



April 18, 2011

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

RE: Haddock Bycatch and Framework Adjustment 46

Dear Mr. Howard:

On behalf of the Herring Alliance, I am writing to express concerns about what we feel are serious deficiencies in the New England Council's developing plans for managing haddock catch in the directed Atlantic herring fishery: Framework Adjustment 46, Northeast Multispecies Fishery Management Plan. The Herring Alliance has written previously to urge that the Council undertake research and analysis that would allow this Framework to reduce the interactions of the herring fishery with groundfish, and we have pointed out deficiencies in the alternatives being contemplated so far.¹

The directed herring fishery includes the most powerful fishing gear in New England, with large vessels towing enormous small-mesh nets, some doing so between a pair of ships making long tows (i.e., hours long) and netting 100 metric tons of catch, or more, in a single haul. The power and scale of this fishery makes the risks associated with unintended catch particularly high, for other fisheries and for the ecosystem as a whole. Alternative herring fishing practices, with lower bycatch, are available but not considered as alternatives. Framework 46 must recognize and address these issues, but has not done so in our view.

We are concerned about the following deficiencies:

- the Council's own objectives for the Framework are not met;
- the range of alternatives is under-developed: too narrow;
- the Framework does not include measures to reduce bycatch and thus violates National Standard 9;
- the document sanctions fishing for groundfish with pair trawl gear even though the use of paired trawls for groundfish has been prohibited for years;
- Option 3 does not include an accountability measure despite the legal requirement for accountability;
- there is no explanation of how haddock catch that is not brought aboard (i.e. slipped, dumped, or otherwise discarded catch) will be quantified and used in the determination of the total haddock catch estimate; and
- the proposed alternatives will slow the pace of haddock catch data dissemination to stakeholders (from weekly to quarterly).

¹ Letters dated December 27, 2010 and March 16, 2011.

We are particularly concerned about Framework 46 because it does not include any alternatives that are designed specifically to reduce unintended catch of groundfish, bycatch or otherwise. The Council specifically identified fishing off-shore and reducing haddock catch as two of the objectives for the Framework yet neither of these objectives are addressed adequately.

There is nothing in the current version of the Framework that incentivizes increased fishing in the truly offshore parts of management Area 3 (Georges Bank), which includes both inshore and offshore areas.² Area 3 includes sensitive inshore fishing grounds as close to shore as 3 miles and also contains diverse herring and haddock habitats and multiple herring and haddock stock components. Even if the proposed incentives are effective in increased fishing in Area 3, this will not necessarily mean that the objective of increasing fishing *offshore* is achieved. We support the Council's objective of promoting a responsible offshore herring fishery, but this Framework will not achieve this objective unless additional measures are added to it. The Framework must address the fact that Area 3 has both inshore and offshore areas and multiple stock components.

National Standard 9 of the Magnuson-Stevens Act mandates that *[c]onservation 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.*³ Haddock catch in the directed Atlantic herring fishery follows three paths once caught: it is discarded at sea, brought to shore and then discarded, and sold mixed with herring as bait (i.e., sold as herring). Under the definitions used by NOAA, as well as many scientific bodies, all of this catch of haddock would be considered bycatch.⁴ According to NOAA, for example, bycatch is *fish other than the primary target species that are caught incidental to the harvest of the primary species. Bycatch may be retained or discarded. Discards may occur for regulatory or economic reasons.*⁵ Though it is true that some unknown portion of the haddock catch is technically sold, it is not sold as haddock but as herring bait for lobster traps. In our view, it is misleading to classify this haddock caught in the directed herring fishery as anything other than bycatch.

