fish, such as Atlantic herring, river herring and shad, and the impacts of forage fish fisheries on the ecosystem through food web depletion and bycatch of non-target species.

² For the purposes of this letter "river herring and shad" refers to four (4) species: alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), American shad (*Alosa sapidissima*) and hickory shad (*Alosa mediocris*).

³ See November 8, 2011 Letter from Herring Alliance to Rip Cunningham re catch caps; see also May 21, 2013 Letter from Herring Alliance to Jason Didden and Lori Steele re catch caps for river herring and shad.

⁴ Action to minimize bycatch is required under the Opinion and Court Order in *Flaherty v. Bryson*, 850 F. Supp. 2d 38, 58-59 (D.D.C. 2012) ("The existence of an earlier rule to reduce bycatch and two measures that, at best, have only an incidental effect on bycatch does not show that NMFS ever considered the significant issue of whether the Atlantic Herring FMP minimizes bycatch or bycatch mortality to the extent practicable based on the best available science. 16 U.S.C. §§ 1851(a)(2), (9)"); ("Amendment 4 is remanded to NMFS for reconsideration and action consistent with the Court's March 8, 2012, Opinion and this Memorandum Order." *Flaherty v. Bryson*, Case 1:11-cv-00660-GK, Document 41 (August 02, 2012) (Memorandum Order).

NMFS's disapproval of critical Amendment 5 monitoring provisions. As a result, we request that you develop precautionary catch level alternatives for the cap in order to account for high levels of uncertainty associated with continued inadequate monitoring in the fishery.

Specifically, we urge the Committee to support the following recommendations in anticipation of the Council's final catch cap action scheduled for the September 24-26 NEFMC meeting. These recommendations will help ensure the Council and NMFS adopt and implement a meaningful river herring and shad catch cap as quickly as possible.

1. Adhere to the NEFMC's goals and objectives for Framework 3, as adopted in June of this year, to reduce all catch (bycatch and incidental catch) of river herring and shad from recent levels in the herring fishery to the extent practicable.⁵ This is consistent with the goals of the MAFMC's river herring and shad cap, as expressed in Amendment 14 to the MSB FMP and as ultimately adopted through MSB specifications earlier this year.⁶ "Reducing" bycatch is also required by the Magnuson-Steven's Act's National Standard 9 and applicable case law.⁷
2. Recommend a cap or cap alternatives that will place a hard overall ceiling on river herring and shad catch in the fishery. The Committee should recommend caps for all areas, including Georges Bank (even if the cap for this area is set "higher" relative to other areas based on its low recent history of documented interaction with river herring and shad). In addition, an alternative should be included to "hard-wire" a process that triggers a future cap on Georges Bank automatically if interactions with river herring and shad increase to a specific threshold amount.
3. Ensure that final selection of cap levels are science-based and precautionary enough to protect river herring and shad by recommending that the Council require SSC review of the cap levels and the methodology used to set them.
4. Recommend that once river herring and shad catch in a catch cap area is projected to reach 95 percent of the cap, the directed herring fishery would close in that catch cap area, and all vessels would be subject to the incidental possession limit in the catch cap area for the remainder of the fishing year consistent with Option 2.⁸ This would also be consistent with the MAFMC's final adopted methodology for projection-based closure under their river herring and shad cap.

The Council established goals and objectives for Framework 3 that intended an effective overall limit on removals of river herring and shad to reduce bycatch in all years. Unfortunately, the Draft Discussion document unnecessarily confuses and aims to weaken the clear goals and

⁵ See NEFMC, Draft Discussion Document for Framework 3 to the Atlantic Herring Fishery Management Plan, at page 9, available at <http://www.nefmc.org/herring/cte%20mtg%20docs/130918-18/Draft%20Fw%203%20Discussion%20Document%20September%20NEFMC%20Mtg.pdf>

⁶ See MAFMC, Final Supplemental Environmental Impact Statement for Amendment 14 to the MSB FMP, page 10 of 526, available at <http://www.nero.noaa.gov/regis/2013/August/13smbamend14prfeis.pdf>

⁷ 16 U.S.C. § 1851(9) ("Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch."); *Conservation Law Foundation v. Evans*, 209 F. Supp. 2d 1, 17 (D.D.C. 2001) ("Finally, by keeping intact the status quo, Defendants refuse to give effect to the clear will of Congress, which expressly directed Defendants to more accurately measure and reduce bycatch.").

