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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 29 2013



Ernest F. Stockwell, III, Acting Chairman
 New England Fishery Management Council
 50 Water Street
 Newburyport, MA 01950

Dear Terry:

I am writing to follow up on my August 31, 2012, letter regarding the District Court's August 2, 2012, remedial order in *Flaherty v. Locke*, No. 11-660 (D.D.C.), a case challenging Amendment 4 to the Atlantic Herring Fishery Management Plan (FMP).

In that letter, I described the District Court's March 2012 opinion finding that the National Marine Fisheries Service (NMFS) had not complied with: Magnuson-Stevens Fishery Conservation and Management Act (MSA) provisions concerning stocks in the fishery and minimizing bycatch; and the National Environmental Policy Act (NEPA) requirement to consider a reasonable range of alternatives for Amendment 4's accountability measures (AMs), acceptable biological catch (ABC) control rule, and measures to minimize bycatch. I further described the remedial actions the District Court ordered NMFS to take.

NMFS has completed all but two of the actions ordered by the District Court. The two remaining actions are:

- (1) Filing with the District Court a report of all remedial actions taken, including a completed NEPA analysis for the 2013-15 herring specifications and management measures for the Atlantic herring fishery analyzing a range of alternatives to the current AMs and the ABC control rule for herring, including consideration of control rules for other forage fish; and
- (2) Filing with the District Court a supplemental explanation setting forth NMFS's consideration of whether the Atlantic Herring FMP minimizes bycatch to the extent practicable in compliance with the MSA.

On July 26, 2013, the District Court granted NMFS an extension until October 23, 2013, to complete these two remaining actions. NMFS expects the District Court to scrutinize the agency's compliance with the August 2, 2012, remedial order closely.

Additionally, during this lawsuit and development of Amendment 5, stakeholders have raised concerns that the Council can address. Although not required by the District Court's August 2, 2012, order, the Council can take steps to improve management of the herring fishery through: Development of an amendment to consider river herring and shad as stocks in the herring

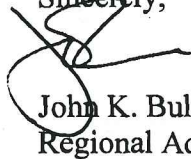


fishery; development of an amendment to further consider alternative ABC control rules for herring, including consideration of control rules for other forage fish; and completion of Framework 3 considering catch caps for river herring and shad. I strongly urge the Council to take the following actions as soon as possible:

- (1) Develop an amendment to consider river herring and shad as stocks in the herring fishery, consistent with the recommendation in my August 31, 2012, letter, and with the Council's 2013 priority list.
- (2) Further consider alternative ABC control rules for herring, including control rules for other forage fish, based on the best available science. This is consistent with the recommendations of the Scientific and Statistical Committee and Herring Plan Development Team calling for comprehensive consideration of managing herring as a forage fish as part of the long-term management strategy for herring. I recommend that the Council begin considering this issue in an amendment prior to development of the 2016-18 herring specifications. This action could be combined with the amendment to consider river herring and shad as stocks in the herring fishery.
- (3) Complete the Council's consideration of the river herring/shad catch cap action in Framework 3.

I appreciate the hard work that you and your staff have put into improving management of the herring fishery, and I look forward to continuing these efforts together. Please contact me if you have any questions.

Sincerely,



John K. Bullard
Regional Administrator

cc: Thomas A. Nies, Executive Director, New England Fishery Management Council