Atlantic States Marine Fisheries Commission

Atlantic Herring Section

April 30, 2012
1:00 p.m. – 3:00 p.m.
Alexandria, Virginia

Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary.

1. Welcome/Call to Order (*D. Pierce)* 1:00 p.m.

2. Section Consent 1:05 p.m.
   - Approval of Agenda
   - Approval of Proceedings from February 7, 2012

3. Public Comment 1:10 p.m.

4. Consider Approval of Draft Addendum V for Public Comment *(C. Vonderweidt)* **Action** 1:15 p.m.

5. Section Comment on New England Fishery Management Council Draft Amendment 5 **Action** 1:45 p.m.
   - Advisory Panel Report (*C. Vonderweidt)*
   - Summary of NEFMC public hearings (*D. Pierce*)
   - Working Group Recommendation *(D. Pierce)*
   - Discuss preferred management alternatives

6. Other Business/Adjourn 3:00 p.m.

The meeting will be held at the Crowne Plaza Hotel Old Town, 901 N. Fairfax St, Alexandria, VA; (703)-683-6000

MEETING OVERVIEW

Atlantic Herring Section Meeting
Monday, April 30, 2012
1:00 p.m. – 3:00 p.m.
Alexandria, Virginia

Chair: David Pierce (MA) Assumed Chairmanship: 08/11	Technical Committee Chair: Matt Cieri (ME)	Law Enforcement Committee Representative: Marston/Fessenden
Vice Chair: Terry Stockewell (ME)	Advisory Panel Chair: David Ellenton	Previous Section Meeting: February 7, 2012
Voting Members: ME, NH, MA, RI, CT, NY, NJ (7 votes)		

2. Section Consent

- Approval of Agenda
- Approval of Proceeding from February 7, 2012

3. Public Comment – At the beginning of the meeting public comment will be taken on items not on the Agenda. Individuals that wish to speak at this time must sign in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Section Chair may determine that additional public comment will not provide additional information. In this circumstance the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Section Chair may allow limited opportunity for comment. The Section Chair has the discretion to limit the number of speakers and/or the length of each comment.

4. Consider Approval of Draft Addendum V for Public Comment (1:15-1:45 p.m.) Action

Background

- The Section initiated Addendum V based on Technical Committee recommendations to refine and clarify the spawning regulations.
- Addendum V for Section Review proposes to modify spawning regulations by decreasing the size bin to begin a closure, increasing the number of fish per sample, shifting the Western Maine/Massachusetts spawning area boundary, and clarifying the ASMFC spawning regulations **(Briefing CD)**.

Presentations

- Overview of Draft Addendum V for Section Review by C. Vonderweidt

Section Action for Consideration

- Approve Draft Addendum V for Public Comment

5. Section Comment on NEFMC Draft Amendment 5 (1:45-3:00) Action

Background

- The NEFMC and NMFS are soliciting public comment on Draft Amendment 5 to the Fishery Management Plan for Atlantic Herring (Amendment 5). Public Hearings have been held in ME, NH, MA, RI, and NJ. The NEFMC is scheduled to select preferred alternatives at its June 19 – 21 meeting **(Briefing CD).**
- Amendment 5 alternatives include: adjustments to the fishery management program including adjustments to reporting requirements for vessels and dealers, and measures to address trip notification requirements, carrier vessels, and transfers of herring at-sea; a catch monitoring program that includes measures to maximize sampling and address net slippage, and alternatives to allocate observer coverage on limited access herring vessels; measures to address river herring bycatch; and criteria for midwater trawl vessel access to year-round groundfish closed areas **(Briefing CD).**
- The ASMFC Atlantic Herring Advisory Panel has reviewed Draft Amendment 5 **(Briefing CD)**
- The Atlantic Herring Working Group met on April 17, 2012 and will provide proposed comments on behalf of the Section at this meeting.

Presentations

- Advisory Panel report by C. Vonderweidt.
- Summary of NEFMC public hearings by David Pierce.
- Working Group recommendations by David Pierce.

Section actions for consideration

- Develop Amendment 5 comments.

6. Other Business/Adjourn

DRAFT PROCEEDINGS OF THE

ATLANTIC STATES MARINE FISHERIES COMMISSION

ATLANTIC HERRING SECTION

Crowne Plaza Hotel - Old Town
Alexandria, Virginia
February 7, 2012

These minutes are draft and subject to approval by the Atlantic Herring Section.
The Section will review the minutes during its next meeting.

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INDEX OF MOTIONS

ATTENDANCE

Board Members

Pat Keliher, ME (AA)
Terry Stockwell, ME, Administrative proxy
Steven Train, ME (GA)
Sen. Brian Langley, ME (LA)
Doug Grout, NH (AA)
G. Ritchie White, NH (GA)
Rep. Dennis Abbott, NH, proxy for Rep. Watters (LA)
David Pierce, MA, proxy for P. Diodati (AA)
William Adler, MA (GA)
Rep. Sarah Peake, MA (LA)
Bill McElroy, RI (GA)
Rick Bellavance, RI, proxy for Rep. Martin (LA)
Dave Simpson, CT (AA)
Rep. Craig Miner, CT (LA)
Pat Augustine, NY (GA)
James Gilmore, NY (AA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)
Peter Himchak, NJ, proxy for D. Chanda (AA)
Tom Fote, NJ (GA)
Tom O'Connell, MD (AA)

(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

Ex-Officio Members

Matt Cieri, Technical Committee Chair
Jeff Marston, Law Enforcement Committee

Staff

Vince O'Shea
Robert Beal
Chris Vonderweidt
Danielle Chesky

Guests

Charles Lynch, NOAA
Steve Meyers, NOAA
Peter Burns, NOAA
Bob Ross, NMFS
Russ Allen, NJ DFW
Wilson Laney, USFWS
Dave Ellenton, Cape Seafoods
Mary Beth Tooley, Camden, ME
Steve Weiner, CHOIR
Raymond Kane, CHOIR
Pam Gromen, NCMC
Patrick Paquette, MSBA/RFA
Janice Plante, Commercial Fisheries News
Kristen Cevoli, Herring Alliance
Greg Wells, PEW Environmental Grp
Theresa Labriola, PEW Environmental Grp
Tom Rudolph, PEW Environmental Grp
Roger Fleming, Earthjustice

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel, Alexandria, Virginia, February 7, 2012, and was called to order at 2:20 o'clock p.m. by Chairman David Pierce.

CALL TO ORDER

CHAIRMAN DAVID PIERCE: I call our meeting to order and welcome everyone. I've got a question for section members sitting at the table and for those in the audience who are still slowly getting ready to take their seats; was anyone here at the River Herring Board Meeting this morning? Everyone was at that meeting, so you've heard the discussions relative to actions that were not taken at that particular meeting and the strategy that was developed to move forward for further discussions on the amendment as it relates to river herring. All right, that will save some time.

APPROVAL OF AGENDA

You have the agenda before you. Unless someone has a suggested change to the agenda, I will adopt it by consent. Okay, I see no one raising their hand, so we will adopt the agenda as it appears before you. I should note that there was a request early on from someone in the audience that we actually move the technical committee review of spawning regulations up on the agenda, but I've decided to keep the agenda as is, and, of course, no one here has suggested any different arrangement of the agenda items.

APPROVAL OF PROCEEDINGS

Approval of proceedings of November 7, 2011; I assume everyone has had a chance to review those proceedings. Do I have a motion to approve them? Okay, Bill Adler has moved approval of the minutes and seconded by Bill McElroy. The motion is approved; the minutes of our November 7th meeting are approved.

PUBLIC COMMENT

All right, as always we provide an opportunity for the public to comment on any issue that relates to management of sea herring by ASMFC items of interest to us that are not on the agenda that you have before you. Is there anyone in the audience who would care to comment on any aspect of ASMFC business relative to sea herring that is not on the agenda? All right, I see no one raising their hands; therefore, we will go on to the next agenda item, and that is update of 2010 final landings. We turn to Chris for that update.

UPDATE OF 2010 FINAL LANDINGS

MR. CHRISTOPHER VONDERWEIDT: This is really just an FYI. There is a proposed rule that was distributed to the section and essentially it proposes that overages from the 2010 fishing season – they were tallied in late 2011 by comparing VTR reports to dealer reports, and in Area 1A there was an overage and in Area 1B there was an overage. We're talking about 2010.

However, the language is that it will be applied to the fishing year after the final catch is tallied. After that has all been said and done, there is a table up there. The Area 1A Sub ACL was initially 26,546 metric tons. It will be reduced by 1,878 metric tons to 24,668. 1B would be reduced by 1,638 to 2,724 metric tons, which is a more significant amount of the total quota. If you read through the proposed rule, you would have noticed that the methodology that they used to calculate the harvest was reviewed by the New England Fishery Management Council Plan Development Team, which has a lot of overlap with ASMFC groups.

Matt is on that group, Steve Correira from Massachusetts DMF, myself. They adopted the recommendations from that group when calculating the final harvest. It has gone through the scientific rigor. I talked to NMFS staff last week and they said that the final rule is expected to be published in the near future, so we'll probably see that soon.

This is just essentially a heads-up that these quotas will be reduced. If you look at our plan, Addendum II was developed jointly with the council's Amendment 4, and it is consistent with the proposed rule that once the final total catch for a fishing year is determined, during the subsequent fishing year, using the best available information, the ACL Sub ACL overage would result in a reduction the following fishing year for that ACL Sub ACL equal to the amount that was exceeded. Our plan is in line with that so we would also have the same Sub ACL.

CHAIRMAN PIERCE: All right, thank you, Chris, for that summary as to the nature of the overages and what we can expect the Service to do. Addendum II, as noted in our meeting overview, specifies how the section will deal with any overages, so it's prescribed for us. Any questions of Chris? Bill.

MR. WILLIAM A. ADLER: Mr. Chairman, I assume there are no underage allowances in the plan, of course. The question I had to do with is what is the latest on 1B right now? It sounds like it was they're almost halfway there already.

DR. MATT CIERI: Current landings as reported – and I'm pulling this directly from the NMFS Website – is 2,932; 67 percent. In fact, once this is implement, 1B will be over again.

MR. ADLER: That is just what I was going to say because your quota is 2,700 for 2012 and you're saying basically we're already going to be over it?

DR. CIERI: Correct.

DISCUSSION OF NEFMC AMENDMENT 5

CHAIRMAN PIERCE: Further questions of Chris? All right, I see none. The next item on the agenda is the council's Amendment 5. The agenda says select preferred alternatives in Amendment 5. Lori Steele, council staffer, who has done all the work or most of the work, anyway, the lion's share of the work on Amendment 5 for the council will be giving us a presentation describing some specifics.

If you recall, Lori gave us a presentation at our Boston meeting. This presentation will differ from the one she gave in Boston, and I'll ask her to elaborate in a bit. Before I do that, I'm going to suggest to the section that in light of the discussions we all heard and some of us participated in earlier this morning on river herring as it relates to Amendment 5, that we follow the same procedure that was adopted by the River Herring Board.

And that is public hearings have not been held. We don't have a final document yet from the National Marine Fisheries Service. They're still working on what was submitted to them by Lori and the rest of the council staff; Lori specifically, I suppose. Lori is preparing a public hearing document that will be available before the end of February, so I would suggest to the section – and we don't have to decide it at this moment, but I want to at least give you some feel for where I'm going.

I think it makes sense for us to have a subgroup of the section similar to a subgroup that has been formed for the River Herring Board. That subgroup would work on comments to provide to the section, and that would enable us to provide comments on Amendment 5 before the council meeting is held.

It would make sense, I suspect, for those individuals who volunteered to be on River Herring Board to perhaps also volunteer to be on this particular section subgroup, but we'll deal with that after Lori gives her presentation. We also have to discuss the strategy that we should adopt relative to getting advisors' input to us on the comments we would choose to submit to the council on Amendment 5.

That's my suggested course of action as opposed to our actually taking the time today to select preferred alternatives in the Amendment 5 Document. I don't believe we're in a position to do that. None of us have the full document. Yes, we have the earlier document, but still it seems a bit premature. With that said, I'll turn to Lori and – yes, Terry.

MR. TERRY STOCKWELL: Mr. Chairman, I concur with your approach. I will volunteer to be on the working group. Actually my request to Lori is that seeing as this Herring Section was also here before lunch, that if you could just highlight the different pages so we could focus on what is new I guess is a more concise way of saying it.

CHAIRMAN PIERCE: Well, let's address it right now. Does the section agree with that approach that I've just described for you? The only thing I would like to do is to have some additional discussion as to how we will deal with input from the advisors and from those who obviously will be impacted by whatever the second decides to offer up as comments on these different alternatives. I see no opposition to the approach so we will proceed in that direction.

I turn to you now, Lori, and I ask that for the benefit of the section it would be very helpful if you would right away highlight the differences between this presentation and the one you gave in Boston. That way everyone will be alert and attentive to the specifics that you offer up that we all need to focus on today, of course, but certainly as we move forward and get closer to the time when public hearings are held.

I would assume that many of us would actually attend those hearings and submit comments on our own on behalf of our own state or organization, but that's a different matter. We, the section, will obviously have to take a position, too. So if you would, Lori, highlight the differences between then and now.

MS. LORI STEELE: When I came in November to the meeting in Boston, I just gave a general presentation on the amendment. The council had just approved the management alternatives and I was in

the process of developing the Draft EIS. Today, because we had the benefit of doing a river herring presentation this morning, I spent a lot more time this morning on the details of the river herring measures, and now this presentation is going to focus more on a lot of the details of the measures. I think the November presentation was much more conceptual. I'm not going to go over the river herring measures again.

For those of you who were at the presentation this morning – and I'll get into it in just a minute – we had circle and I sort of focused on the lower left quadrant, the green part, that was all the measures to address river herring bycatch. I'm going to cover all three of the other sections of that circle in this presentation. David, would you like me just to right ahead?

CHAIRMAN PIERCE: Before you do, I want to highlight another document that is available that was prepared with a lot of involvement of council staff. I believe it was Pat Fiorelli working with you, obviously, Lori. This is an insert into the Commercial Fisheries News, special supplement. This is the February issue of the News.

There is a well-done, easily understood description of what is being prepared for public hearings; that is, the specifics of this amendment, well-done, easy to understand relatively speaking. Certainly it was written with fishermen in mind so that they would have a better understanding as to what exactly is being offered up as proposed alternatives for this amendment. I would encourage all of you who would like to have an additional source of information regarding what is being proposed to take a look at this special supplement because it again is a job well done. Okay, Lori, if you will.

MS. STEELE: Okay, thank you, and actually thank you for reminding me of that supplement. All of the section members should have a copy of that on your CD. I think that Chris was able to scan it for everybody, and it is in this month's Commercial Fisheries News. It's a really good summary of everything that we'll be taking to public hearings.

Very generally again, this is all part of the Draft Amendment 5 EIS, which the formal draft was just submitted to NMFS in late January. We are hopeful that we will hear very soon that the draft is moving through the process so that we can begin our 45-day comment period. We're anticipating a comment period during late February and March with public hearings in March.

If we can stick to this timeline and if the document doesn't get held up, the council will be making final decisions at the April council meeting. We're trying to get this amendment completed and submitted so that the new measures for catch monitoring can be implemented at the start of the fishing year with the new specifications on January 1, 2013.

Goals and objectives; again, I won't go through these in detail since most of you were here this morning, but the overall purpose of this amendment is to develop a comprehensive catch monitoring program for the herring fishery and to address bycatch to the extent possible. Beyond the regular goals and objectives of the amendment, the overall goals and objectives of the amendment, the council did identify some specific goals for the catch monitoring program that is developed in Amendment 5.