⁸ See Draft FW3 Discussion Document at p. 17 (Options for triggering closure of a catch cap area).

objectives of this framework to reduce bycatch, consistent with Magnuson-Stevens Act requirements, by suggesting new, separate and weaker objectives for the cap, as it applies to fishing years 2014-2015:

Note: The Herring PDT recommends that the Council identify objectives for the RH/S catch caps for 2014-2015 before specifying the cap amounts. For example, is the objective for 2014-2015 to reduce catch of RH/S from recently observed levels, or to cap catch at the highest level observed in recent years, or to cap catch at a level that promotes responsible management and provides an opportunity to evaluate the monitoring issues? The identification of a specific objective for specifying the 2014-2015 RH/S catch caps should influence which option is selected.⁹

Capping catch at the highest level observed in recent year or merely monitoring catch is simply not adequate. As discussed above and in our prior correspondence, National Standard 9 requires that FMPs minimize bycatch to the extent practicable. The catch cap in Framework 3 is the only measure contemplated in the Atlantic herring fishery for river herring and shad, for at least the 2014 fishing year that will minimize bycatch consistent with the Magnuson-Stevens Act and the Courts' Opinion and Remedial Order in *Flaherty v. Bryson*.¹⁰ Implementing this catch cap in time for the start of the new fishing year on January 1, 2014 is both necessary to comply with the law to minimize bycatch of river herring and shad in the herring fishery, and supported by a large and diverse group of stakeholders.

A cap on all areas, including Georges Bank and/or an overall fishery-wide limit is consistent with other limits in the fishery. We generally support the process for setting and modifying catch caps for RH/S in the Atlantic herring fishery in Alternative 2, however, we are concerned that the Herring PDT (technical team) failed to recommend an offshore Georges Bank cap for 2014-2015. See Section 2.2.4 Draft FW 3 Discussion Document at p. 22. Although there have been low levels of observed river herring and shad catch documented on Georges Bank in the last five years, the three year specifications process in the herring fishery is not reactive enough to effectively limit total catch of river herring and shad if they are encountered with greater frequency in future years due to river herring and shad recovery, river herring and shad movements related to the changing climate regime, or changes in fishery practices or gear. We urge you to consider a cap on all areas, including Georges Bank (even if it is set at a higher level relative to recent catch than in other areas) and promote other backstop provisions such as an overall fishery-wide limit. Alternatively, we also urge you to consider a hard-wired process that automatically triggers a future cap if interactions with river herring and shad increase to a certain limit.

The Scientific and Statistical Committees (SSC) should have a role in assessing the caps and the methodology upon which the caps are determined. River herring and shad must be added as

⁹ NEFMC, Draft Discussion Document for Framework 3 to the Atlantic Herring Fishery Management Plan, at p.9.

¹⁰ See *Flaherty v. Bryson*, 850 F. Supp. at 59 (holding NMFS violated MSA by failing to minimize bycatch in Atlantic herring fishery to extent practicable); see also Remedial Order at p. 12. Although the NEFMC prioritized an amendment to add river herring and shad as stocks to the Atlantic herring FMP, it has taken no further action to advance the amendment. The Mid-Atlantic Council is developing Amendment 15 to the MSB FMP to add river herring and shad as federally-managed stocks in the MSB FMP, this amendment is unlikely to be completed in time for the start of the 2014 fishing year.

stocks in the Atlantic Herring FMP, which would require that the Acceptable Biological Catch (ABC) be determined by the SSC. In the mean-time, the catch cap effectively serves as an interim step to limit annual catch and, thus the SSCs (NEFMC and MAFMC) should review the catch cap methodology and the level of mortality established annually with a similar level of oversight to that applied to setting an ABC. Similar to the haddock cap, the yellowtail cap, and the butterfish cap, the review should include: 1) the scientific uncertainty of the catch cap estimate; 2) estimates of river herring and shad mortality; and 3) status and trends of the species. This work should be guided by the best scientific information available, as required by National Standard 2.

