



New England Fishery Management Council

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DRAFT MEETING SUMMARY

Herring Committee

Holiday Inn, Peabody, MA

September 19, 2013

The Herring Committee met on September 19, 2013 in Peabody, Massachusetts to: review and discuss the Framework 3 alternatives and 2014/2015 catch cap options for river herring and shad (RH/S), develop recommendations for Council consideration, discuss the partial approval of Amendment 5 and issues related to 2014 Council management priorities, and to review Herring Advisory Panel applications.

Meeting Attendance: Doug Grout (Chairman), Matt McKenzie (Vice Chair), Mark Gibson, Frank Blount, David Pierce, Vincent Balzano, Terry Stockwell, Mary-Beth Tooley, Jeff Kaelin, Peter Kendall, John MacMurray, Herring Committee members (all Committee members present); Lori Steele, Rachel Neild, Rachel Feeney (NEFMC staff); Carrie Nordeen, Mitch MacDonald, Peter Christopher (NMFS NERO staff); Chris Weiner (Herring Advisory Panel Chairman); Adam Holbrook, Peter Mullen, Dave Ellenton, Herring Advisory Panel members; Matt Cieri (ME DMR); Brad Scholdelheimer (MA DMF); Dave Bethoney (SMAST); Peter Shelley (CLF), Roger Fleming, Erika Fuller (EarthJustice), Dick Allen, Patrick Paquette (MASBA), Ray Kane, Gerry O'Neill Jr., and several other interested parties.
Webinar: Mellissa Yuen, Katherine Deuel, Peter Baker, Roger Fleming (internet).

Presentation: Framework 3 Alternatives and 2014/2015 RH/S Catch Cap Options

Ms. Steele presented an overview of the Draft Framework 3 Discussion Document and the options under consideration for specifying RH/S catch caps in 2014 and 2015. Committee members asked several questions and discussed issues related to monitoring the RH/S catch caps. Dr. Pierce and several other Committee members expressed concern regarding the uncertainty associated with the catch cap monitoring methods, which NMFS will develop as part of the implementation of Framework 3. He referenced the August 27, 2013 Herring Plan Development Team (PDT) Report, in which the PDT expresses similar concerns. Ms. Nordeen explained that the monitoring methods will be similar to those for the haddock and butterfish catch caps. These methods are described on the Regional Office website, quota monitoring page. Ms. Steele summarized the butterfish monitoring methods but noted that monitoring RH/S catch will be somewhat different because total catch must be monitored – kept and discarded – and there may be some unique issues associated with the herring fishery because of the nature of the fishery (pulses of fishing effort, additional variability in sampling data due to sub-sampling a high-volume catch). She also noted that the Council should have a clear understanding of the

monitoring methods prior to Framework 3 implementation since the methods will need to be developed and published to monitor the RH/S catch cap in the mackerel fishery (2014 fishing year). Ms. Tooley stated that she had hoped that some of these issues would be addressed in the Science Center's peer-review of monitoring methods, originally anticipated for summer 2013. She expressed significant concern about this issue, especially given the NMFS staff and resource constraints that have been communicated to the Council. Ms. Nordeen stated that the timing associated with any peer review remains unclear at this time.

Presentation: SMAST/MADMF/SFC River Herring Bycatch Avoidance Program

Dr. David Bethoney presented an overview of the ongoing river herring bycatch avoidance program, coordinated by SMAST in cooperation with Massachusetts Division of Marine Fisheries and the Sustainable Fisheries Coalition. Dr. Bethoney summarized progress and participation to date, discussed future efforts and funding opportunities, and noted the potential benefits and challenges that the program may experience under RH/S catch caps established in Framework 3. The Herring Committee expressed full support for the program since its inception commended the work that Dr. Bethoney and all parties involved have completed. Committee members emphasized the importance of supporting any funding opportunities for this program in the future. Ms. Steele stated that once Amendment 5 and Amendment 14 (Mackerel FMP) become effective, she will work with Dr. Bethoney and Mid-Atlantic Council staff to coordinate a formal presentation/review of the program to both Councils, as required under both amendments.

Following the presentation and discussion, Chris Weiner, newly-elected Herring Advisory Panel Chairman, provided a brief summary of the September 18, 2013 Herring AP meeting (see Draft Herring Advisory Panel Report).

Discussion of Framework 3 Alternatives: Selection of Preferred Alternative and Specification of 2014-2015 RH/S Catch Caps

The Herring Committee's discussion of the Framework 3 alternatives and options for 2014-2015 RH/S catch caps began with a motion:

1. MOTION: Terry Stockwell/Mary-Beth Tooley

That in Section 2.2, Alternative 2 be the *Preferred Alternative*, with the 95% trigger option. And to adopt in Section 2.2.1, a high metric RHS catch cap for all gears combined the GOM, Cape Cod, and SNE areas for 2014-2015, no cap for the GB area in 2014-2015, and to modify the VMS reporting requirements as outlined on p. 15-16 of the draft Framework 3 document

Discussion on the Motion: Mr. Stockwell provided his rationale for the motion. He felt that the high metric option for 2014-2015 provides the incentive for industry to participate in avoidance program, provides incentive for NMFS to develop and implement a reasonable monitoring program, promotes the utilization of optimum yield (OY) in the herring fishery, and provides two years under a cap to review any monitoring issues and evaluate the performance of the program. He believes that this motion would allow the Council to move forward establishing catch caps

without penalizing the industry and provide an opportunity to do some fine-tuning. He noted many concerns expressed about catch cap monitoring methods.