I put these on the screen since we're focusing this afternoon more on the catch monitoring program, and you'll see next to these goals there are little symbols. They're a little hard to see on the screen, but there is a star, a circle, a square and a triangle. Those are for each of the four goals in the catch monitoring program; and as you follow some of these tables and illustrations that we've put together, you'll see these symbols next to a lot of the management measures. It's just a key that you can see which goals the management measures are designed to address. Essentially the council's main goal is to create a cost-effective and administratively feasible catch monitoring program to obtain accurate and timely records of catch of all species in the herring fishery; and beyond that we have several other goals that we have identified.

The measures that are proposed in the document have been evaluated relative to the goals and objectives of the catch monitoring program. As I mentioned before, the measures and the alternatives in Amendment 5 can essentially be grouped into four categories; changes to the fishery management program, which we'll go into in a minute; measures to address catch monitoring at sea; measures to address river herring bycatch; and measures to establish criteria for midwater trawl vessels to access the year-round groundfish closed areas.

This is the visual sort of graphic representation of the Amendment 5 alternatives. The presentation this morning was the lower left, which were the measures to address river herring bycatch, recognizing that there are measures to address river herring bycatch in all of the other elements of this amendment as well,

but I'm going to go ahead and try to spend a little more time now on the pink, the blue and the orange.

Starting with the blue, which is all of our fishery management program adjustments, this is Section 3.1 of the document. These tables just provide you with the general description of all the options that are being considered. We're considering changes to some regulatory definitions, defining what a transfer at sea is and defining what an offload is.

We're also considering some general provisions to eliminate the VMS power-down on limited access vessels, establish a new permit for carrier vessels that sell fish at sea. We're trying to get a much better handle in this amendment on the transfer activities that may be occurring at sea and the utilization of carrier vessels in the fishery.

Carrier vessels, if they're buying or selling fish at sea, are dealers and it's not clear – we're trying to clarify some of the regulations and give them their own permit so that we can make sure to get reporting cleaned up a little bit. We also have some measures in here to address carrier vessels and provide some flexibility for vessels that do participating in carrying activities.

Moving on to the next slide, again these are the adjustments to the fishery management program. A couple of options are being considered to limit transfers at sea. Option 2 would only allow transfers to occur between A and B vessels. That's only about 40 vessels in the fishery, and those are the limited access directed fishery vessels.

The other option would just require that you have some sort of herring permit in order to transfer and receive herring as sea. This means under Option 3 that anybody who is going to transfer at sea has to go get a permit and then be subject to all of the reporting requirements associated with that permit, so that's something to consider for lobster vessels, recreational vessels, other vessels that would then be required to, for example, report through VTRs and everything else that's associated with the federal permit.

We're considering notification requirements. Right now some vessels are required to call pre-trip and notify NMFS to potentially have an observer put on the boat. We are proposing in this amendment to require all limited access herring vessels to comply with pre-trip and pre-landing notification requirements. This is to facilitate the deployment of observers on herring vessels and to make sure that we're actually covering the boats that we want to be covering in this fishery when they're fishing for herring.

We're also considering several options that I mentioned this morning to require dealers to accurately weigh all of their fish. In the last part of this section we're considering some changes to the open access provisions in Areas 2 and 3 for limited access mackerel vessels. This would be a new permit category. This I guess would be a Category E permit and it would be available to any limited access mackerel vessels that did not quality for a limited access herring permit.

Right now if you're a limited access mackerel vessel and you didn't qualify for a limited access herring permit, you're limited to three tons under the open access permit, so we're considering options just for these vessels that would increase their allowance to either 10,000 pounds or 20,000 pounds. This is in an effort to try to minimize regulatory discarding of herring when vessels are fishing for mackerel.

In the document – and I know this is probably little hard to read on the screen. Hopefully, you can see it on the pages – are some summary tables that summarize the impacts of the measures that are under consideration relative to the valued ecosystem components that we have identified in this amendment.

You'll notice, as you go through the document and the impact analysis, that each measure and each option is analyzed for its impacts on Atlantic herring, which is the first VEC. Non-target species in other fisheries is the second VEC. Non-target species in other fisheries includes bycatch in general as well as river herring, mackerel and groundfish. Those are the three other fisheries that we have identified as sort of being important for the impact analysis.

The third VEC is essential fish habitat and the fourth VEC is protected resources and the fifth VEC is fishery-related businesses and communities or the herring fishery. As you can see in the table here, we've gone through – and for the fishery management plan adjustments, the things that I just talked about, these are not things with huge impacts. These are mostly administrative largely, anyway.

A lot of them provide more flexibility for carrier vessels and things like that, so you don't see a whole bunch of significant impacts here. There are some estimates provided on how much a vessel monitoring system would be for boats that don't have one if they want to carry fish, but for the most part the measures

in the fishery management program section doesn't have a whole lot of significant impacts.

They should, however, help to streamline the catch monitoring program and improve monitoring and reporting. This is just a continuation of that same slide. I'm going to go ahead and move into the next section of the document, which is the catch monitoring at sea. This is probably the more complicated section of the document, and this includes the alternatives that are under consideration to allocate observer coverage on limited access herring vessels.

I went through these this morning because they do address river herring and the need to sample for river herring bycatch. I'm not going to go into too much detail, but there are four elements to each of these alternatives; one being what the priorities for allocating coverage are; two being what the process is; three being what the options for funding are; and four being what the provisions are for service providers should there be a need for additional service providers beyond the Science Center's Observer Program.

This is the same slide I had this morning that summarizes the four observer allocation alternatives. The first alternative is status quo, no action alternative. The second alternative would require a hundred percent observer coverage on Category A, B and C vessels anytime that they are on a declared herring trip.

The third alternative would require that the current SBRM process, whatever coverage levels come out of the current SBRM process, would be minimums for this fishery. It would essentially prohibit the council from having the ability to shift days out of the herring fishery and reprioritize them into another fishery because of lack of funds or something like that. It requires under this alternative that SBRM be mandated as a minimum so there wouldn't be any allowances for days to be shifted away.

The fourth alternative would allocate observer coverage based on a new set of priorities identified by the council. These priorities included obtaining a 30 percent CV, coefficient of variation or a precision estimate; a 30 percent CV for estimates of catch of herring and haddock as well as a 20 percent CV, which is a more precise estimate, for the estimate of bycatch of river herring.

This fourth alternative actually identifies river herring as a priority for allocating coverage and requires that we target a more precise estimate of bycatch than the standard sort of 30 percent CV that's used in the SBRM process. The other elements of the catch monitoring at-sea section of document include measures to maximize sampling and address net slippage.

I went through these this morning as well, but there are several measures in the document to enhance sampling by observers and several measures in the document are options in the document for requirements if there are slippage events in the fishery. I'm going to go ahead and flip right to this slide so I can go into them in a little bit more detail than the last slide.

This is Section 3.2.2 of the document; and in terms of the additional measures to improve sampling, as I mentioned the options under consideration include things like requirements for a safe sampling station, requirements to provide the observer with reasonable assistance to carry out their duties, requirements for notification when pumping starts and stops, a requirement if there is a multiple-vessel operation that observers be put on any vessel taking on fish, requirements for additional communication between pair trawl vessels and a requirement that the vessel operator provide the observer with visual access to the cod end after pumping has ended.

Regarding slippage, the options under consideration include requiring a released catch affidavit for slippage events any time the observer is on board, and that would be with pictures. Another option is to implement the Closed Area 1 sampling provisions throughout the entire fishery whenever there is an observer on board.

These provisions require that all fish be at least pumped across the deck for sampling and do not allow discarding prior to fish being sampled by the observer except for under very specific circumstances. And then another option being considered with several suboptions is a provision that would actually apply a catch deduction to the herring quota in the area if a slippage event occurs; and then a couple of the suboptions, as you see, after a certain number of events occur there would be a trip termination requirement as well.

These are again only on trips where there is an observer on board, and the observer coverage would be determined by one of those four alternatives to allocate observer coverage on the limited access vessels. Again, we have some summary tables that

go VEC by VEC in the document and talk about what the impacts are.

The impact analysis is very extensive in the document and it's somewhat hard to sort of read it and get just a sort of general idea of what the impact is, so we've tried to put these tables together. These are the alternatives here on this slide to allocate observer coverage in the fishery. Some of the alternatives to allocate observer coverage are likely to have significant impacts.

Again, we're talking about the limited access fishery so this is about a hundred vessels; Categories A, B and C. You can see obviously requiring a hundred percent observer coverage on the vessels is going to have a pretty high negative impact on the businesses. A lot of it depends on how much of the observer coverage is funded federally and how much would have to come from other funding sources.

Really, the only option in the document besides federal funding is that the industry would fund the additional observer coverage. Under Alternative 2 for a hundred percent coverage and under Alternative 4, it's very likely that those two alternatives would require observer coverage at levels that are going to be greater than what federal funds are going to support and even possibly under Alternative 3.

But, it's likely that the council, if any of these alternatives are selected, the council is going to have to make some decisions about how an industry-funded observer program would be constructed to sort of go into effect with this amendment. On this slide is a summary of the impacts of the measures to improve sampling and some of the measures to address net slippage.

Again, these are not big impact measures requiring communication between pair trawl vessels, requiring the vessel operators help an observer. These are not things that are going to have huge impacts, but collectively are likely to enhance sampling in the fishery. Some of the measures to address net slippage on the other hand are a little bit more substantial in terms of their potential impact, and that's both on things like bycatch as well as on the participants in the fishery.

The Closed Area 1 sampling provisions here at the bottom of the table in Option 3 are likely to have a positive impact in terms of bycatch in other fisheries because you're ensuring that everything that is caught will at least be observed or sampled when the observer is on board. And potentially some negative impacts on the fleet in terms of bringing operational discards on board.

We have no idea, we have no experience with this measure on purse seine vessels. This measure is in place in Closed Area 1 right now, which is on Georges Bank, and it is only applicable to midwater trawl vessels. This measure is proposed across the fishery, but there may be some logistical issues with the purse seine vessels that we're going to have to deal with.

The next slide here is a continuation of the measures to address net slippage. At the bottom you'll see that the bottom row here talks about an alternative for a maximized retention experimental fishery. Maximized retention was considered as a possible approach in Amendment 5 for ensuring a more comprehensive catch monitoring program, but we ran into a lot of problems in terms of trying to implement a maximized retention program across the entire fishery in this amendment.

What is in there now is an alternative that would allow NMFS to conduct an experimental fishery in the first four or five years under Amendment 5 to determine whether or not maximized retention is something that should be considered across the herring fishery. Through that experimental fishery we would try to figure out what the challenges would be for implementing maximized retention across the fishery.

We can't do it in Amendment 5 but there is a mechanism to consider it in the future that it could be established in Amendment 5. I'm not going to go through the measures to address river herring bycatch. I went through those this morning. I'm just acknowledging them here as another major component of this plan.

This figure here just sort of gives you a visual representation of the alternatives under consideration. We're looking at setting up areas for monitoring bycatch potential avoidance areas, and there is another alternative that sets up protection areas, which would be bimonthly closed areas for river herring protection.

Hopefully, everybody already heard all that this morning. I certainly can come back and answer any questions if anybody has any. And then the last element of this amendment that we're considering is criteria for midwater trawl access to groundfish year-round closed areas. This is Section 3.4 of the document.

There are five alternatives under consideration. They range from no action all the way to closing the areas entirely to midwater trawling. Right now midwater trawls are allowed into all of the year-round groundfish closed areas with some additional sampling provisions in Closed Area 1 and also with haddock catch cap in the multispecies incidental catch allowance.

These alternatives are being considered to potentially apply criteria beyond just Closed Area 1 into any of the other closed areas. Similar to the river herring areas, things that are being considered include a hundred percent observer coverage and applying the Closed Area 1 sampling provisions.

Here is a map of the year-round groundfish closed areas. In the solid orange shading, those are essentially the area that we're looking at here for midwater trawl access. Again, we have a summary table. There is not really a lot here on the midwater trawl access to the closed area issue. There isn't a lot of information to suggest that there is a significant bycatch problem.

The vast majority of the bycatch that we've seen on midwater trawl vessels, groundfish bycatch has been haddock, and it is being controlled through a catch cap now. In general, for the most part this is largely a policy call for the council as to whether or not they want to make some policy decisions about midwater trawl fishing in the groundfish closed areas. There is not a lot here that has significant impacts; although closing these areas completely to the herring fishery is obviously going to have some significant impacts.

One thing that has not been fully determined yet is which permit categories all of these measures are going to apply to. For the most part the catch monitoring measures, the allocation of observer coverage, the measures to address net slippage are all intended to apply to the limited access fishery. That's Categories A, B and C. That's about a hundred vessels. They catch 99.5 percent of the herring.

Category D vessels, that's our open access fleet, there are over 2,200 vessels and they catch very little; less than 1 percent of the total herring landings in a year. The council may apply some of the measures in the amendment to just the limited access fleet. They may decide to go A, B, C and D on some of them. The council stills retains the ability just apply measures to the A and B fleet.

There is some analysis in the document about cost differences and the impacts and the different impacts by vessel permit category, but for the most part the catch monitoring program is intended to apply to the limited access fleet. The river herring measures may apply to both limited access and open access.

The council will be seeking public comment during the comment period on which permit categories any of the measures should apply to. I'm not going to go into all of these other slides in the interest of time, but I did put some information in here just for your reference about the different permit categories and what kind of gears these boats are using and how much they contribute to the landings.

Hopefully you can see the first chunk of rows in this table represent the Category A vessels. These are the 42 vessels that have access to all management areas, and the Category A vessels are essentially landing 98 percent of the herring. Category B is in there, too. There are only four Category B vessels and we can't even really report them separately because I think in one year there is only three. Category C lands about 1 percent and Category D again less than 1 percent.

This is just a couple of tables that summarize landings recently; and since we just discussed the 2010 landings I won't go into that. Again, here I've just provided some information by permit category and by management area so you get a sense of what boats are really sort of participating most in this fishery. Again you're really looking at Category A and B when you're talking the vast majority of the fishery.

In terms of the impacts, there is a lot of information in the document about impacts. I don't want to get too into it because there is a lot of information, but you'll see some things in the document that look at the impacts of the alternatives to allocate observer coverage. Again, those are probably from an industry impact perspective going to be one of the more significant things in this amendment.

The impacts will depend largely on how much can be funded federally and how much will remain to be funded by the industry. We took a look at what the cost of an observer is and in general it's about $1,200 a day. There is information in the document that breaks down what that $1,200 is.

Essentially given the way this fishery operates and the level of sampling that is required in this fishery, the assumption is that if we're going to go hire a service provider to sample this fishery we want that

service provider to sample it consistent with the way that the Science Center observers sample it so that we get information that's consistent and we have data that is actually comparable.

We want to supplement the observer data and not create addition data that's not comparable. Under that assumption, with all of the training that is required and the subsampling methodology that has to be learned for this fishery, species identification training and everything else, you're looking at about $1,200 a day whether you're using a Science Center observer or a service provider.

Based on that, we looked at vessel operating costs and revenues per day, and we looked at what the costs of an observer would be as a percentage of the daily revenues and the daily operating costs, and you're looking on the order of 6 to 10 percent for the midwater trawl and purse seine fleet; 6 to 10 percent of the daily revenues for putting an observer on the boat.

The bottom trawl numbers are a little bit skewed because bottom trawl vessels do a lot more than just fish for herring and actually their contribution to the herring revenues and herring landings is a lot smaller. Just to kind of move through this, one of the other things that we looked at is general costs.