A well founded decision was made that the annual cap for river herring and shad should be based upon catch history using the best available data from observed trips. Considering the nature of the available catch data, including outliers and uncertainty about the form of the underlying statistical distribution, the expected annual catch is most appropriately estimated from the median. This same conclusion was reached in the Mid-Atlantic. The annual variability has been noted by the PDT and this must be reflected in the process of arriving at the actual cap amount from the median. Since the goal of the cap in Framework 3 is to reduce the mortality of river herring and shad, the cap should clearly be no more than the median to start with and should be reduced below the median based upon the goal of reducing annual catch, to reflect the uncertainty inherent in the catch estimates, and according to other factors typically considered in establishing history-based limits.¹¹

Once catch in a catch cap area is projected to reach 95 percent of the quota, the directed herring fishery in the catch cap area should close, and all vessels should be subject to the incidental possession limit in the catch cap area for the remainder of the fishing year consistent with Option 2. See FW 3 Discussion Document at p. 17. This is consistent with other closure thresholds in the herring fishery, which are based on analyses of management uncertainty and the need to prevent overages. This is also consistent with the provisions approved by the Mid-Atlantic Council for the river herring and shad catch cap in the Atlantic mackerel fishery.

Thank you for considering these recommendations.

Sincerely yours,

/s/ Roger Fleming

Roger Fleming

Erica Fuller

Attorneys

Earthjustice

On behalf of the Herring Alliance

¹¹ National Oceanic and Atmospheric Administration Technical Memorandum NMFS-SEFSC-616, "Calculating Acceptable Biological Catch for Stocks that Have Reliable Catch Data Only (Only Reliable Catch Stocks – ORCS)," May 2011, http://www.pifsc.noaa.gov/tech/NOAA_Tech_Memo_SEFSC_616.pdf.

Herring Alliance Member List

Alewives Anonymous
Rochester, Massachusetts
www.plumblibrary.com/alewives.html

Blue Ocean Institute
Cold Spring Harbor, New York
www.blueocean.org

Buckeye Brook Coalition
Warwick, Rhode Island
www.buckeyebrook.org

Chesapeake Bay Foundation
Annapolis, Maryland
www.cbf.org

Conservation Law Foundation
Boston, Massachusetts
www.clf.org

Delaware Audubon Society
Christiana, Delaware
www.delawareaudubon.org

Delaware River Shad Fishermen's Association
Hellertown, Pennsylvania
www.drfsfa.org

Earthjustice
Washington, DC
www.earthjustice.org

Eightmile River Wild & Scenic Coordinating
Committee
Haddam, Connecticut
www.eightmileriver.org

Environmental Entrepreneurs (E2)
Boston, Massachusetts
www.e2.org

Environment America
Washington, DC
www.environmentamerica.org

Environment Connecticut
West Hartford, Connecticut
www.environmentconnecticut.org

Environment Maine
Portland, Maine
www.environmentmaine.org

Environment Massachusetts
Boston, Massachusetts
www.environmentmassachusetts.org

Environment New Hampshire
Concord, New Hampshire
www.environmentnewhampshire.org

Environment New Jersey
Trenton, New Jersey
www.environmentnewjersey.org

Environment New York
New York, New York
www.environmentnewyork.org

Environment North Carolina
Raleigh, North Carolina
www.environmentnorthcarolina.org

Environment Rhode Island
Providence, Rhode Island
www.environmentrhodeisland.org

Environment Virginia
Washington, DC
www.environmentvirginia.org

Farmington River Watershed Association
Simsbury, Connecticut
www.frwa.org

Float Fishermen of Virginia
Roanoke, Virginia
www.floatfishermen.org

Friends of the Bay
Oyster, NY
www.friendsofthebay.org

Friends of the Rappahannock
Fredericksburg, Virginia
www.riverfriends.org

Herring Alliance Member List

Friends of the Rivers of Virginia
Roanoke, Virginia
www.forva.giving.officelive.com

Gateway Striper Club
Maspeth, NY

Great Egg Harbor National Scenic and Recreational
River Council
Newtonville, New Jersey
www.gehwa.org/river.html

Greater Boston Trout Unlimited
Boston, Massachusetts
www.gbtu.org

Greenpeace
Washington, DC
www.greenpeace.org

Hackensack Riverkeeper
Hackensack, New Jersey
www.hackensackriverkeeper.org

Hudson River Fishermen's Association
Ridgefield Park, New Jersey
www.hrfaq.org

Ipswich River Watershed Association
Ipswich, Massachusetts
www.ipswichriver.org

Huntington-Oyster Bay Audubon Society
Huntington, NY
www.huntingtonaudubon.org

Island Institute
Rockland, Maine
www.islandinstitute.org

James River Association
Richmond, Virginia
www.jamesriverassociation.org

Jones River Watershed Association
Kingston, Massachusetts
www.jonesriver.org

Juniata Valley Audubon
Hollidaysburg, Pennsylvania
www.jvas.org

Long Island Chapter of Trout Unlimited
Lowell
Long Island, New York
www.longislandtu.org