Ms. Fuller expressed opposition to the motion; she felt that the motion is not consistent with the Amendment 4 court order or the RH/S catch cap that was established by the Mid-Atlantic Council. Mr. Holbrook noted that there was significant concern about the data and that the Advisory Panel did not support a cap for 2014-2015 for this reason. Dr. Piece expressed opposition to this motion based on the action the Council took in Amendment 5. He felt that a more conservative option would be appropriate since the Council did not close any hotspots in Amendment 5 and took a position to support industry-based bycatch avoidance. He expressed support for the median option at this time.

1A. MOTION TO AMEND: Dr. David Pierce/Matt McKenzie

That in Section 2.2, Alternative 2 be the *Preferred Alternative*, with the 95% trigger option. And to adopt in Section 2.2.1, median metric RH/S catch caps for MWT and PS gear in the GOM, a median metric cap for MWT gear in the Cape Cod area, and median metric catch caps for BT and MWT gears in the SNE/MA cap area for 2014-2015, no cap for the GB area in 2014-2015, and to modify the VMS reporting requirements as outlined on p. 15-16 of the draft Framework 3 document (intent is separate caps for the gear types identified in the motion)

Discussion on the Motion: Mr. MacMurray expressed concern about the gear-specific approach in the southern New England/Mid-Atlantic area given the comments received from the Regional Office. Mr. Kaelin supported the gear-specific allocations in southern New England and referred to Dr. Bethoney's presentation, which suggested that a separate cap for bottom trawl vessels in southern New England may incentivize participation in the bycatch avoidance program. However, Mr. Kaelin did not support the motion to amend and expressed concern about closing the entire southern New England/Mid-Atlantic area to the directed herring fishery when the cap is reached. He suggested that the Committee revisit the southern New England/Mid-Atlantic consequence area and consider leaving the offshore statistical areas open to the directed herring fishery. Ms. Tooley did not support using the median value and reiterated significant concerns about uncertainty regarding the catch cap monitoring methods as well as data variability. She felt that the median option, by its nature, could close the fishery in half of the years and that this would be more punitive than rewarding for participation in the industry-based bycatch avoidance program. Mr. Gibson expressed concern about the median metric and noted that river herring runs are increasing in many areas. Ms. Nordeen further clarified the NERO comments. She noted that the NERO suggestion for one catch cap per area is based on the need to balance available resources but said that an option with two caps in southern New England could be further evaluated. She emphasized the monitoring burden given existing staff resources. She and Mr. Christopher agreed that the option proposed in the motion may be feasible.

MOTION TO AMEND FAILED 5/5 ON A TIE.

1B. MOTION TO AMEND: Terry Stockwell/Mary-Beth Tooley

That in Section 2.2, Alternative 2 be the *Preferred Alternative*, with the 95% trigger option. And to adopt in Section 2.2.1, a 75th percentile metric RH/S catch cap for MWT gear in the GOM, for MWT gear in the Cape Cod area, and for BT and MWT gears in the SNE/MA cap area for 2014-2015, no cap for the GB area in 2014-2015, and to modify the VMS reporting requirements as outlined on p. 15-16 of the draft Framework 3 document (intent is separate caps for the gear types identified in the motion). The Area 2 consequence (closure) area would be the RH/S catch trigger area as depicted on Figure 2 May 23, 2013 Herring PDT report

Discussion on the Motion to Amend: Mr. Stockwell stated that he is offering this motion as a compromise to move the RH/S catch caps forward for 2014 and 2015. Ms. Steele reviewed the 75th percentile numbers with the Committee and agreed to provide them in the presentation for the Council meeting. In Appendix II, there are five data points for each gear type in each area; the 80th percentile is the fourth-highest data point, and for the options under consideration, there is no difference between the 80th percentile and the 75th percentile, so the Herring Committee is essentially recommending the fourth-highest point in each of the strata. Dr. Pierce stated that he is willing to support this motion because it is restrictive in nature, consistent with the goals and objectives, and allows the process to move forward without being overly punitive. Despite the NERO comments, the Herring Committee generally supported separate caps for midwater trawl and bottom trawl vessels in southern New England/Mid-Atlantic because data suggest that both gear types encounter RH/S at levels high enough to set a reasonable cap, and because separate caps may provide more incentive for bottom trawl vessels to participate in the SMAST river herring bycatch avoidance program. Mr. Gibson agreed with Dr. Pierce and suggested that with only five data points, the median is not very meaningful (statistically), and that it may be appropriate to step outside the box and think more creatively about how to approach setting the caps. Dick Allen (representing Shafmaster) agreed and expressed support for considering a multi-year approach.