A hundred percent observer coverage, you're looking at for the Category A and B fleet, based on how many days they fished in 2007, 2008 and 2009, you're looking at around $2 million or so for a hundred percent coverage. And then Category C is where things start to get a little bit more confusing because Category C is an incidental catch category, but it is a limited access category. They fish on a lot of other things other than herring.

If you only look at the Category C days where herring was landed, you're looking at maybe an extra $115,000 cost, but this bottom table here shows how many days you're looking for the Category C fleet if you're actually going to do it across the whole fleet and all of the trips they take. In 2009 the Category C fleet landed herring on 96 days. In 2009 the Category C fleet fished 6,005 days.

So, multiply that out by $1,200 a day and it makes a huge difference in terms of an industry-funded observer program. Again, we're talking about the Atlantic herring fishery, so we need to make sure if we're going to develop regulatory requirements for the herring fishery that we're actually imposing those requirements on vessels that are fishing for herring.

Okay, this is part of the analysis of the impacts of the observer coverage alternatives, and it's really complicated. There is a very detailed technical analysis in the document that shows as to how we would go about allocating observer days to achieve the council targets, the 20 percent CV on river herring, 30 percent CV on haddock, and 30 percent CV for herring by gear type, by area.

This just gives you sort of an overall picture after you do the analysis and you sum it all up across the gear types and the areas how many days you would need in the fishery for each of these sectors based on 2010 – we did this in 2010 based on 2010 – to meet those CV targets. This is the kind of information that the council would be presented with but hopefully a little bit more clearer so that they could have an understanding of when they get an SBRM type report or whatever report we'll see in the future from the Science Center on how to allocate days to the various fleets.

They would then take this piece of information here as a supplement and look at just the herring fleets and look at the difference between the SBRM allocations and these allocations here, and the council would be able to make decisions on where they wanted to add extra days, which strata, which areas, which fleets in order to try to meet these targets for river herring bycatch and everything else. It's a little bit complicated.

Hopefully, you have had a chance to look at in the document. It's a little more clear if you can read through it. This is just a summary table of what the coverage rates have been in the fishery. We've had really good observer coverage in this fishery for the last couple of years. Actually, the PDT was confident enough in the 2010 observer data that we did generate some estimates of total removals across the fishery. We did some extrapolations

This is just a breakdown, again recognizing the bottom trawl vessels are sort of all over place, but you're looking at 30 to 40 percent coverage in this fishery for the pair trawl, midwater trawl and purse seine fleets, a little less for purse seine, in 2009 and 2010. In 2009 and 2010 for the Category A and B trawl fleets, 40 percent or more of the trips were observed. That's higher coverage than most fisheries get. That's it. I tried to shorten this up, believe it or not, and I'm sorry if it was all over the place but I had covered half of it this morning. I'm happy to answer any other questions.

CHAIRMAN PIERCE: Lori, never apologize for a comprehensive presentation of such an important issue facing the sea herring fishery in the New England and the Mid-Atlantic. Section members and audience, we have been well briefed. Between Boston and this meeting in Alexandria all the details of this amendment have been covered and covered very well.

Of course, there are some section members around this table on whose shoulders a lot has been placed and that would be David Simpson, Mark Gibson, Doug Grout, Terry Stockwell and myself because we are New Council members. Many of us I think have been members at one time or another of the Sea Herring Committee of the council so we have participated in developing this document with a lot of input from the industry and from the general public.

If all goes well, if NMFS releases it fairly soon, this document will go to public hearing as noted by Lori in March and then in April in Connecticut some very important decisions will be made after about five years of hard work regarding how to adequately sample the catch in the sea herring fishery.

The meeting will be April 24th, 25th and 26th, and that's about two and a half months from now, so it doesn't provide much time for consideration of this document by the section and some conclusion regarding preferred alternatives. With that said, I will turn to the section and ask you if you have any questions of Lori and her presentation? Okay, I see none.

Now, to the point I raised earlier regarding how we will effectively get public input into the process that we have established to deal with this amendment, be it river herring or specific measures to sea herring, I turn to you, Bob, and ask you to help us in that regard. Can you give us some guidance?

MR. ROBERT E. BEAL: Well, I can tell you what the River Herring Board did this morning. I think that might be an option for this board. The River Herring Board formed a working group similar to what this section did before Lori's presentation. What they agreed is that the advisory panel would meet and review the document once Lori has completed the public hearing document.

They would provide their feedback and comment to the working group and the working group would then distill their information with the position of the working group and then present that information to the section, and the section would sign off on those comments to the National Marine Fisheries Service. That's how the earlier group agreed to get the advisory panel involved in this process.

CHAIRMAN PIERCE: All right, that sounds like a reasonable approach. Do section members agree with that strategy or is there something else to offer up as an alternative approach? Okay, I believe that there seems to be agreement that is the way we should go with the advisory panel feedback being acquired. Now, I need to get some volunteers for the working group. Chris just indicated that Terry is on the working group, correct? Besides Terry, any other members of the section care to be on this working group; Bill Adler –

MR. STOCKWELL: I'm going to volunteer Doug.

CHAIRMAN PIERCE: Doug Grout has been volunteered. That's right; he is not at the table.

MR. G. RITCHIE WHITE: Mr. Chairman, wouldn't it make sense to just have the same people for the river herring and the herring; just have the same group?

CHAIRMAN PIERCE: It is my hope that the working group would consist of the same people. However, there may be some individual around this table that is not a member of the River Herring Board so that's why I asked if there was anyone else who might be interested. All right, we have a few volunteers that will join the River Herring Board participants in the working group, and I assume that Chris and ASMFC staff dealing with river herring will help coordinate that effort.

TECHNICAL COMMITTEE REVIEW OF SPAWNING REGULATIONS

All right, I see Vince shaking his head so that is how we will proceed relative to our providing some constructive input and preferred alternatives on these measures described in Amendment 5. All right, if there are no further questions or issues to be raised regarding the amendment, I'd like to go on to the next agenda item, and this leads us to a charge that the section gave to Matt Cieri I believe at our last meeting when we asked for technical committee review of spawning regulations, and Matt and other technical committee members I believe have put together a white paper. Matt is now going to describe the technical committee review; and I believe at the end of that review he is going to have a recommendation from the technical committee that the section needs to entertain.

DR. CIERI: My name is Matt Cieri. I'm with the Maine Department of Marine Resources, and I'm current Chair for the Atlantic Herring Technical Committee. Today I'm going to be basically going over that white paper, which you all should have received. It was actually in the supplemental materials and I think it is going to be passed out momentarily. Just to give you guys a little bit of a background, back in Boston the section sort of initiated a review of the spawning regulations and management among all the states.

The technical committee took a look at the issues and developed a white paper based around the section's discussions and their concerns. We took all this stuff and sort of hammered it all together and got on a conference call and examined all these issues and discussed them for a fair bit of time.

The TC also brought up a number of other issues, and so what we tried to do is actually put out a series of questions to be addressed through some analysis to give you guys a better sort of idea of where we were going with this white paper. But first things first; this whole thing sort of centered around this issue of smaller fish that are spawning.

It has generally been seen across the entire fishery, all areas, and spawning seems to be at the same age roughly, but that size at age has decreased over time since the mid 1980's. This has implications for our current spawning regulations which is sort of capped at a 24 or better centimeter total length for analysis.

Just to give a sort of a rough idea, here is the percentage of females that are mature by age 2005-2010, and as you can see age threes generally are 50 percent mature, so 50 percent of the females that are age three are mature, going up to 80 percent by age four and not actually reaching a hundred percent mature until about age six. However, the mean total length in millimeters this time of age three spawning females caught in the same area has sort of trended like this over time.

As you can see, since about the mid-1980's, back in the eighties it was about a 26-1/2 centimeter fish was a typical size for an age three, and now we're looking at something that was closer to 23 and below. That red line is the cut-off for which we sample for spawning fish, and so those fish that are below that size are probably in condition to spawn.

Again, slicing it a different way, this is the percentage of spawning or developing females in Area 1A during the spawning season. And here it's in this size bin, this 23 to 24, this is the size bin just below where our regulations say that we need to sample, so this is the next size bin down. As you can see over time, it's sort of been highly variable but it has certainly been trending upwards.

As you can see now, 20 percent of the fish back in 2004 in this size bin were spawning or were going to spawn, but in most recent years it has been about a quarter, so about 25 percent of the fish in the most recent years in that size bin that we're not sampling because of the regulations are showing signs of maturity and development.

Again, another way of looking at it, this is the actual data that went into that previous graph, and as you can see on average from 2000-2011 for that size bin directly below where we sampled, which I've highlighted here in yellow, about 11 percent of the fish are usually in spawning condition. However, it has shown up that it has been maybe 4, 6, 10 in 2001, 2002, 2003, but that in recent years it has been 13, 18 and 25 percent.

I just got out of a data workshop meeting in Woods Hole for the assessment. One of the issues is we've been dealing with this sort of issue also within the assessment and how to model it. As you can see from the NMFS bottom trawl information, this is a problem that has been happening over the course of the fishery since about 1980's.

As it shows here, the proportion of females that are mature – this is from the NMFS bottom trawl, all areas – back, for example, in 1987 and in 2006 and that timeframe between 1987 and 2007 was roughly about 21 and 22 centimeters fork length, which is different than the total length that we normally use, but that in recent years it has been about 2 centimeters smaller.

So now that we've beaten that one to death, the TC, as I told you earlier, proposed a number of questions for further analysis, and one of the biggest questions was do fish that are below 24 centimeters spawn earlier than larger spawners. There is some suggestions within the biological literature that this happens in fish populations.

In general, no, the fish that are in the same area tend to spawn roughly around the same time regardless of whether they're smaller fish or bigger fish. In general with herring, males tend to hang out in an area that is in a developmental stage. It's more advanced than their female counterparts in the same

area, and they sort of suspend their development, waiting for the females to be fully mature.

You can find males in a given area that have a well-advanced maturity stage than females and they have that ability to do that. The question was do the default spawning dates overlap with peak spawning times? This is a very difficult question to answer, of course, because most of our information comes from the commercial fishery that is closed out of those areas during that time.

However, it seems the TC felt the regulations generally work pretty well. There is some indication – and I'll highlight this a little bit later on – some indication that down east and mid-coast Maine, that the fish, when we have sampled, are spawning later than the defaults, so our defaults that we have set in the plan, when we actually go out and sample, those fish are spawning a little bit later on.

However, it's not really that significant. It's about five days. There seems to be about a five-day difference between the default and the average spawning date if you do it by sampling. Now, this could be changed, but TC made a sort of cautionary note that this may mean that spawning areas in mid-coast Maine and in eastern Maine and Massachusetts and New Hampshire, because that hasn't really changed its spawning dates very much, may overlap more strongly, which means that there would be areas of the coast and many times in many years in which all the coast would be closed for a certain portion of time.

Again, this is sort of a breakdown that Chris did of when the spawning closure dates happened 2005-2011. As you can see it has been fairly variable. For example, the eastern Maine area has closed the 25th, the 28th, in and around there; where western Maine has closed, its default is the 1st, but it has closed as late as the 17th or the 13th.

And then for Massachusetts and New Hampshire, again its general default date is the 21st but it has closed as late as October 1st, but generally has been around the same timeframe from about the 16th to the 21st, so there is some indication it's slightly early but not by much. But, again, getting back to eastern Maine, it has been fairly variable and the same thing with western.

Another question you'll find in the TC white paper is are regulations necessary or practical to address vast differences in herring being sampled from northern and southern areas of the same spawning area. What this comes down to is that we have three spawning areas along the coast of Maine and Massachusetts; the eastern Gulf of Maine, western Gulf of Maine and the Massachusetts/New Hampshire closure.

During certain years Massachusetts DMF will sample some of their fish that are closed by their facility, we'll sample fish that are fairly close by our facility, and we find that they're vastly different in their maturity stage, and this has caused some consternation. There may be an issue in which basically Massachusetts DMF and Maine DMR are sampling two separate bodies of fish that are all in very different spawning conditions.

There may be a need to adjust the Massachusetts/New Hampshire Boundary with the western Maine boundary; in other words, to adjust that boundary. That boundary currently is a little bit south of Cape Elizabeth; and so there was some suggestion by the TC that if the section wanted us to, we could go back and take a look at samples that have come in that general area across a lot of years and see if that line could be drawn a little better, but that's up to you guys to decide if you want that type of an analysis to be done because that requires a good amount of work.

The other question is do the current spawning closure regulations effectively protect local populations from extinction or extirpation and can the regulations be improved upon. In general the TC came up with this sort of consensus statement that the measures are pretty effective protecting spawning fish when they are aggregated for spawning.

So, if you're not going to allow people to fish on Atlantic herring while they're spawning during that timeframe, then generally they're going to be pretty effective. Of course, some improvement and standardization among states as far as protocols and as far as language within their regulations is probably warranted.

The other question that was posed was should the goals of the spawning closures and the objectives be clarified or expanded. The TC found this was pretty much a management issue. The goals and objectives of the spawning closures and the spawning management in general seem relatively unclear from a technical aspect and so you guys might want to go back and take a look at those goals, see if they currently address your needs and your current goals, the way they did when this plan was implemented back I believe in 1999.

Another technical question that came up was generally both Massachusetts DMF, Maine DMR and even New Hampshire Fish and Game have the ability to sample both directed trips and non-directed trips for Atlantic herring, and so there has been some discussion among all the samplers as to whether or not that's an appropriate representation of what is going on out there.

The TC sort of met on this particular issue and they came up with the idea that non-directed trips are probably important especially when the area that is being examined is closed to directed fishing because of spawning closures. The only way you're going to get fish is from a non-directed trip, and that these non-directed trips probably provide some insight and some window into a process that isn't normally sampled with a directed fishery.

Next came the question of how many samples is necessary. The current regulations as it's currently spelled out is that you need at least two samples of 50 fish or more per week in order to keep an area open or to close it. That has been what has been in the regulations as far as ASMFC is concerned. The TC suggested that be increased to two 100 fish samples generally because when you go through a sample you have to look for females in a particular size.

It's a lot easier to get the required number of females from a hundred fish than it is from fifty fish and it doesn't require that much more work. That is one technical change, for example, that the TC recommended. The other is whether or not the spawning regulations provide sufficient guidance and are they standardized among all the states.

In general the answer is, no, there are discrepancies in regulations among all three states, especially when it comes to what sizes to sample, how to sample, those sorts of things. There is a need to standardize among the states. In general things have worked pretty well in the past. There are not huge slugs of spawning fish that come across the dock that most people know about, but that's basically because Massachusetts, New Hampshire and Maine, usually the samplers have been in constant contact with each other usually during the process.

I know I call Mike Armstrong quite a bit during the spawning season just to see if we can line stuff up. But this isn't codified within any of our regulations and so at certain points as we go through budget cuts, personnel changes, those types of things, having states have a regulatory document that they can go back to that spells out what kind of sampling they need to do and when would be most helpful.

To sum up everything, the TC's recommendation is to initiate an addendum to address spawning management, including the goals and objectives to adjust the sampling size downward to account for this drop in weight and size of age; to examine the default dates if so desired, particularly in western Maine and in eastern Maine; to address the Massachusetts, New Hampshire and western Maine Boundary Issue; and to standardize the sampling protocol and the regulations associated with spawning among all the states involved. That's what I've got.

CHAIRMAN PIERCE: Thank you, Matt, to you and the technical committee for the followup that you did on this issue. Section members, any question of Matt? Pat.