Parks & Conservation Trust
Lowell, Massachusetts
www.lowelllandtrust.org

Massachusetts Baykeeper
Watertown, Massachusetts
www.massbaykeeper.org

Midshore Riverkeeper Conservancy
Easton, Maryland
www.midshoreriverkeeper.org

Mystic River Watershed Association
Arlington, Massachusetts
www.mysticriver.org

National Audubon Society
Washington, DC
www.audubon.org

Natural Resources Defense Council
Washington, DC
www.nrdc.org

Neponset River Watershed Association
Canton, Massachusetts
www.neponset.org

Neuse Riverkeeper Foundation
New Bern, North Carolina
www.neuseriver.org

New England Coastal Wildlife Alliance
Middleboro, Massachusetts
www.necwa.org

North Fork Environmental Council
Mattituck, New York
www.nfec1.org

Herring Alliance Member List

North and South River Watershed Association
Norwell, Massachusetts
www.nsrwa.org

NY/NJ Baykeeper
Keyport, New Jersey
www.nynjbaykeeper.org

Oceana
Washington, DC
www.oceana.org

Ocean River Institute
Cambridge, Massachusetts
www.oceanriver.org

Operation SPLASH
Freeport, New York
www.operationsplash.org

Pamlico-Tar River Foundation
Washington, North Carolina
www.ptrf.org

Parker River Clean Water Association
Byfield, Massachusetts
www.businessvision.info/parker_river

Peconic Baykeeper
Quogue, New York
www.peconicbaykeeper.org

PennEnvironment
Philadelphia, Pennsylvania
www.pennenvironment.org

Pennsylvania Organization for Watersheds and Rivers
Harrisburg, Pennsylvania
www.pawatersheds.org

The Pew Charitable Trusts
Washington, DC
www.pewenvironment.org

Riverkeeper
Ossining, New York
www.riverkeeper.org

Rivers Alliance of Connecticut
Litchfield, Connecticut
www.riversalliance.org

Seatuck Environmental Association
Islip, New York
www.seatuck.org

Shark Angels
New York, New York
www.sharkangels.org

Shenandoah Riverkeeper
Washington, DC
www.shenandoahriverkeeper.org

South River Federation
Edgewater, Maryland
www.southernriverfederation.net

Spruill Farm Conservation Project
Roper, North Carolina
www.spruillfarm.org

West and Rhode Riverkeeper
Shady Side, Maryland
www.westrhoderiverkeeper.org

Waterkeepers Carolina
Washington, North Carolina
www.waterkeeperscarolina.org

Waterkeepers Chesapeake
Washington, DC
www.waterkeeperschesapeake.org

Watershed Action Alliance of Southeastern
Massachusetts
Plymouth, MA
www.watershedaction.org

Wild Oceans
Leesburg, Virginia
www.savethefish.org

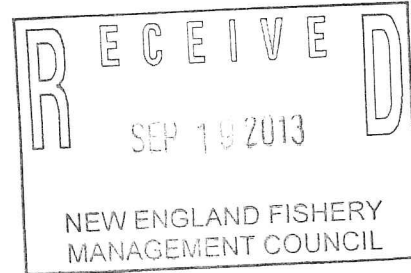
E.

**CAPE COD COMMERCIAL
FISHERMEN'S
ALLIANCE**

Small Boats. Big Ideas.

September 19, 2013

Terry Stockwell, Acting Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950



Dear Terry;

I am writing to you as a former fellow New England Fishery Management Council (Council) member to share my concern regarding National Marine Fisheries Service's (NMFS) recent decision on Amendment 5 to the Atlantic herring fishery management plan.

The Council's June 2012 vote was the result of a decade-long community effort; the Council recognized the need to address public concerns pertaining to the herring fleet and opted for measures that would provide the complete catch data necessary to manage this fishery effectively. The agency's disapproval of this decision, despite the Council's position and near-unanimous public opinion, leaves us ill-prepared to improve management of this fishery during a time when forage abundance is declining and groundfish stocks are struggling to rebuild.