It was clarified that the motion reduces the southern New England/Mid-Atlantic catch cap closure area to the statistical area clusters shown in the May 2013 Herring PDT/MSB Monitoring Committee Report. The southern New England/Mid-Atlantic catch cap would apply to trips landing more than 6,600 pounds in all of Area 2; when 95% of the cap is projected to be reached, the area shown in Figure 2 of the PDT Report would close. This figure will be added to the Council staff presentation given to the Council at its September 2013 meeting.

MOTION TO AMEND 1B CARRIED 8-2-0.

MAIN MOTION CARRIED 8-2-0.

The Committee briefly revisited the idea of a multi-year approach. Mr. Stockwell emailed Committee members language from the ASMFC Striped Bass FMP that utilizes a multi-year approach to determine whether management action is required based on stock status/overfishing condition. The language is somewhat complicated, and it was unclear how this could translate to a multi-year approach for the RH/S catch caps. The Committee agreed to revisit this issue in future specifications, or in a framework adjustment if deemed necessary/appropriate.

Discussion of Amendment 5 Partial Approval and 2014 Herring Management Priorities

Ms. Steele briefly summarized issues related to the partial approval of Amendment 5, updated the Herring Committee regarding the September 2013 Council meeting agenda items, and generally identified several management actions that the Council may consider for 2014 herring priorities:

- Action to address disapproved elements of Amendment 5 – it is unclear what kind of action may be required to revisit and potentially revise elements of Amendment 5 that were not approved (revised amendment, new amendment, etc.); Ms. Nordeen summarized some possible approaches to revising Amendment 5, which will be discussed in more detail at next week's Council meeting. She and Mr. McDonald noted that the amendment revision process is unclear but that they are seeking guidance from other regions as to what may be necessary.
- Action to address industry-funded monitoring (NMFS FMAT, NMFS-led) – Ms. Steele noted that the Council will receive an update regarding this issue at the September Council meeting and that if an action is developed, it would likely be a NMFS-led action but would require Council staff work and resources.
- Stocks in the herring fishery (RHS) amendment and/or ABC Control Rule amendment – addressing these two issues would require an amendment. Ms. Steele mentioned that the stocks in the fishery issue is on the priority list for 2013 after Framework 3, but the Mid-Atlantic Council has already begun development of an amendment to consider adding RH/S as stocks in the mackerel fishery. The Mid-Atlantic Council is scheduled to make a decision regarding the further development of this amendment at its October 2013 meeting.

The Herring Committee discussed the above management priorities for 2014 and developed the following potential “laundry list,” based on input from Committee members as well as the audience:

- Action to address disapproved elements of Amendment 5 – Category A/B 100% observer coverage, slippage caps/trip termination, dealer weighing requirements
- Action to address industry-funded monitoring (NMFS-led?)
- Stocks in the herring fishery (RHS) amendment
- ABC Control Rule amendment
- MWT access to Area 1A (suggested by Mr. Ellenton)
- Catch shares/sectors/ITQs (suggested by Ms. Tooley)
- Management area boundaries (suggested by Mr. Paquette)

2. MOTION: Mary-Beth Tooley/Jeff Kaelin

To recommend to the Council that the top and only herring management priority for 2014 be consideration of revising Amendment 5, focused on 100% observer coverage and developing the industry-funded monitoring component

Discussion on the Motion: Ms. Tooley emphasized the importance of addressing observer coverage issues. Mr. Stockwell felt that all measures that were disapproved in Amendment 5 should be reconsidered. He offered a friendly amendment, which was accepted by the maker and the seconder.

FRIENDLY AMENDMENT

To recommend to the Council that the top and only herring management priorities for 2014 be addressing the disapproved elements of Amendment 5 and action related to industry-funded monitoring; all other herring-related actions would fall below the line

Discussion on the Motion: Dr. McKenzie expressed some concern about not including an amendment for stocks in the fishery on the Council's 2014 priority list. Ms. Steele stated that the New England Council will be in a better position to determine how to move forward regarding that issue after the October Mid-Atlantic Council meeting. She also stated that she remains involved in the Mid-Atlantic Council's process and suggested that some consideration be given to coordinating this action rather than immediately initiating a separate amendment. Dr. McKenzie expressed support for continued staff involvement with the Mid-Atlantic Council process.

MOTION CARRIED UNANIMOUSLY.

Other Business

Ms. Nordeen briefed the Herring Committee regarding some technical corrections to the herring management area boundaries that will be revised by NMFS during Framework 3 rulemaking. The Committee had no further comments regarding this issue.

The Herring Committee meeting adjourned at approximately 4:00 p.m., and the Committee convened a closed session to review Herring Advisory Panel applications for the 2014-2016 term.