MR. PATRICK AUGUSTINE: Great presentation, Matt. When you were talking about the difference in spawning areas – east/west, if you will – that they were spawning at different dates, if you will, how long a period of time are we talking about, a week or two weeks or three weeks?

DR. CIERI: Do you mean between the default dates or the two groups of fish in the same area, which one?

MR. AUGUSTINE: Two groups of fish in the same area to start with.

DR. CIERI: They could be almost I would say maybe a week and a half to two weeks apart sometimes. Yes, it might be a week, maybe two.

MR. AUGUSTINE: So a follow-on to that, it's almost as though you're suggesting a short-term or quick fix – I mean not a quick fix – might be to go ahead and close the whole area off one simultaneous period of time. At least that's the gist of what you're saying that I'm getting. I'm kind of outside looking in because we're not deeply involved in the herring fishery.

But, from an objective point of view, that sounds like one of the things you're saying in addition your recommendation from the technical committee in developing an addendum – and I'm not sure those would be terms of reference of the items that you've listed there or not. So, in response to the first part of it; and then when the chairman is ready, I'll make a motion to do your addendum.

DR. CIERI: Actually, no, that isn't what I'm suggesting. I'm suggesting that each of those three areas have three different default dates associated with them, and at least two of those areas have been – generally when we've gone out and sampled have been spawning later than those default dates.

In herring management in the Gulf of Maine for spawning if you have samples, you close based around the sample. If you don't have samples, the fishery is not operating there, then you close based around the default dates. It's sort of an either/or. The suggestion would be that if the section wanted to they could take a look at the default dates – this is when we don't have samples – and whether to push it back a little bit.

The TC's feeling is that five days probably wasn't statistically significant. Five days isn't that different statistically, but then it might be different enough from a fishery management point of view to warrant that kind of action. Does that make sense; am I explaining that?

MR. AUGUSTINE: It' makes sense. And then the next follow-on question would be what is the sense of urgency on behalf of the technical committee to move forward with this at a relatively quick pace? I'm not talking about fast-tracking it. The sense that I'm getting is that it looks we really should embark on this effort as quickly as possible.

DR. CIERI: This is my own personal take. You might want to have something done by the time we start doing the sampling for next year because it's pretty clear that you're missing a lot of potential spawners that are below that 24 centimeter cut-off, and so they're not being effectively sampled and used in closing those areas.

MR. AUGUSTINE: And then a final one and then I'll shut up; within our budget constraints, Bob, could you tell us whether or not we could actually go ahead and embark upon this issue. I know we have a lot of hot items on our agenda yet for the next couple of days, so could you help us with that.

MR. BEAL: I think doing an addendum to clarify these definitions and bring them all together because they're scattered out over a bunch of documents and those sorts of things is a pretty straightforward technical exercise more than anything else. I don't see a whole lot of public input and extensive public comment periods and those sorts of things which would generate a lot of expenses for the commission. We can have hearings up and down the coast if that's what the states would like, but we may ask the states to conduct some of those hearings themselves. I think it can be done and I think it's important to sort out these definitions soon we can, as Matt was saying, get it clarified.

MR. DENNIS ABBOTT: Mr. Chairman, I think it would just appropriate to make a motion that we initiate an addendum based on the five bullet points that Matt gave us. They always do good work for us and I think that it's important that we move forward regarding the size and the boundaries and the sampling protocols.

CHAIRMAN PIERCE: Okay, check the language on the screen and see if it's the motion you are intending to make. All right, is that your motion, Dennis? We should read that into the record, if you would.

MR. ABBOTT: That's correct.

CHAIRMAN PIERCE: I will read it then. A motion has been made; let's see what the motion is. All right, move to initiate an addendum implementing the technical committee's recommendations regarding spawning regulations. That is the motion by Dennis Abbott; is there a second to the motion; Bill Adler. Okay, Terry you had your hand up; was it to make a motion?

MR. STOCKWELL: No, it was to make a comment leading into a motion.

CHAIRMAN PIERCE: Okay, we have a motion, so discussion relative to the motion. Terry.

MR. STOCKWELL: I do support the motion on the board although those of us involved in herring know full well that the section and the technical committee spend an inordinate amount of time trying to balance the spawning herring protection and the needs of the industry. Matt and I have discussed a number of the issues that are in the white paper over the years, and I believe it's timely to initiate this addendum. I do think, Mr. Chairman, we need to have some discussion on the goals and objectives before we dispense with this motion.

CHAIRMAN PIERCE: Yes, I agree with you. For the benefit of the section, I reference Page 5 of the white paper where we find common themes regarding the section's goals and objectives for sea herring. The specific text that we have in Addendum I and Amendment 2 relative to goals and objectives for protection of spawning fish, specifically the

spawning closures, that is on Page 1 and o Page 2 of the document.

Again, to clarify the motion I think that the maker of the motion, his intent is to follow what the technical committee has recommended. Specifically they're noting that this is a policy decision on our part. The technical committee did not comment on what the goals should be but they feel that some clarification is necessary. I'm feeling the maker of the motion feels the same way that the goals and objectives need to be clarified. They're all listed for us now in the white paper. Chris, do you have a point?

MR. VONDERWEIDT: I just wanted to point out that on Page 5, as David mentioned, under should the goals of the spawning closures be clarified or expanded, we actually summarized the common themes. If you look at that second from the bottom paragraph, it says common themes include protecting schools of spawning fish when aggregated, to not interfere with spawning behavior, so on and so forth. You can kind of just use this list rather than looking at the actual regulations that are in the document, too.

CHAIRMAN PIERCE: Okay, with that said, we have a motion before us with a suggestion that we spend some time focusing on the goals and objectives, so why don't we do that? Sarah.

REPRESENTATIVE SARAH K. PEAKE: Mr. Chairman, a question on the motion. I think going back to that other slide, it looks as though we're looking at certain spawning areas that it delineates. I know recently I had a meeting with some fishermen about dogfish, but herring came up.

There was some concern expressed about the lack of appropriate protections for the Nantucket Shoals Spawning Area. Would this motion include that area as we're looking at herring spawning in general; and if not, is that something that could be included with a friendly amendment?

REPRESENTATIVE PEAKE: It does not include spawning closures outside of the Gulf of Maine. We do not have any spawning closures that pertain specific to Georges Bank or Nantucket Shoals. That's another issue entirely, so right now the motion is specific to the way we do business now, which would spawning closures for the Gulf of Maine. Terry.

MR. STOCKWELL: I hear where you're coming from, Sarah. I'm afraid that if we're going to make some technical corrections that's going to help the technical committee move ahead for this year, that modifications and/or additions to the existing closures and/or new ones will take more time than we have. Probably your interest would be better served in a subsequent action to follow this, and I'll second it.

CHAIRMAN PIERCE: Well, let's dispense with this motion first. Any further comment on this motion especially with regard to the clarification of goals and objectives? David.

MR. DAVID SIMPSON: Just one thing to be clear; this is entirely a Gulf of Maine issue; right?

CHAIRMAN PIERCE: All right, I will be going to the audience, yes, but first I need to make sure that everyone who would like to speak has an opportunity to do so. I see that is the case so I will go to the audience. Mary Beth.

MS. MARY BETH TOOLEY: Mr. Chairman, I'm still a little unclear following that discussion about how this motion relates to the goals and objectives. Is it your intent that the common themes that are listed on Page 5 be the goals and objectives or are you going to take it up under a separate motion? I wasn't too sure.

CHAIRMAN PIERCE: Well, as it stands right now the goals and objectives as they are in Addendum I and in Amendment 2, this motion does indicate that the goals and objectives need to be clarified, and I'm looking to section members to see if indeed there is any desire to do that, but right now they stand as in the addendum and as in the amendment.

MS. TOOLEY: So this motion, Mr. Chairman, then would be to move forward the technical committee's recommendations and then any consideration of changing the goals and objectives would be considered separately; is that correct?

CHAIRMAN PIERCE: Well, I turn to the maker of the motion for the maker to clarify his intent regarding the goals and the objectives. Dennis, do you care to elaborate a bit? No, okay. This motion was made principally because the technical committee has made some recommendations regarding the need for some changes in the way the fish is sampled, protocols. It's a technical issue, so the maker of the motion has included goals and objectives, which is not a technical issue. Well, my preference would have been not to have goals and objectives in the motion, but again the maker of the motion has spoken. Yes, Dennis.

MR. ABBOTT: I didn't try to cause any confusion. I tried to simplify things, but if it makes more simple to remove goals and objectives from the motion, that's perfectly fine with me.

CHAIRMAN PIERCE: That would be my preference especially because the technical committee has not taken a position on goals and objectives. They said it's a policy call.

MR. ABBOTT: Let's remove it, then.

CHAIRMAN PIERCE: Thank you, Dennis. To make it simpler and to be specific to required or suggested technical changes by the technical committee, let's do that. If there is no objection from the section, we will modify the motion before us. We are not talking about goals and objectives. The goals and objectives stand as is. This is about making some technical changes in how we deal with the spawning regulations themselves.

MS. TOOLEY: Thank you, Mr. Chairman, that clarifies the issue, and I certainly do support the motion.

CHAIRMAN PIERCE: Thank you, Mary Beth. I'll still go to the audience. You now know what the motion reads relative to the goals and objectives. Yes.

MR. STEVE WEINER: David, can I ask a question of Matt or is that out of bounds now? I had a question on his presentation; just a couple of small questions.

CHAIRMAN PIERCE: Questions that would relate to clarifying the motion itself?

MR. WEINER: Possibly; it's not that simple a question.

CHAIRMAN PIERCE: Go ahead, Steve.

MR. WEINER: Matt, how do you sample an area for spawned fish when there isn't any fishing going on in the area?

DR. CIERI: You don't. If there is no fishing going on, of course, you're pretty much out of luck, in which case that area closes on its default dates. If there are no samples to keep an area open or to close it, then it's within our regulations – in all the states actually is language that will close it on a day if there are no samples available. Sometimes we have the ability to get them off non-directed trips, and that includes, for example, some of the whiting vessels that fish in the Massachusetts/New Hampshire area or some other way.

MR. WEINER: And then the other question I had is given that a default date is just that, a default date, theoretically you could open an area, sample and then close an area again because the fish are still in spawning state; have you ever done that?

DR. CIERI: Yes, we have. That's happened I believe a couple of times in the last I want to say five or six years in which the area is closed based on defaults because we don't have any samples; and then when we go to reopen it, the fish are spawning later that year, and the area reopens for a week and then the guys go in, they fish – holy heck, they're still spawning; the whole place just gets closed right back up again for two weeks.

MR. WEINER: But that doesn't happen very often; does it?

DR. CIERI: It's actually fairly rare. Usually we have a good track with the fishery as to where the spawning conditions are. For example, down east there may be nobody fishing in that area and want to go fishing in that area once the area comes right back open again.

MR. WEINER: Okay, just one last question, David. I just spent the same four days as Matt did down at Woods Hole on the stock assessment data collection meeting. It was pretty obvious at least to me – as a layman sitting there it was hard to follow at times, but if I heard it right the biggest aggregation of herring and the largest potential for spawning is out in the Georges Bank/Nantucket Shoals area based upon what I heard there.

It seems hard for me to believe that this group wouldn't take up now as part of this effort the possibility that there are other spawning areas maybe even more important than the ones you're doing now. As I read this Page 5, Number 4, do the current spawning closure regulations effectively protect local populations from extinction; could the regulations be improved upon, I really think to not – I'm all for taking up and so are most of the people I represent; let's talk about spawning, let's talk about our goals, and let's talk about whether there really are other areas that might be more important than the ones we're protecting now. Thank you.

DR. CIERI: Just to that point, for those section members who weren't aware or weren't around when

this fishery management plan was implement – and I don't even think I was – initially the federal plan also had spawning areas basically in that management as well. Those were actually disapproved by the regional administrator's office at the time as being unenforceable and unneeded.

Because all of that occurs in federal jurisdictions where the fishing actually takes place, so that's actually more of a federal issue in some cases. I know there have been some indications – and I believe Terry remembers that there have been some people who have been trying insert that into another herring sort of management action, but right now that area is actually under federal jurisdiction, and so therefore the regional administrator disapproved that in the last go-around I believe in 1999, and that's where it stands.

CHAIRMAN PIERCE: Yes, a motion may be made relative to this particular issue, but I'll wait and see on that. The section will certainly entertain a motion if one is made relative to Georges Bank, but we have to dispense with this. I am going to come back to the section because we're running out of time with the allotted time for this particular section meeting. Are there any further questions or further debate on the motion? Okay, we need to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN PIERCE: **The motion is move to initiate an addendum implementing the technical committee's recommendations regarding spawning regulations not including the goals and objectives. Motion by Mr. Abbott; seconded by Mr. Adler. All right, I assume everyone is ready to vote. All those in favor of the motion please signify by raising your hand, 6 in favor; any opposed; any null votes. It is unanimous.**

All right, we will move forward with this addendum to make these technical changes in how we deal with our herring spawning regulations. I turn you, Chris, and certainly you, Bob, could you give us some idea as to the requirements that you would need to prepare – the time requirements needed to prepare this addendum.

MR. VONDERWEIDT: I think as it sits right now, assuming that the goals and objectives are worked out, it would be pretty easy to put what is in the white paper, have Matt run a little bit more analysis, look at shifting the boundary between the Massachusetts, New Hampshire and eastern Maine.

Well, it wouldn't be a big deal to kind of get the addendum out the door pretty quickly. And in thinking forward to the next board meeting in April and then following that, just following the standard two meeting weeks in between the timeline for these addendums, we could actually get the final addendum and have it voted on prior to the start of the spawning season.

That would be convenient for when it is going to impact; but if we were to include a new spawning closure, that's a whole new bag of worms and that would probably take quite a while to develop and probably not anytime soon with – I know Matt is real busy with the specifications and also the assessment is going on. I hope that answered the question.

MR. BEAL: I think I heard Chris right but if there is not a lot of additional work added to this, we could draft it for May, have hearings over the summer and final approval in August. Is that what we think we can do?

CHAIRMAN PIERCE: All right, very good, it certainly would be of great benefit to have it in place for this year. Sarah.

REPRESENTATIVE PEAKE: Mr. Chairman, based on what we heard from the public and some discussion here around the table, if a motion is in order now, **I would like to move to initiate an addendum to provide options to protect spawning herring in the Nantucket Shoals/Georges Bank area.** I'll leave it at that for the moment.

CHAIRMAN PIERCE: Okay, we have a motion from Sarah Peake; is there a second to the motion? Ritchie White has seconded the motion. Discussion on the motion? Let's make sure it's clear. Is that the motion, Sarah, the correct language?

REPRESENTATIVE PEAKE: That looks like it and I'm open to wordsmithing.

CHAIRMAN PIERCE: All right, so move to initiate an addendum to provide options to protect spawning herring in the Nantucket Shoals and Georges Bank areas. That is the motion. Matt.

DR. CIERI: From a technical issue, as Lori could probably tell you, we actually just went through this entire process with the council as some of this issue actually did come up. The issue seems to be that all of the fish that we get from Georges Bank and Nantucket Shoals are frozen. They're not fresh fish,

which is how we actually sample the inshore component to regulate the spawning closures.

Frozen fish cannot give you a good understanding of maturity, particularly gonad weight and staging. In order to put something like this into place, you would need a sampling program that would get you fresh fish from Georges Bank in a reasonable timeframe. That requires an additional monitoring component.

Currently that monitoring is done by the states of Massachusetts and Maine. Ours is under ACCSP, and so you would have to actually implement an entirely different monitoring program for fish coming into Massachusetts and New Hampshire from Georges Bank. That was one of the issues that were involved.