Now, more than ever, we need oversight and accountability for this fishery. In the aftermath of NMFS' decision, previously silent stakeholders in the groundfish fishery have come forward to share knowledge regarding incidents of significant haddock catch by the herring boats. These accounts serve to further substantiate existing testimony on bycatch in this fishery. Considering the depleted state of New England's groundfish right now and the extent to which our commercial fishermen will be relying on the upcoming 2010 haddock year class to bolster their fishing businesses, it is imperative that the Council holds NMFS responsible for implementing the accountability measures outlined in Amendment 5, including 100% observer coverage, dumping disincentives, and accurate catch weights.

I urge the Council to take action and prompt NMFS to develop workable solutions to fix Amendment 5 as soon as possible. The agency must commit to finding a solution that enables the collection of complete at-sea catch data for this fishery; if they are unable to develop a way to afford the oversight necessary for this fishery then we simply can't afford to keep this fleet on the water.

Thank you for your attention to this important matter.

Sincerely,

John Pappalardo
CEO

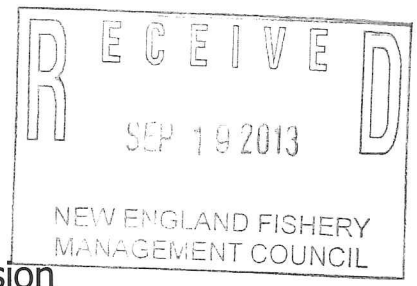
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1566 Main Street, Chatham, MA 02633 (508)945-2432 info@capecodfishermen.org www.capecodfishermen.org

cc: LS, Cornell (9/19)

F.

From: Katharine Deuel [<mailto:KDeuel@pewtrusts.org>]
Sent: Wednesday, September 18, 2013 4:11 PM
To: Tom Nies
Cc: John Bullard
Subject: Public Comment Submission for Herring Discussion



Dear Mr. Nies,

Attached please find a spreadsheet that shows that **nearly *18,000** Americans have recently commented on plans at the New England Council, the Mid-Atlantic Council, and NOAA Fisheries to protect and restore river herring and shad. The letter they have all signed (attached PDF) makes clear that these three management bodies must work proactively and expeditiously to address the conservation of these important species. Many of the signers have personalized the letter with additional comments (see Column I).

Please include this correspondence in the Council's preparatory materials for next week's discussion of the river herring catch cap in Framework 3 and NOAA's partial disapproval of Amendment 5.

Thank you,
Katharine

Katharine Deuel

Associate, U.S. Oceans, Northeast
The Pew Charitable Trusts
185 Devonshire St, Ste 701, Boston, MA 02110
p: 617-728-0300 f: 617-728-0355
e: kdeuel@pewtrusts.org | www.PewEnvironment.org

*please contact the Council office for a complete list of the 18,000 names

cc: LS, Council (9/19)

Federal River Herring and Shad Management: Amendments 5 (Atlantic Herring FMP) and 14 and 15 (Mackerel, Squid, Butterfish FMP)

John K. Bullard, Regional Administrator
NOAA Fisheries, Northeast Regional Office
55 Great Republic Dr.
Gloucester, MA 01930

Dr. Chris Moore, Executive Director
Mid-Atlantic Fishery Management Council
800 N. State St., Suite 201
Dover, DE 19901

Tom Nies, Executive Director
New England Fishery Management Council
50 Water St., Mill 2
Newburyport, MA 01950

Dear Mr. Bullard, Mr. Moore, and Mr. Nies:

I strongly support, and urge NOAA Fisheries to approve, the New England and Mid-Atlantic Fishery Management Councils' efforts to establish federal management of river herring and shad in the Atlantic mackerel and herring fisheries.

I urge NOAA Fisheries to approve the Mid-Atlantic Council's Amendment 14 to the Mackerel, Squid, Butterfish Fishery Management Plan in its entirety. This plan includes a strong catch cap, 100 percent observer coverage on all mid-water trawl vessels, accurate dealer weighing of catch, a cap on at-sea dumping (slippage) of unobserved catch, and related accountability measures. NOAA Fisheries should also reverse its recent disapproval of 100 percent observer coverage, slippage caps, and dealer weighing requirements in the New England Council's Amendment 5 to the Atlantic herring plan or offer alternative, equally effective solutions. In both regions, all parts of these amendments are necessary to foster river herring and shad conservation, and they were the result of an extensive public process and thoughtful deliberations.