While the legal interpretation of the *bycatch* definition contained in the Magnuson-Stevens Act has yet to be tested in court, NOAA's technical and other scientific definitions of bycatch would be influential.⁶ Regardless, at minimum the alternatives in the current draft of Framework 46 will not decrease at-sea or regulatory discards of haddock, and may lead to increases in these forms of bycatch. If the Framework achieves its first objective of increasing herring catch on Georges Bank, it can also be expected that it will increase bycatch of haddock, absent any new measures to reduce interactions of the fishery with groundfish. In fact, the implied purpose of the Framework is to increase the allowed bycatch of haddock so that the catch of Atlantic herring will not be constrained.⁷

Option 2 of the Framework proposes to treat the haddock catch in the herring fishery as a sub-ACL of the overall haddock ACL. In doing so, the proposed rules would in essence sanction fishing for groundfish (i.e., haddock) with pair trawls. That is, pair trawls are part of the mid-water fleet permitted to fish for

² NEFMC Meeting, January 26, 2011, Portsmouth, NH, motion #2 under Groundfish: (1) maximize the chance for Georges Bank (Area 3) herring TAC to be caught; (2) provide incentive to fish offshore; (3) provide incentives to fish in a manner and at times and in areas when and where haddock bycatch is none to low; (4) to reduce the impact of a haddock cap on the entire herring fishery.

³ Magnuson-Stevens Fishery Conservation and Management Act; 16 U.S.C. 1851-1852 MSA §§ 301-302 (May 2007)

⁴ See attached document on haddock catch in the herring fishery.

⁵ NOAA Fisheries Glossary, NOAA technical memorandum NMFS-F/SPO-69, June 2006.

⁶ See accompanying definitions of bycatch.

⁷ Framework Adjustment 46 to the Northeast Multispecies FMP Working Draft, dated March 25, 2011.

herring. However, pair trawling for groundfish was prohibited in 1994, first by NMFS as an Emergency Action, and then as part of Amendment 5 to the northeast multi-species fishery management plan.⁸ Framework 43 sought to reduce haddock bycatch by establishing a limit (i.e., cap). Framework 46 will increase bycatch (i.e., contrary to National Standard 9) and promote fishing for groundfish with pair trawls (i.e., discouraged by 50 C.F.R. § 648.80(g)(3)) thereby raising doubt about the legality of the package of proposed measures.

We urge the Council to consider these points and develop additional alternatives for Framework 46 that will meet all of the Council's objectives for the action, comply with National Standard 9 by reducing bycatch and avoid sanctioned fishing for groundfish with pair trawls. In earlier correspondence, we have suggested some measures that might reduce haddock catch as well as analyses that could yield additional insights as to how to reduce bycatch in the herring fishery. We again urge the Council to include the following alternatives in Framework 46:

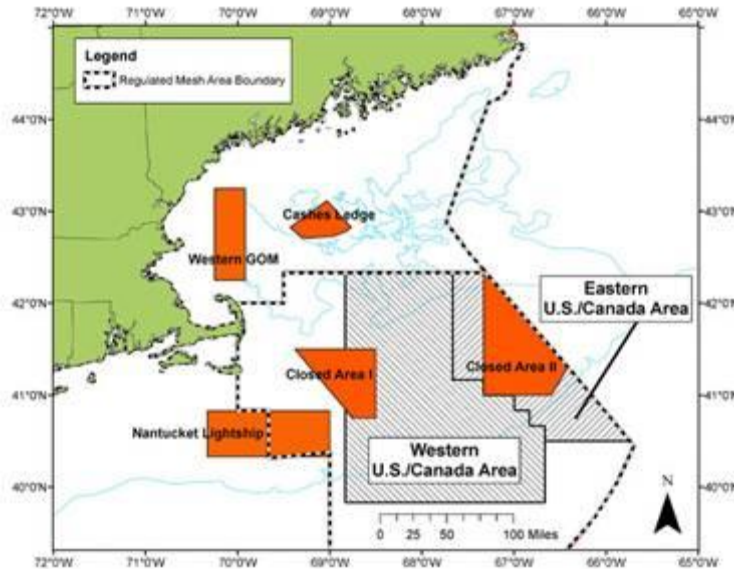
- Application of the groundfish Closed Area I regulations for *released* catch (i.e., nets released to the sea, slipped, or dumped)⁹ throughout the haddock stock areas and/or in the Georges Bank Haddock stock area where most haddock bycatch occurs. This will not only reduce bycatch (by reducing dumping) but it will also improve monitoring and ensure that haddock catch is accurately estimated.
- Measures that account for haddock catch that is partially or completely dumped at sea; the catch that is not brought aboard must be applied to the cap. Options include
 - applying an assumed quantity of haddock for each incident or
 - a reliable protocol for estimating the haddock discarded to the sea without bringing it on board.
- Exclusion of mid-water trawls from all groundfish closed areas.
- Exclusion of mid-water trawls from bycatch hotspots as identified from available data.
- Prohibit mid-water trawls from fishing on or near the bottom by establishing a minimum distance (i.e. buffer) off the sea floor for the footrope.