There is no record or data base that is associated with this, so we can't, for example, reach back in time and tell you what optimal spawning period there is going to be because that information wasn't collected from Georges Bank because there was no spawning closure. That would take time to implement as well. This is a very major undertaking. Rather than changing areas and changing boundaries, this is a significant amount of work and actually a significant amount of time and energy that would be required by the samplers getting fresh samples. Please keep that in mind.

CHAIRMAN PIERCE: Okay, Matt has raised some very legitimate issues. Nevertheless, we have a motion on the floor. Sarah.

REPRESENTATIVE PEAKE: If I may just respond to those issues, Matt, thank you for the explanation. I understand this may be time-consuming, we don't have a bank of data on which to rely. On the other hand, like many things in life, if we don't begin at some point in time, when do we ever begin if we say it's always going to be too difficult?

I'd hate to be like the Wizard of Oz who says, "Go get the broom from the Wicked Witch of the West" and we never set off to do that. I guess my question is or my statement would be I think that there is a spawning stock of herring that is there. My goal is to find a way to help develop protections for them, for the viability of this industry moving forward, and I'm seeking a way to do that. I think there has to be a way to get to get to yes from it doesn't seem likely or not possible. I'm open to ways to getting to yes. Thank you.

CHAIRMAN PIERCE: Any other comments on the motion? Terry.

MR. STOCKWELL: Mr. Chairman, I agree with much of what Representative Peake has said. However, I have been reminded through our conversations today of the ongoing specification package and a stock assessment that is going to take all the technical committee's time. Just reading part of the white paper here, I think in order to give this proposed addendum and/or of interest to me modifications to the current closures any justice, I'm inclined to support postponing this until we receive the updated assessment and we've been able to work our way through the specification process. If you're willing to withdraw this motion, I won't make a motion to postpone.

REPRESENTATIVE PEAKE: I'll withdraw it if you'll work with me on a motion for August; how is that?

MR. STOCKWELL: Deal.

REPRESENTATIVE PEAKE: **Mr. Chairman, I'd like to withdraw my motion.**

MR. STOCKWELL: Or later in the fall when we're – I guess I'd defer to Matt for timing on when the appropriate time would be.

CHAIRMAN PIERCE: All right, I believe the sentiment expressed by you, Terry, is that we're not going to be able to get this addendum done for this year. There will be a delay because of other priorities relative to sea herring assessment, sea herring work and followup on our previous action. Therefore, it makes sense, you're saying that we wait until after the assessment is in hand and that will then enable us to have what?

MR. STOCKWELL: A better understand on how to move forward as well as the specification package and the time for the technical committee to work with this.

CHAIRMAN PIERCE: Okay, so Terry has made that suggestion and, Sarah, you would like to withdraw the motion? Okay, obviously with the intent to make it later on in concert with Terry and others, I suppose. Does the section object to Sarah withdrawing the motion? I see no objection from section members so before I say it's withdrawn I'll turn to you, Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, I think you're going in the right direction here. I think the focus to let us get this other addendum, we know we can get that done, but one of things I would suggest in response to the maker of motion's intent to get something started was we might be able to pull together a white paper sort of scoping out what the issues would be involved with this; much less labor-intensive than an addendum.

Because there are resource implications that the states are going to have to consider in doing that, it would give us a chance to scope that out for the board so that you could make an informed decision about what you wanted to do.

I think a reasonable time may not be in May but maybe for the August meeting we could get that pulled together for you, so it wouldn't be a total collapse of this motion. I mean, the motion goes away but the idea of continuing to work on this issue would still be alive.

CHAIRMAN PIERCE: That's a great suggestion, Vince, thank you. Matt, did you want to elaborate?

DR. CIERI: Yes, I actually produced the same exact white paper for the council, so I can do that fairly quickly. You guys are going to be tied up in August when you guys get the results of the SARC presentation for Atlantic herring, and you're going to start the specifications' process, so we can get that done by your next meeting.

CHAIRMAN PIERCE: Okay, thank you. I appreciate that, Vince and Matt. Clearly, protection of spawning fish is a priority of the section. The status of the resource as revealed to us later on this year certainly will provide us with better insight into how needed that spawning closure is. I suspect that when all is said and done there will be support for our moving forward to implement similar sorts of spawning protection.

That's the Chair speaking a personal opinion since I have a lot of history with Georges Bank sea herring, and I know that the collapse of the Georges Bank sea herring resource occurred because of concentrated fishing by the large pelagic fleet, the foreign fleet, back in the sixties and seventies on spawning concentrations on Georges Bank. It's a different fleet, foreign fleet versus domestic fleet, but nevertheless it's an issue that definitely deserves some further thought.

This white paper should help us in that regard. Any further business before the section? We've come to the end of the agenda. Other business is next. All right, I see none so without any objection we will adjourn. Well, hold on a second, I see some people in the audience. These hands have been waving. I think people have traveled some distance so I'll go to Chris.

MR. CHRISTOPHER WEINER: Chris, bluefin tuna fishermen, ABTA and CHOIR. I just had a question for Matt. You guys kind of glossed through the – and this is on that first notion and I know it's already done with, but I wanted to ask this then. Why would you move the western Maine closure south? From our perspective that is where we fish out of.

Our concern is that everything – the closures are too early. In years past – well, the last two years we didn't see any spawning on the traps and fish – or, last year we didn't see any spawning off of Maine. In years prior to that, the tuna boats and the lobster boats, the lobster gear that was out there was covered with spawn. In mid to late October it was covered in spawn then and guys that were fishing jigging up herring in Ipswich Bay or just north of Ipswich Bay – the bottom line is that our concern – and I've told this to Matt a number of times that things are too early.

Correct me if I'm wrong, if you move the western Maine spawning closure south, you're basically opening up more area earlier, right, because the western closure opens or closes earlier – or opens earlier than the Massachusetts/New Hampshire one, so basically you're just opening up more area earlier, right, by default?

DR. CIERI: Yes, in that way. What we found when we go through and we take look at sampling, the sampling that's occurring just south of Portland are usually are much more advanced, so they're spawning earlier than the fish that are happening, for example, in Ipswich Bay, and so they're going to be completed earlier as well than the fish at Ipswich Bay.

If both fish take roughly four weeks to do their spawning thing, then the ones in Portland are already finished but then the ones in Ipswich Bay are still going. If we base that closure only on the fish that are south of Portland, then the fish in Ipswich are still going to be spawning, correct?

MR. WEINER: I would agree with you, but just from our own observations, I think that, you know, maybe the bigger concern is when you open and

close it, and that would be the second part of my comment that I want to just quickly state is that it's troubling – and, again, I've told you this in this past that when you sample, you basically – and it's a shock to me.

I was unaware that you had opened and then closed an area in the last five years, but apparently I missed that one. But the point is that in my opinion that doesn't happen and there is a lot of pressure on the managers for that not to happen. I think the biggest concern – I still think I'm concerned with you moving that, and I when you do the analysis you carefully consider why you would do that. I would also suggest if you need to hire boats – you find a better way to sample before the boats get in there because I don't think your timing is correct in a lot of years. I think you're close, but I think it could be done better. I think once you open it, it's not closing.

ADJOURNMENT

CHAIRMAN PIERCE: Chris, thanks for your views and I'm sure you'll continue to share them with Matt as well as Mike Armstrong and other members of the TC when they follow through with this issue. Thank you. All right, meeting adjourned.

(Whereupon, the meeting was adjourned at 4:05 o'clock p.m., February 7, 2012.)

Draft Document for Section Review. Not for Public comment.

Atlantic States Marine Fisheries Commission

DRAFT ADDENDUM V TO THE INTERSTATE FISHERY MANAGEMENT PLAN FOR ATLANTIC HERRING FOR SECTION REVIEW

This draft addendum was developed for Section review and discussion. It is not intended to solicit public comment as part of the Commission/State formal public input process. Comments on this draft document may be given at the appropriate time on the agenda during the scheduled meeting. If approved, a public comment period will be established to solicit input on the draft addendum.

ASMFC Vision Statement:
Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015.

April 3, 2012

NOTE: The Technical Committee is currently developing scientifically valid options for Issue 2 Boundary Between Western Maine and Massachusetts/New Hampshire Spawning Area. If available, these options will be included in the ASMFC Spring Meeting supplemental materials and/or presented to the Section during their meeting on April 30, 2012.

Draft Document for Board Review. Not for Public comment.

Draft Document for Section Review. Not for Public comment.

Public Comment Process and Proposed Timeline

In January 2012, the Atlantic States Marine Fisheries Commission's (ASMFC) Atlantic Herring Section (Section) initiated an addendum to implement the Technical Committee's (TC) recommendations regarding spawning regulations. Specifically, the TC's recommendations are: 1) refine sampling protocol; 2) investigate shifting the boundary between the Western Maine and Massachusetts/New Hampshire (MA/NH) spawning areas south and 3) include all spawning regulations in one document for clarity. The proposed measures are primarily administrative and would not change the overall spawning area closure regulations significantly.

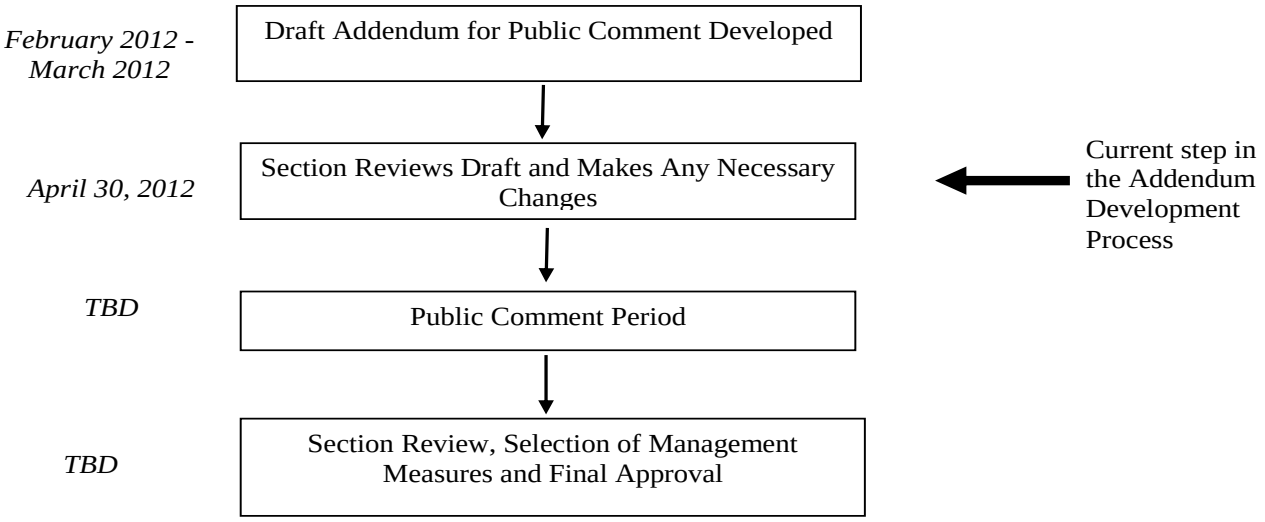
This draft addendum presents background on the ASMFC management of Atlantic herring, the addendum process and timeline, and a statement of the problem. This document also provides options of Atlantic herring management for public consideration and comment.

The public is encouraged to submit comments regarding this addendum during the public comment period. Comments will be accepted until **5:00 pm (EST) on [Month] [Day], 2012.** The Section will consider final action on this addendum during the week of [Month] [Day], 2012 at the ASMFC [Season] Meeting.

Comments may be submitted by mail, email, or fax. If you have any questions or would like to submit comment, please use the contact information below.

Mail: Chris Vonderweidt
Atlantic States Marine Fisheries Commission
1050 N. Highland Street, Suite 200 A-N
Arlington VA. 22201

Email: cvonderweidt@asmfc.org
(Subject: Addendum V)
Phone: (703) 842-0740
Fax: (703) 842-0741



1.0 Introduction

In January 2012, the Atlantic Herring Section (Section) initiated an addendum to implement the Technical Committee's (TC) recommendations regarding spawning regulations. These recommendations include 1) refining the sampling protocol; 2) investigating shifting the boundary between the Western Maine and Massachusetts/New Hampshire (MA/NH) spawning areas south and 3) incorporating all spawning regulations in one document for clarity. The proposed measures are primarily administrative and would not change the overall spawning area closure regulations significantly.

The Final Draft for Public Comment was approved by the Board on [Month] [Day], 2012.

2.0 Management Program

2.1 Statement of the Problem

ASMFC spawning regulations do not provide sufficient guidance for standardized regulations between states because they are contained in five different ASMFC management documents. As a result, slight inconsistencies exist between state and the ASMFC spawning regulations, and between the states. Cooperation and open communication between state fisheries agencies staff has resulted in consistent application of sampling protocol and open/close dates for shared spawning areas—but this consistency is not guaranteed in the future.

This addendum seeks to clarify the spawning regulations to achieve consistency in their application as well as eliminate any inconsistencies between various ASMFC documents. When final, this Addendum will replace all spawning regulations in previous management documents to provide a single, clear document for states to use when complying with ASMFC spawning regulations.

Additionally, parts of the required sampling process (size bins, number of fish per sample, and MA/NH boundary) could be improved to better reflect spawning stages and behavior of current herring stocks.

2.2 Background of Current Spawning Regulations

ASMFC spawning regulations are found in sections from Addendum I to Amendment 1, Amendment 2, and Technical Addendum I to Amendment 2 as follows. Each requirement is described in Section 2.2.1.1 – 2.2.1.6 of this addendum. Full text of the spawning regulations can be found in Appendix A.

2.2.1 Spawning Area Delineation (4.2.1.1 of Amendment 2):

Note: The Western Maine and MA/NH spawning area boundaries may change under Issue 1 in Section 3.0 Management Options of this Addendum

The spawning area boundaries are (Figure 1):

Eastern Maine Spawning Area: All waters bounded by the following coordinates:

Maine coast 68^{o} 20' W
43^{o} 48' N 68^{o} 20' W
44^{o} 25' N 67^{o} 03' W
North along US/Canada border

Western Maine Spawning Area: All waters bounded by the following coordinates:
43° 30' N Maine coast
43° 30' N 68° 54.5' W
43° 48' N 68° 20' W
North to Maine coast at 68° 20' W

Massachusetts/New Hampshire Spawning Area: All waters bounded by the Massachusetts, New Hampshire and Maine coasts, and 43° 30' N and 70° 00' W

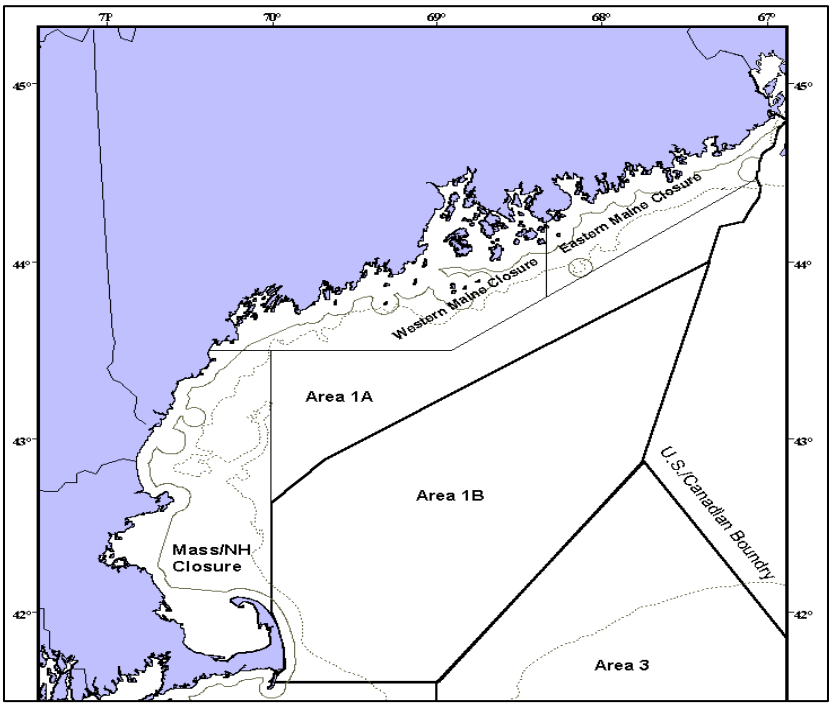


Figure 1. ASMFC Atlantic Herring Spawning Areas.