Although these two amendments are an important start, the Magnuson-Stevens Act also requires, and I fully support, the designation of river herring and shad as stocks in federal herring and mackerel fishery management plans. The Mid-Atlantic Council is currently considering this designation in Amendment 15 to the Mackerel, Squid, Butterfish FMP, and New England has placed a priority on consideration of a similar amendment to its Atlantic herring plan. I strongly urge you to support adding river herring and shad to federal fishery management plans. This designation would enable the councils and NOAA Fisheries to:

- Set science-based annual catch limits.
- Identify and protect essential fish habitat.
- Gather better data and improve the population estimates of these fish.
- Coordinate with state efforts to restore river herring and shad.

Please take this action as soon as possible.
Thank you.

Signed by nearly 18,000 Americans (names on file with Council office)

Title	First Name	Last Name	Address 1	City
Mr.	John S.	Sonin	329 5th St	Juneau
Mr.	Larry	Casey	12428 Winter Pa	Eagle River
Mrs	Debi	Lawson	230 Westbrook F	Sterrett
	Doris	McQuiddy		Fort Deposit
Ms	Karen	Spradlin	307 Wilson Dr S	Jacksonville
	Brian	Inzer	180 Vikie Ln	OXR
Mr	Copley	Smoak	102 Winding Wo	Bonnerdale
Dr.	Judy	Bash	12700 Ridgehavi	Little Rock
mr	Donald	Uphold	437 Madison 260	Huntsville
Mr	Charles	Elliott	3100 Southside F	Oden
Mrs.	Marcie	Brushaber	PO BOX 227	Reyno
Mrs	Arleen	Wiley	130 Polk Road 2	Mena
	Maria	Pugliese	10946 Ruggles R	Florence
Ms.	Jane	Chischilly		Bisbee
Mr.	John	Nowlin		Scottsdale
Ms.	Mireya	Landin-Erdei	1830 Coronado	Bullhead City
	Joanne	Smith	1665 N Alamo Ci	Mesa
	Kristine	Richter	5700 E 24th Stre	Tucson
	Peter	Curia	2048 N. 68Th Plz	Scottsdale
Ms.	Laurel	Watson	43522 W. Kristal	Maricopa
	carolyn	shaw	8467 brier drive	los angeles
Ms.	Corliss	Jenkins-Sherry	8024 W Greensk	Tucson
Ms.	Kate	Daniel	118 N Cherokee	Benson
Mr.	Douglas	Russell	30600 N Pima R	Scottsdale
Mrs	Patricia	Grames	4262 W Camino	Tucson
Mrs	AMALIA	BENSON BODKIN	9651 E Belasco I	Tucson
Ms	Georgia	Braithwaite	2145 S Hogan Lr	Cottonwood
Mrs	Judith	Greil	673 W Rushwook	Tucson
Mr.	Mark Hayduke	Grenard	12810 N Cave Ci	Phoenix
Ms.	Surya-Patricia	Hood	205 E Ruth Ave	Phoenix
Mrs.	Liana	Moran	8331 W Marlette	Glendale
Ms.	judith	tuck	3521 E 23rd St	Tucson
Ms	Peggy	Yeargain-Williams	16418 E Bradfor	Fountain Hills
ms	Maxann	Kasdan	1238 E Cambridg	Phoenix
MR	JOHN	DIONNE	6800 S Strand A	Yuma
Ms.	Patricia	Orlinski	10511 W Kingsw	Sun City
ms	jane	larsen	349 Chapalita Dr	Encinitas
	Daniel	Hasselman		Santa Cruz
Ms.	Lillian	Mejia	632 W 5th St	Ontario
Mr	Samuel	TwoBears	PO BOX 441	Windsor
Prof.	Mala	Wingerd	7188 Melotte St	San Diego
Mrs	Gailf	Overton	2413 Walker Wa	Winterhaven
Ms.	Sara	MacKusick	1633 Grant St	Berkeley
Mr.	Richard Adrian	Nelson, Jr.	1215 Liberty St A	Santa Barbara
ms	JANINE	STOKES	2482 6th St	Riverside
Mr.	Larry	Lapuyade	PO BOX 81	San Anselmo
Ms	Cathy	McPeek	1980 S Camino F	Palm Springs
Ms.	Susanne	Madden	7319 Trask Ave	Playa del Rey
MRS	MARY	ROJESKI	2603 3rd St	Santa Monica
Mrs.	LJ	Tanaka	PO BOX 1135	Solana Beach