⁸ Pair trawling for groundfish is prohibited: 50 C.F.R. § 648.80(g)(3); Federal Register v 59 (no. 40) Rules and Regulations, Final Rule.

⁹ 50 CFR 648.80(d)(7)(ii)(D); Federal Register / Vol. 75, No. 229 / Tuesday, November 30, 2010.

- A measure to establish a geographically graduated cap on haddock bycatch such that the cap will increase as fishing effort moves off-shore to the East. The Georges Bank region (i.e., Area 3) could be sub-divided into three zones, with unequal allocation of the haddock amounts, for example:
 1. 50% of the Georges Bank cap: Eastern Area 3 (based on existing sub-stock boundary used in EUSCA sharing)
 2. 35% of the Georges Bank cap: offshore Western (based on existing sub-stock boundary used in EUSCA sharing)
 3. 15% of the Georges Bank cap: inshore Western (everything not shared with Canada)

This geographically graduated plan would allow the Georges Bank Haddock cap to be



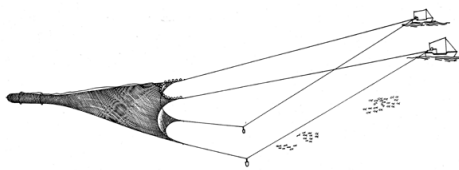
increasingly liberal for herring trawlers as they moved off-shore to the East.

In closing, we strongly recommend that the Council and its Groundfish Committee consider the points raised in this letter carefully and expand the scope of the Framework by adding alternatives. This would allow the Council to address the objectives it set out for this action and to comply with the letter of the law and the spirit of previous Council actions dealing with groundfish and pair trawls.

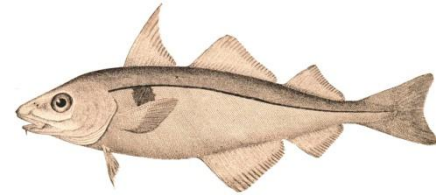
Sincerely,

Peter Baker, Manager
New England Fisheries Campaigns
Pew Environment Group

What's the Catch with Pair Trawling and Groundfish?



HADDOCK
CAUGHT



DISCARDED AT
SEA

- **bycatch**
- Observed discards
- Catch not brought on board – *slipped*
- Quantity poorly known
- All kinds of haddock

LANDED, THEN
DISCARDED

- **bycatch**
- Regulatory discards
- Inspected dockside
- Quantity well known
- Larger haddock

LANDED, THEN
SOLD AS BAIT

- **bycatch**
- Mixed with target catch: herring
- Landed & sold as herring / bait
- Quantity poorly known
- Smaller haddock

CATCH = AT SEA DISCARDS + REGULATORY DISCARDS + CATCH SOLD

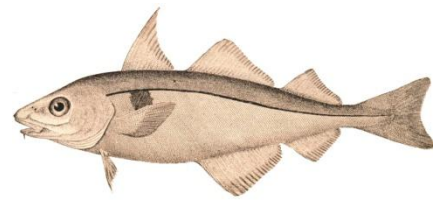
Catch includes bycatch plus all other haddock caught; the quantity is uncertain because at-sea discard of haddock, and the amount of haddock sold, are not well known.

- Framework 46 will introduce new rules governing haddock fishing by Atlantic herring vessels.
- Framework 46 would allocate a portion of the haddock ACL to the herring fleet, thereby permitting haddock catch by the mid-water pair trawl component of the fleet.
- Pair trawls are legally prohibited from fishing for all groundfish including haddock.¹⁰
- In its present form, the draft of the framework includes no measures that would decrease haddock bycatch in the Atlantic herring fishery - including catch discarded at sea (i.e., observed and catch not brought on board) and regulatory discards (i.e., catch brought to shore before discarding).
- National Standard 9 requires that fishery management plans seek to minimize bycatch and to reduce bycatch mortality.¹¹
- Due to the long tow durations, and high catch volumes, the bycatch mortality associated with mid-water pair trawls is expected to be higher than that of other gears suitable for catching Atlantic herring.¹²

¹⁰ Pair trawling for groundfish is prohibited: 50 C.F.R. § 648.80(g)(3) ; prohibited first by NMFS as an Emergency Action in 1994, and then as part of Amendment 5 to the northeast multi-species fishery management plan in 1994: Federal Register v 59 (no. 40) Rules and Regulations, Final Rule.