2.2.2 Default Start Date (4.3.2.2 Spawning Closures & Default Dates of Amendment 2):
If sufficient samples are not available, closures will begin on the following dates.
Note: Default start dates <u>will not change</u> in this addendum.

Eastern Maine: August 15
Western Maine: September 1
Massachusetts/New Hampshire: September 21

2.2.3 Sampling Protocol (4.2.1.2 Determination of Starting Date for Spawning Closures of Addendum I to Amendment 1):

Note: The size of fish that would trigger a closure may decrease under Issue 2 in Section 3.0 Management Options of this Addendum

Closures in a given area will begin based on the spawning condition of Atlantic herring as determined from commercial catch samples. Commercial catch sampling shall begin by at least August 1 for the Eastern and Western Maine areas, and by at least September 1 for the Massachusetts/New Hampshire area. If sufficient samples are not available, closures will begin on the default dates.

Closures in a given area will begin seven days after the determination that female herring in ICNAF gonadal stages III - V from that specific area have reached the following spawning conditions: female herring greater than 28 cm in length have reached a mean gonadosomatic index (GSI) of 20% or female herring greater than 24 cm and less than 28 cm in length have reached a mean GSI of 15%. Length refers to the mean natural total length, measured from the tip of the snout to the end of the caudal fin in normal position. "GSI" shall mean gonadosomatic index calculated by the following formula. Length refers to the mean natural total length, measured from the tip of the snout to the end of the caudal fin in normal position. "GSI" shall mean gonadosomatic index calculated by the following formula:

[Gonad Weight / (Total Body Weight - Gonad Weight)] x 100 percent

2.2.4 Sufficient Sample Information (4.2.1.2 Determination of Starting Date for Spawning Closures of Addendum I to Amendment 1):

Note: The required number of fish per sample may increase under Issue 3 in Section 3.0 Management Options of this Addendum

"Sufficient sample information" shall mean at least two (2) samples of 50 fish or more, in either length category, taken from commercial catches during a period not to exceed seven days apart.

2.2.5 Spawning Closure Length (4.3.2.2 Spawning Closures & Default Dates of Amendment 2):

Note: Default spawning closure length and sampling protocol to determine the end date will not change in this addendum.

By default, closures will last four (4) weeks. Catch sampling of the fishery will resume at the end of the initial four-week closure period. If catch sampling indicates significant numbers of spawn herring are still being harvested, closures will resume for an additional two weeks. Significant numbers of spawn herring is defined as 25% or more mature herring, by number in a catch sample, have yet to spawn. Mature or "spawn" herring are defined as Atlantic herring in ICNAF gonadal stages V and VI.

2.2.6 Tolerance (4.3.2.3 Tolerance Provision—Zero Tolerance of Amendment 2, clarified in Technical Addendum I to Amendment 2):

Note: Zero Tolerance will not change in this addendum.

Any vessel is prohibited to fish for, take, land, or possess herring from or within a restricted spawning area. Any herring vessel having spawn herring onboard, which were caught outside of a management area that is under a herring spawning closure, may transit the closed area only if all of its fishing gear

has been stowed. An incidental bycatch allowance of up to 2,000 pounds of herring per trip for non-directed fisheries shall be in place during the spawning closures.

3.0 Management Options

When final, this Addendum will replace all spawning regulations in previous management documents to provide a single, clear document for states to use when complying with ASMFC spawning regulations. Spawning regulations that are not modified under Issues 1 – 3 of this Addendum will be included with identical requirements as the original management documents. The text may be modified or rewritten for clarity. Once the Section takes final action on the management options, the Atlantic Herring Plan Development Team (PDT) and TC will develop the final text to include a clear description of all spawning regulations with modifications to incorporate selected options from Issue 1 – 3. The Section will review the final addendum language as provided by the TC/PDT at its next meeting before Addendum V is published.

3.2 Boundary Between Western Maine and Massachusetts/New Hampshire Spawning Area.

3.2.1 Background

Herring samples collected by Maine Department of Marine Resources (ME DMR) and Massachusetts Division of Marine Fisheries (MA DMF) to determine the start date for the MA/NH spawning area closure are often in different spawning stages. Herring in the northern range of the MA/NH area tend to be in later stages of spawning compared to herring collected in the southern range.

This discrepancy could be addressed by creating a new spawning area to be monitored, or adjusting the MA/NH- Western Gulf of Maine spawning area boundaries. Of these two, shifting the area boundaries seems to be more warranted given the sampling data available from MA DMF and ME DMR. Accordingly, shifting the border between the Western Maine and MA/NH boundary south may be necessary to more accurately cover distinct spawning groups of herring.

3.2.1 Management Options

> *The Technical Committee is currently developing scientifically valid options for Issue 2. If available, these options will be included in the ASMFC Spring Meeting supplemental materials and/or presented to the Section during their meeting on April 30, 2012.*

3.2 Size Bins that Trigger a Spawning Closure Start

3.2.1 Background

The current spawning regulations specify that closures begin based on the % of stage III – V spawn herring that are greater than 24 cm. The TC reviewed this language and commented that the wording "greater than 24 cm" was a typographical error and should have included "or equal to". A review of state spawning regulations revealed that some states have interpreted the requirement as "greater than *or equal to* 24 cm" (full text of state regulations is included as Appendix B).

Additionally, commercial biological sampling has found that in recent years, sampled fish are maturing at a smaller size but at the same age. As outlined in the most recent 2009 TRAC assessment, both length and weight at age has been steadily declining since the 1980s (Figure 2). As a result, mean fish length

of age 3s (typically first time spawners) is now below 24 cm total length during the fall spawning period. As can be seen in Figure 3 and Table 1, an increasing number of fish in the 23-24 length bin are mature.

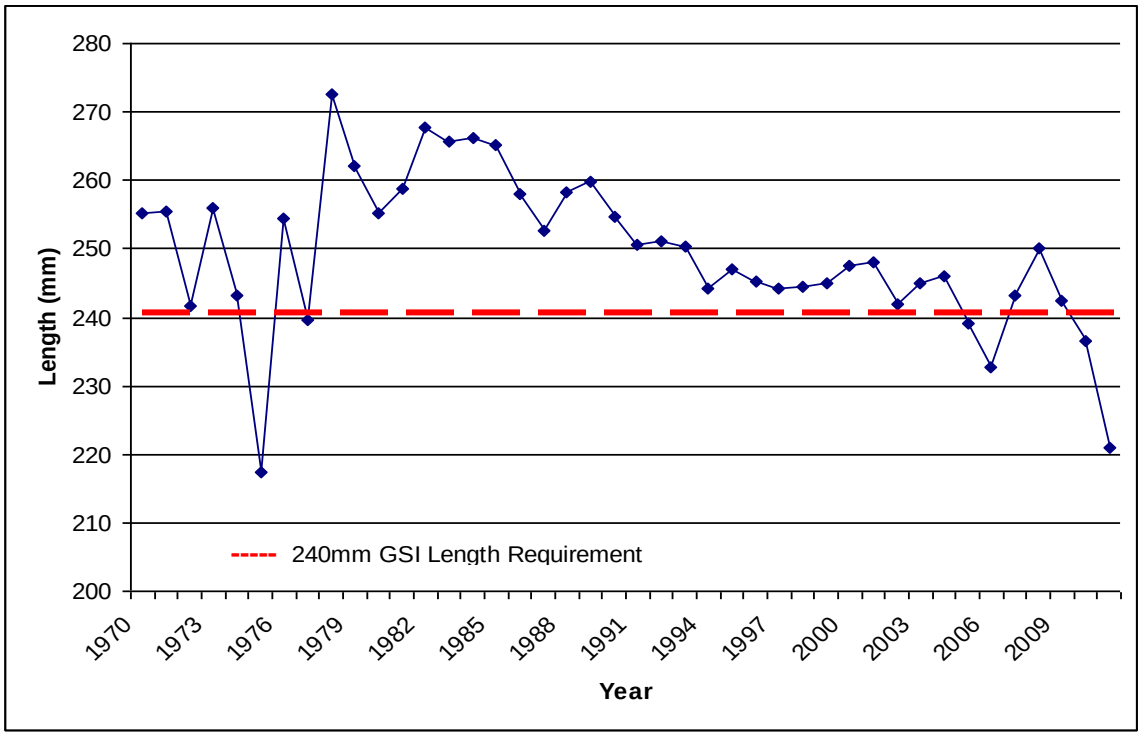


Figure 2. Mean total length (in mm) of age three females caught in area 1A during the spawning season (Aug –Oct).

Table 1. Percentage of spawning or developing females (> 10% GSI or > ICNAF stage III) Aug –Oct. by year and length bin from commercial samples. Note: blank cells indicate "no data" while zeros are calculated.

Total Length (cm)	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	average 2000-2011
21-22										0		20	10
22-23			5	0		0	0	0		0	0	23	4
23-24	0	4	6	10	21	11	7	18	0	13	18	25	11
24-25	31	16	38	13	27	23	9	19	0	19	12	30	20
25-26	39	28	49	30	38	42	15	20	11	18	30	40	30
26-27	70	36	65	42	59	57	29	26	24	7	27	55	41
27-28	87	76	85	66	67	72	41	35	47	29	37	80	60
28-29	94	84	90	77	74	74	62	50	51	46	44	69	68
29-30	96	96	96	89	84	81	71	68	59	64	64	68	78
30-31	98	100	100	92	86	94	72	84	73	83	69	100	88
31-32	100	100	100	100	100	95	73	90	85	100	100	100	95
32-33	100	100	100				83	100	50	0	67		55
33-34							100	100	100				

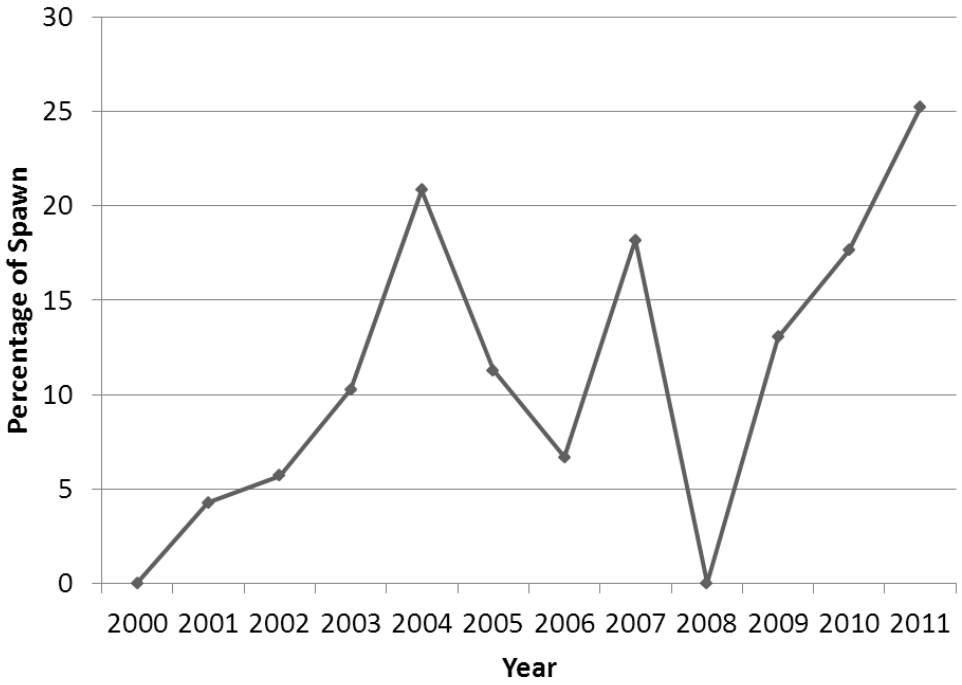


Figure 2. Percentage of spawning or developing females (> 10% GSI or > ICNAF stage III) Aug –Oct. by year in Area 1A, for fish 24-25 cm total length from commercial samples.

3.2.2 Management Options

If selected, the size bin from Option B – D would be inserted into the paragraph below to replace "insert option".

> *Closures in a given area will begin seven days after the determination that female herring in ICNAF gonadal stages III - V from that specific area have reached the following spawning conditions: female herring greater than 28 cm in length have reached a mean gonadosomatic index (GSI) of 20%; or female herring* ***[insert option]*** *and less than 28 cm in length have reached a mean GSI of 15%.*

OPTION A. STATUS QUO (GREATER THAN 24 CM).

OPTION B. GREATER THAN OR EQUAL TO 24 CM.

OPTION C. GREATER THAN OR EQUAL TO 23 CM.

OPTION D. GREATER THAN OR EQUAL TO 22 CM

3.3 Number of Fish Per Sample

3.3.1 Background

Current regulations require "at least two samples of 50 fish or more, in either length category, taken from commercial catches during a period not to exceed seven days apart". The TC recommended that the number of fish per sample be increased to 100. They agree that interpreting the samples is often a qualitative science and 100 fish per sample should suffice to determine if a closure should be extended.

3.3.2 Management Options

Current regulations require "at least two (2) samples of 50 fish or more, in either length category, taken from commercial catches during a period not to exceed seven days apart" to determine the start and end date of a spawning closure. The TC has recommended an increase to 100 fish per sample.

OPTION A. STATUS QUO (50 FISH PER SAMPLE)

OPTION B. 100 FISH PER SAMPLE

Sufficient sample information shall mean at least two (2) samples of 100 fish or more, in either length category, taken from commercial catches during a period not to exceed seven days apart.

4.0 Compliance Schedule

States must implement Addendum V according to the following schedule to be in compliance with the Atlantic Herring FMP:

XXXXXX: States submit proposals to comply with Addendum V.

XXXXXX: Section reviews and takes action on state proposals.

XXXXXX: States implement regulations.

APPENDIX A. ASMFC SPAWNING REGULATIONS

Addendum I to Amendment 1 Spawning Regulations:
4.2 COMMERCIAL FISHERIES MANAGEMENT MEASURES

4.2.1 Spawning Area Closures

Atlantic herring schools are especially susceptible to fishing when they aggregate for spawning. This is also when herring are most valuable, as fat content is generally at its peak. The economic reasons to allow fishing on spawning herring, however, are countered by conservation concerns. Fishing on spawning herring not only can result in high catch rates, but may also interfere with the spawning behavior of those herring not caught. Herring in the latter stages of spawning may not be fit for some markets. Therefore, Addendum I defines specific measures which are designed to reduce the exploitation and disruption of herring spawning aggregations, while providing a limited opportunity to harvest herring during that time of the year.

4.2.1.1 Delineation of Spawning Areas (Figure 1a)

The spawning areas for Management Area 1A (Inshore Gulf of Maine) shall be defined as:

Eastern Maine

All waters bounded by the following coordinates:

Maine coast 68^{o} 20' W
43^{o} 48' N 68^{o} 20' W
44^{o} 04.4' N 67^{o} 48.7' W
44^{o} 06.9' N 67^{o} 52.8' W
44^{o} 31.2' N 67^{o} 02.7' W
North along US/Canada border

Western Maine

All waters bounded by the following coordinates:

43^{o} 30' N Maine coast
43^{o} 30' N 68^{o} 54.5' W
43^{o} 48' N 68^{o} 20' W
North to Maine coast at 68^{o} 20' W

Massachusetts/New Hampshire

All waters bounded by the Massachusetts, New Hampshire and Maine coasts, and 43^{o} 30' N and 70^{o} 00' W.

4.2.1.2 Determination of Starting Date for Spawning Closures

Closures in a given area will begin based on the spawning condition of Atlantic herring as determined from commercial catch samples. Commercial catch sampling shall begin by at least August 1 for the Eastern and Western Maine areas, and by at least September 1 for the Massachusetts/New Hampshire area. If sufficient samples are not available, closures will begin on a specified date (see 4.2.1.3 Default Closure Dates) and extend for at least four (4) weeks. Closures in a given area will begin seven days after the determination that female herring in ICNAF gonadal stages III - V from that specific area have reached the following spawning conditions:

female herring greater than 28 cm in length have reached a mean gonadosomatic index (GSI) of 20%; or female herring greater than 24 cm and less than 28 cm in length have reached a mean GSI of 15%. Length refers to the mean natural total length, measured from the tip of the snout to the end of the caudal fin in normal position. "GSI" shall mean gonadosomatic index calculated by the following formula:

[Gonad Weight / (Total Body Weight - Gonad Weight)] x 100 percent

If sufficient sample information is not available for reliably estimating mean GSI in either of the size categories, the restrictions will go into effect automatically on the default closure dates (see 4.2.1.3). "Sufficient sample information" shall mean at least two (2) samples of 50 fish or more, in either length category, taken from commercial catches during a period not to exceed seven days apart.

4.2.1.3 Default Closure Dates

In the event of insufficient sample information, closures would commence on the following default dates:

Eastern Maine:	August 15
Western Maine:	September 1
Massachusetts/New Hampshire:	September 21

4.2.1.4 Duration of Closures; Determination of Continuance

Closures would initially last for four (4) weeks. Catch sampling of the fishery will resume at the end of the initial closure period. If catch sampling indicates significant numbers of spawn herring are being harvested, closures would resume for an additional two weeks. Closures would resume if catch sampling determines that 25% or more mature herring, by number, have yet to spawn. Mature or "spawn" herring shall be identified as Atlantic herring in ICNAF gonadal stages V and VI.

4.2.1.5a Tolerance Provision (effective for 2000 season only)

Any vessel may fish for, take, land, or possess "spawn" herring, as identified below, from or within a restricted spawning area as long as such herring comprise less than 20% by number of the amount of herring possessed onboard at any time. "Spawn" herring shall be identified as Atlantic herring in ICNAF gonadal stages V and VI.

A bycatch allowance of up to 2,000 pounds of herring per trip for non-directed fisheries shall be in place during the spawning closures. This bycatch allowance will not be subject to the tolerance provision, i.e. vessels may land "spawn" herring over the 20% by number as long as said vessel lands no more than 2,000 pounds. The amount of herring landed by one vessel in a day, as a bycatch allowance, shall not exceed 2,000 pounds (this prohibits a vessel from making multiple trips in one day to land more than the bycatch allowance). A trip shall be based on a calendar day basis.

Any vessel may fish for, take, land, or possess "spawn" herring from a management area outside of those identified in Section 4.2.1.1. Any herring vessel having onboard spawn herring over the tolerance limit and which were caught outside of a management area that is under a herring spawning closure, may transit the closed area only if all of its fishing gear has been stowed.

4.2.1.5b Bycatch Allowance (to be implemented January 1, 2001)

No directed fisheries for Atlantic herring shall be allowed in a management area subject to a spawning closure. A bycatch allowance of up to 2,000 pounds of herring per trip for non-directed fisheries shall be in place during the spawning closures. The amount of herring landed by one vessel in a day, as a bycatch allowance, shall not exceed 2,000 pounds (this prohibits a vessel from making multiple trips in one day to land more than the bycatch allowance). A trip shall be based on a calendar day basis.

Any herring vessel transiting a management area that is under a herring spawning closure must have all of its

fishing gear stowed.

AMENDMENT 2 SPAWNING REGULATIONS:

4.3.2 Spawning Restrictions

Landing restrictions on spawn herring are designed to conserve the stock by ensuring recruitment to the stock. Much of the management program is designed to move effort into the offshore areas where the TAC has not been fully harvested and the spawning component is thought to be strong. The inshore component is the most vulnerable component of the stock complex; therefore, management measures are focused on providing the greatest protection to the component that is thought to be most susceptible to overfishing. Protection to the offshore spawning component would come at the expense of putting more pressure on the inshore component of the stock complex.

Atlantic herring schools are especially susceptible to fishing when they aggregate for spawning. While vulnerable, they are also most valuable during spawning because their fat content is at its peak. The economic incentives to harvest spawn herring are countered by conservation concerns for the status of the stock. Fishing on spawning herring not only results in high catch rates, but may also interfere with the spawning behavior of uncaught herring. There is a peak point at which spawn herring is acceptable to the market; spawn herring in the latter stages may not be fit for some markets. Therefore, the amendment defines specific measures designed to reduce the exploitation and disruption of spawning aggregations, while providing a limited opportunity to harvest herring during that time of the year.

4.3.2.1 Inshore Gulf of Maine Spawning Areas (Area 1A)

Figure 14 displays the areas defined in this measure.

Eastern Maine Spawning Area
All waters bounded by the following coordinates:

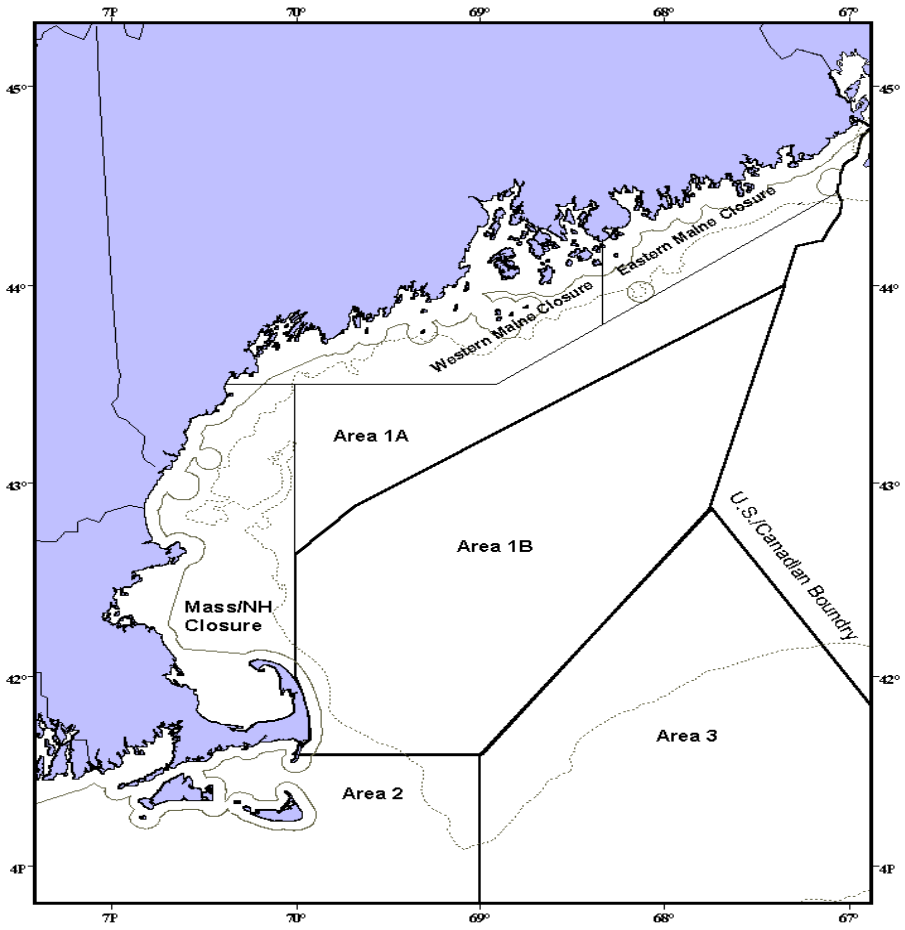
Maine coast 68^{o} 20’ W
43^{o} 48’ N 68^{o} 20’ W
44^{o} 25’ N 67^{o} 03’ W
North along US/Canada border

Western Maine Spawning Area
All waters bounded by the following coordinates:

43^{o} 30’ N Maine coast
43^{o} 30’ N 68^{o} 54.5’ W
43^{o} 48’ N 68^{o} 20’ W
North to Maine coast at 68^{o} 20’ W

Massachusetts/New Hampshire Spawning Area
All waters bounded by the Massachusetts, New Hampshire and Maine coasts, and
43^{o} 30’ N and 70^{o} 00’ W

Figure 1. Spawning Areas for Atlantic Herring in State Waters



4.3.2.2 Spawning Closures & Default Dates

Spawning closures are based on commercial catch samples that are collected by at least August 1 for the Eastern and Western Maine areas, and by at least September 1 for the Massachusetts/New Hampshire area. If sufficient samples are not available, closures will begin on the default dates listed below and extend for at least four (4) weeks. Area 1A inshore spawning area closures will begin on the following dates, unless commercial catch samples show earlier spawning than the default date or continuing two weeks after the four-week closure.

Eastern Maine:	August 15
Western Maine:	September 1
Massachusetts/New Hampshire:	September 21

By default, closures will last four (4) weeks. Catch sampling of the fishery will resume at the end of the initial four-week closure period. If catch sampling indicates significant numbers of spawn herring still are being harvested, closures will resume for an additional two weeks. Significant numbers of spawn herring is defined as 25% or more mature herring, by number in a catch sample, have yet to spawn. Mature or "spawn" herring shall be identified as Atlantic herring in ICNAF gonadal stages V and VI.

Table 10 shows the start and end dates of the area spawning closures for the past four years, as well as the default closure dates from Addendum I (*Section 4.2.1.3* Default Closure Dates). Reviewing the closure information from the past four years, the three spawning areas have closed right around the default closure dates and have lasted for about four weeks. Using the commercial catch samples, Maine had the flexibility to delay the closure date to allow the fishery to continue while providing protection to the stock at the appropriate time. The viability of the spawning closures can be attributed to the collection of commercial catch samples to modify the closure periods providing greater protection to the spawning component of the stock.

Table 11 shows the number of Area 1A commercial catch samples that contained greater than 20% spawning females outside of a spawning closure. Since implementation of Amendment 1 in January 2000, a total of 12 commercial samples collected from Area 1A during August to October have had >20% spawning fish, representing a small fraction of the total samples collected during the time period (~5%). Most of these samples were collected just before the start of the spawning closure between issuing the closure notice and actual start date (Table 12). In many states, it can take 3-5 business days between notice and implementation of a spawning closure because of public notification requirements.

Table 10. Historical and default dates for the spawning area closures (EGOM is Eastern Gulf of Maine; WGOM is Western Gulf of Maine; and MA/NH is Massachusetts/ New Hampshire; see Figure 14)

	AREA					
	EGOM		**WGOM**		**MA/NH**	
YEAR	**Start**	**End**	**Start**	**End**	**Start**	**End**
2000	15-Aug	11-Sept	1-Sept	21-Sept	21-Sept	18-Oct
2001	26-Aug	23-Sept	2-Sept	30-Sept	21-Sept	18-Oct
2002	15-Aug	12-Sept	13-Sept	11-Oct	4-Oct	1-Nov
2003	1-Sept	29-Sept	1-Sept	29-Sept	21-Sept	19-Oct
Default Date	**15-Aug**	**13-Sept**	**1-Sept**	**30-Sept**	**21-Sept**	**19-Oct**

Table 11. Number of samples containing > 20% spawning females (ICNAF stages 5&6). Note total samples are the numbers of samples taken from Area 1A August - October of each year.

Year	**# Samples > 20%**	**Total samples**
2000	3	76
2001	0	49
2002	8	70
2003	1	62

Table 12. Year, Spawning Area, and timing of 12 samples containing >20% spawning females

Year	**Sample ID**	**Area**	**ɒre or After Clos**	**Comments**
2000	107	EGOM	Before	Within 5 days of start
	109	EGOM	Before	Within 2 days of start
	115	WGOM	Before	Within 3 days of start
2001	N/A	N/A	N/A	N/A
2002	160	MA/NH	Before	Within 10 days of start
	174	MA/NH	Before	Within 5 days of start

	176	MA/NH	Before	Within 2 days of start
	177	MA/NH	Before	Within 5 days of start
	179	MA/NH	After	Within 2 days of end
	180	MA/NH	Before	Within 3 days of start
	193	MA/NH	Before	Within 3 days of start
	207	MA/NH	After	Within 3 days of end
2003	116	EGOM	After	Within 4 days of end

4.3.2.3 Tolerance Provision – Zero Tolerance

Any vessel is prohibited to fish for, take, land, or possess "spawn" herring, as identified below, from or within a restricted spawning area. "Spawn" herring shall be identified as Atlantic herring in ICNAF gonadal stages V and VI.

Any vessel may fish for, take, land, or possess "spawn" herring from a management area outside of those identified in the Delineation of Spawning Areas. Any herring vessel having onboard spawn herring, which were caught outside of a management area that is under a herring spawning closure, may transit the closed area only if all of its fishing gear has been stowed.

An incidental bycatch allowance of up to 2,000 pounds of herring per trip for non-directed fisheries shall be in place during the spawning closures. This bycatch allowance will not be subject to the tolerance provision, i.e. vessels may land "spawn" herring as long as said vessel lands no more than 2,000 pounds. The amount of herring landed by one vessel in a day, as a bycatch allowance, shall not exceed 2,000 pounds (this prohibits a vessel from making multiple trips in one day to land more than the bycatch allowance). A trip shall be based on a calendar day basis.

4.3.2.4 Other Spawning Area Considerations – Exemption for East of Cutler Fixed Gear Fisheries

Under Amendment 1, all vessels fishing with fixed gear in state waters were required to obtain a permit from the appropriate state agency. While Amendment 1 does not specify an exemption for the fixed gear fisheries in the East Cutler area, these fisheries did have an exemption from the spawning restrictions prior to the amendment. The exemption was granted by the State of Maine and was later removed to comply with Amendment 1 to the Interstate FMP. The East Cutler area is defined in Figure 17 below. With implementation of Amendment 2, East of Cutler fixed gear fisheries are granted an exemption from spawning area considerations and are not limited on the amount of spawn herring that can be landed during a spawning closure.

TECHNICAL ADDENDUM 1A SPAWNING REGULATIONS:

Executive Summary – *4.3.2.3 Tolerance Provision -- Zero Tolerance*

Any vessel is prohibited to fish for, take, land, or possess herring from or within a restricted spawning area except for the incidental bycatch and transiting provisions of Section 4.3.2.3.

Any vessel may fish for, take, land, or possess "spawn" herring from a management area outside of those identified in the Delineation of Spawning Areas. Any herring vessel having onboard spawn herring, which were caught outside of a management area that is under a herring spawning closure, may transit the closed area only if all of its fishing gear has been stowed. "Spawn" herring shall be identified as Atlantic herring in ICNAF gonadal stages V and VI.