¹¹ Magnuson-Stevens Fishery Conservation and Management Act; 16 U.S.C. 1851-1852 MSA §§ 301-302 (May 2007).

What is Bycatch?



Bycatch according to NOAA - Glossary¹³

Fish other than the primary target species that are caught incidental to the harvest of the primary species. Bycatch may be retained or discarded. Discards may occur for regulatory or economic reasons.

Bycatch according to NOAA – Bycatch Monitoring Program¹⁴

Discarded catch of any living marine resource plus retained incidental catch and unobserved mortality due to a direct encounter with fishing gear.

Bycatch according to the US National Research Council¹⁵

Fish other than the primary target species that are caught incidental to the harvest of the primary target species. Bycatch may be retained or discarded. Discards may occur for regulatory or economic reasons.

Bycatch according to the Food and Agriculture Organization (FAO)¹⁶

Bycatch -- Discarded catch plus incidental catch...

From our review of the literature, we conclude that “bycatch” has customarily been used to identify (1) species retained and sold, (2) species or sizes and sexes of species discarded as a result of economic, legal, or personal considerations, and (3) non-targeted species retained and sold, plus all discards. These terms may be further constrained in that within any one of these three categories authors may select and discuss only a portion of the bycatch caught with a particular gear type.

Bycatch according to the Merriam-Webster Unabridged Dictionary

The portion of a commercial fishing catch that consists of marine animals caught unintentionally.

Bycatch according to the Magnuson-Stevens Act¹⁷

The term "bycatch" means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

¹² Suuronen, P (2005) Mortality of fish escaping trawl gears. FAO Fisheries Technical Paper. No. 478. Rome, FAO. 72p.

¹³ NOAA Fisheries Glossary, NOAA technical memorandum NMFS-F/SPO-69, June 2006.

¹⁴ NMFS (National Marine Fisheries Service). 2004. Evaluating bycatch: a national approach to standardized bycatch monitoring programs. U.S. Dep. Commer., NOAA Tech. Memo. NMFSF/SPO-66, 108 p. On-line version, <http://spo.nmfs.noaa.gov/tm>; Appendix 1: Definition of Terms (p 93).

¹⁵ *Sharing the Fish: Toward a National Policy on Individual Fishing Quotas*. National Academy Press, Washington DC 1999 (P 268).

¹⁶ Alverson, D.L.; Freeberg, M.H.; Pope, J.G.; Murawski, S.A. *A global assessment of fisheries bycatch and discards*. FAO Fisheries Technical Paper. No. 339. Rome, FAO. 1994. 233p.

¹⁷ Magnuson-Stevens Fishery Conservation and Management Act As Amended Through January 12, 2007, Sec. 3. Definitions 16 U.S.C. 1802104-297 (2); to our knowledge, the scope of this definition has not yet been interpreted by the courts.

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

Earthjustice
Washington, DC
www.earthjustice.org

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

Environment America
Washington, DC
www.environmentamerica.org

Environment Maine
Portland, Maine
www.environmentmaine.org

Environment Massachusetts
Boston, Massachusetts
www.environmentmassachusetts.org

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

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

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

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

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

Island Institute
Rockland, Maine
www.islandinstitute.org

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

Herring Alliance Member List

Juniata Valley Audubon
Hollidaysburg, Pennsylvania
www.jvas.org

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

National Coalition for Marine Conservation
Leesburg, Virginia
www.savethefish.org

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

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

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

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

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

Peconic Baykeeper
Quogue, New York
www.peconicbaykeeper.org

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

Pew Environment Group
Washington, DC
www.pewenvironment.org

Riverkeeper
Ossining, New York
www.riverkeeper.org

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