4.3.2.3 Tolerance Provision – Zero Tolerance

Any vessel is prohibited to fish for, take, land, or possess herring from or within a restricted spawning area. Vessels are permitted to transit the restricted spawning areas with herring on board provided they comply with the provisions listed in the following two paragraphs.

Any vessel may fish for, take, land, or possess "spawn" herring from a management area outside of those identified in the Delineation of Spawning Areas. Any herring vessel having onboard spawn herring, which were caught outside of a management area that is under a herring spawning closure, may transit the closed area only if all of its fishing gear has been stowed. "Spawn" herring shall be identified as Atlantic herring in ICNAF gonadal stages V and VI.

An incidental bycatch allowance of up to 2,000 pounds of herring per trip for non-directed fisheries shall be in place during the spawning closures. This bycatch allowance will not be subject to the tolerance provision, i.e. vessels may land "spawn" herring as long as said vessel lands no more than 2,000 pounds. The amount of herring landed by one vessel in a day, as a bycatch allowance, shall not exceed 2,000 pounds (this prohibits a vessel from making multiple trips in one day to land more than the bycatch allowance). A trip shall be based on a calendar day basis.

APPENDIX B. STATE SPAWNING REGULATIONS:

Maine:
DEPARTMENT OF MARINE RESOURCES

Chapter 36 Herring Regulations

36.01 Herring Management Plan

A. Definitions

(1) Herring.
Herring means Atlantic Sea Herring, particularly the *Clupea Harengus harengus.*

(2) ICNAF gonad stages.

ICNAF gonad stages are the official stages adopted by the International Commission for the Northwest Atlantic Fisheries in 1964.

Excerpt from ICNAF, 1964, Table 2 definitions:
Stage V. Gonads fill body cavity. Eggs large, round; some transparent. Ovaries yellowish; testes milkwhite. Eggs and sperm do not flow, but sperm can be extruded by pressure.
Stage VI. Ripe gonads. Eggs transparent; testes white; eggs and sperm flow freely.

(3) Spawn herring.

Spawn herring is a sexually mature herring (male or female) in ICNAF gonad stages V or VI.

(9) "GSI" means the gonadosomatic index calculated by the following formula:
(Gonad Weight/ Total Body Weight – Gonad Weight) X 100 percent.

D. Catch restrictions.

(1) Spawning area restrictions.

It shall be unlawful to fish for, take, possess, transfer or land in any State of Maine port or facility, or to transfer at sea from any Maine registered vessel, any catch of herring harvested from the following described areas within ASMFC Management Area 1 at the following times:

(a) Eastern Maine:

All waters bounded by the following coordinates:
Maine coast 68° 20.0' W,
43° 48.0' N 68° 20.0' W,
44° 25.0' N 67° 03.0' W,

North along the U.S./Canada border.

Western Maine:

All waters bounded by the following coordinates:
43° 30.0' N Maine coast,
43° 30.0' N 68° 54.5' W,
43° 48.0' N 68° 20.0' W,
North to Maine coast at 68° 20.0' W.

Massachusetts/New Hampshire:

All waters bounded by the Massachusetts, New Hampshire and Maine coasts, and
43° 30.0' N 70° 00.0' W.

(b) Determination of starting dates for spawning areas.

Closures in a given area will begin based on a pre-determined spawning condition of Atlantic herring indicated by commercial catch samples. This spawning condition will be defined as: female herring greater than or equal to 28 cm in length having reached a mean gonadosaomatic index (GSI) of 20%; or female herring greater than 24 cm and less than 28 cm in length having reached a mean GSI of 15%. Closures in a given area will begin seven (7) days after the GSI determination is made. If sufficient samples are not available, closures will begin on area specific dates as follows: Eastern Maine- August 15, Western Maine- September 1, Massachusetts/New Hampshire- September 21.

(c) Duration of spawning area restrictions.

The closure will extend for four (4) weeks. If catch sampling after the end of the initial restricted period determines that 25% or more mature herring, by number, have yet to spawn then the spawning restrictions would resume for an additional two weeks. The 20% tolerance shall be determined by examination of at least one hundred herring selected at random from the catch.

New Hampshire:

Fis 603.07 Sea Herring.

(a) No person shall fish for, take, or possess unprocessed herring within the jurisdiction of New Hampshire from September 21 through October 19, except as specified in (d).

(b) The executive director shall revise the beginning date of the closure so that the closure shall be in effect whenever it is determined that the mean gonad somatic index for female herring 24 - 28 cm in length or greater is 15% or greater or the mean gonad somatic index for female herring 28 cm in length or greater is 20% or greater.

(c) If the results of herring samples collected at the end of the closure indicate that 25% or more by number of mature spawn female sea herring still contain spawn the executive director may

extend the closure for an additional 28 days. "Mature spawn female sea herring" means female sea herring greater than 24 cm in length.

(d) During a spawning closure as specified in (a) through (c), all vessels fishing for species other than sea herring shall be limited to an incidental catch of 2000 pounds of herring per calendar day caught in or from the management area subject to a spawning closure.

(e) Any person, firm or organization engaged in the taking or landing of herring shall first obtain a permit to do so from the executive director.

(f) Any person, firm or organization properly permitted may land herring from areas not under spawning closures provided they are equipped with a functional vessel monitoring system.

(g) Nothing in the above provisions shall prohibit a person from possessing herring for use as bait while in the normal conduct of tending lobster and crab pots or any herring used as bait for angling purposes.

(h) No person shall land, transfer or transport herring taken from a management area or sub-area closed to a directed herring fishery to an internal waters processing operation.

(i) No person shall land herring taken from a management area or sub-area when 95% of the total allowable catch (TAC) for that area's or sub-area's seasonal or annual total allowable catch will be exceeded except a person may land and possess up to a maximum of 2,000 pounds of incidentally caught herring. The executive director shall revise the percentage of TAC, that would trigger a prohibition on landing, to 90% if it is determined that a closure at 95% is insufficient to prevent exceeding the seasonal or annual TAC.

(j) The executive director shall prohibit vessels from landing Atlantic herring caught from a management area which includes state waters from one and seven days per week, except as an incidental catch of a maximum of 2,000 pounds, if its projected that the seasonal or annual total allowable catch of the management area will be exceeded without no landing days. The number of no landing days per week shall be determined by the Atlantic States Marine Fisheries Commission's Atlantic herring section commissioners from New Hampshire, Maine and Massachusetts at a public meeting

(k) No person shall take herring from the waters under the jurisdiction of the state when the total allowable catch assigned to management area or sub-area which includes state waters has been attained except that a person may take and possess up to a maximum of 2,000 pounds of incidentally caught herring.

(l) Vessels shall not land herring more than once per calendar day.

Massachusetts:

322 CMR 9.00: MANAGEMENT OF SEA HERRING

Section

- 9.01: Definitions
- 9.02: Management Area Boundaries
- 9.03: Vessel Size Limit
- 9.04: Management Area 1A Fishing Day Restrictions
- 9.05: Fishing Restrictions & Annual Specifications

- 9.01 Definitions.
- For purposes of 322 CMR 9.00 only, the folowing words shall have the following meanings:
  - (1) Fish for means to harvest, catch or take, or attempt to harvest, catch or take any sea herring by any method or means.
  - (2) Gonad somatic index or GSI means for female herring the percentage obtained by the formula: [Gonad weight/(total body weight - gonad weight)] x 100.
  - (3) GSI Trigger means female herring greater than 28 cm total length with a mean GSI of 20% or female herring greater than 24 cm and less than 28 cm with a mean GSI of 15%.
  - (4) GSI Sampling means at least two samples of 50 fish or more in either GSI trigger length category taken from commercial catches during a period not to exceed seven days apart.
  - (5) Southern Gulf of Maine means that portion of Management Area 1 south of 43 [degrees] 32' N parallel of latitude.
  - (6) Land means to transfer the catch of any sea herring from any vessel onto any land or dock, pier, wharf, or other artificial structure.
  - (7) Management Area means one of three Management Areas as specified in the Atlantic States Marine Fisheries Commission Atlantic Herring Fishery Management Plan (FMP) and NOAA Fisheries federal fishery management plan.
  - (8) Management Area Quotas means the annual area-specific quota as specified by the Atlantic States Marine Fisheries Commission under the authority of the interstate and federal management plans.
  - (9) Massachusetts/New Hampshire Spawning Area means all waters encompassed by an imaginary line beginning at the intersection of the 43 [degrees] 30' N parallel of latitude and the Maine coast; thence in a southwesterly direction along the coasts of Maine, New Hampshire, and the Commonwealth to the intersection of the 70 [degrees] 00' W meridian of longitude; thence in a northerly direction along the 70 [degrees] 00' W meridian of longitude to its intersection with the 43 [degrees] 30' N parallel of latitude; thence in a westerly direction along the 43 [degrees] 30' N parallel of latitude to the point of beginning.
  - (10) Sea Herring means that species of Atlantic sea herring known as Clupea harengus.

- (11) Spawn Herring means mature sea herring in ICNAF gonadal stages V and VI.
- (12) Vessel means any waterborn craft registered under the laws of the state as that term is defined in M.G.L. c. 130, § 1.
- (13) Vessel Fishing for Mackerel means any vessel whose catch on board at any given time is at least 75% mackerel (Scomber scombrus) by weight.

- 9.02 Management Area Boundaries
  - (1) Management Area 1: all U.S. waters of the Gulf of Maine (GOM) north of a line extending from the eastern shore of Monomoy Island at 41º 35' N latitiude, eastward to a point at 41º 35' N latitude, 69º 00' W longitude, thence northeasterly to a point along the Hague Line at 42º 53' 14" N latitude, 67º 44' 35" W longitude, thence northerly along the Hague Line to the U.S. Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:
  -

W Longitude
70º 00' at Cape Cod shoreline
70º 00'
69º 40'
69º 00'
68º 00'
(the U.S.-Canada Maritime Bou

  - (2) Management Area 2: All waters west of 69º 00' W longitude and south of 41o 35' N latitude, to include state and Federal waters adjacent to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.
  - (3) Management Area 3: All U.S. waters east of 69º 00' W longitude and southeast of the line that runs from a point at 69º 00' W longitude and 41º 35' N latitude, northeasterly to the Hague Line at 67º 44' 35" W longitude and 42º 53' 14" N latitude.
  - (4) Management Area Map: [CLICK HERE TO VIEW MAP]
- 9.03 Spawning Herring Protection
  - (1) Prohibition. It shall be unlawful to possess or land any spawn sea herring caught from the Massachusetts/New Hampshire Spawning Area seven days after the GSI trigger for herring from that area is reached. (2) Closure Duration. The prohibition of 322 CMR 9.03(1) shall extend for four weeks and may be extended by the Director if DMF sampling indicates that herring landings comprise more than 25% spawn herring.
  - (3) Default Closure. It shall be unlawful to possess or land any spawn sea herring caught from the Massachusetts/New Hampshire Spawning Area during the period September 21 through October 18 provided the GSI trigger has not been reached by September 14. This prohibition may be extended by the Director beyond October 18 if DMF sampling indicates that herring landings comprise more than 25% spawn herring

- (4) Exceptions. A vessel may land or possess up to 2,000 lbs. of sea herring during the closure period described in 322 CMR 9.03.

- 9.04 Vessel Size Limit
- It shall be unlawful for any vessel greater than 165 feet in overall length and 3,000 horsepower to land sea herring in the Commonwealth.
- 9.05 Fishing Restrictions & Annual Specifications *
  - (1) Commercial Fishery Limits. It is unlawful for a vessel to land or possess sea herring from:
    - (a) Management Area 1A
      - (i) on no-fishing days specified by the Atlantic States Marine Fisheries Commission and established by the Director through declaration;
      - (ii) when 100% of the Management Area 1A quota is taken or projected to be taken.
    - (b) Management Area 1B & 2
      - (i) when 100% of the Management Area 1B or 2 quota, respectively, is taken or projected to be taken.
  - (2) Commercial Fishery Limit Specifications & Adjustments.
    - (a) The director may declare and adjust sea herring commercial fishery landing/possession limits, seasons, and no-fishing days to correspond to limits established by the Atlantic States Marine Fisheries Commission.
    - (b) Prior to any declaration or adjustment of the landing/possession limits for sea herring, the Division shall:
      - (i) obtain written approval by a majority of the members of the Massachusetts Marine Fisheries Advisory Commission;
      - (ii) file notice with the Secretary of State;
      - (iii) publish a notice on the Marine Listserv and Division website; and (iv) directly notify sea herring dealers.
  - (3) Exceptions.
    - (a) Any vessel may land or possess up to 2,000 lbs. of sea herring during prohibited times established by 322 CMR 9.05.
- REGULATORY AUTHORITY
  - M.G.L. c. 130, §§ 2, 17A, 80 and 104.
- ** Please Note: Sea Herring Management Area 1A trip limits have been updated via specification. Please see MarineFisheries Advisory*

PUBLIC HEARING DOCUMENT

for

AMENDMENT 5

to the
Fishery Management Plan (FMP)
for
Atlantic Herring

Prepared by the
New England Fishery Management Council

Amendment 5 Public Hearing Schedule

The New England Fishery Management Council (NEFMC) is conducting public hearings to solicit comments on Draft Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP). These hearings are being scheduled in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. Following these hearings, additional opportunities for review and comment on Amendment 5 and Draft Environmental Impact Statement (DEIS) may be provided by the National Marine Fisheries Service (NMFS) in accordance with the National Environmental Policy Act.

Date, City, and Time	Location
Friday, March 2, 2012 **Rockport, Maine** **9:00 am – 1:00 pm**	Samoset Hotel 220 Warrenton Street, Rockport, ME 04856 Phone: (207) 594-2511
Wednesday, March 14, 2012 **Gloucester, MA** **7:00 – 9:00 pm**	MA DMF Annisquam River Station 30 Emerson Avenue, Gloucester, MA 01930 Phone: (978) 282-0308
Thursday, March 15, 2012 **Portsmouth, NH** **7:00 – 9:00 pm**	Sheraton Harborside Hotel 250 Market Street, Portsmouth, NH 03801 Phone: (603) 431-2300
Monday, March 19, 2012 **Fairhaven, MA** **7:00 – 9:00 pm**	Seaport Inn 110 Middle Street, Fairhaven, MA 02719 Phone: (508) 997-1281
Wednesday, March 21, 2012 **Portland, Maine** **7:00 – 9:00 pm**	Holiday Inn By the Bay 88 Spring Street, Portland, ME 04101 Phone: (207) 775-2311
Tuesday, March 27, 2012 **Plymouth, Massachusetts** **7:00 – 9:00 pm**	Radisson Hotel Plymouth Harbor 180 Water Street, Plymouth MA 02360 Phone: (508) 747-4900
Wednesday, March 28, 2012 **Warwick, RI** **7:00 – 9:00 pm**	Hilton Garden Inn One Thurber Street, Warwick, RI 02886 Phone: (401) 734-9600
Thursday, March 29, 2012 **Cape May, New Jersey** **7:00 – 9:00 pm**	Congress Hall Hotel 251 Beach Avenue, Cape May, NJ 08204 Phone: (609) 884-8421

New England Council staff will brief the public on the herring amendment prior to opening the hearing for public comments. The NEFMC Draft Amendment 5 document and this public hearing document are available on the Council's website (www.nefmc.org/herring/index.html), or may be obtained by contacting the Council office at (978) 465-0492.

Written comments on Draft Amendment 5 must be received on or before 5 p.m. EST, Monday, April 9, 2012. Comments may be sent to Paul J. Howard, Executive Director, 50 Water Street, Mill #2, Newburyport, MA 01950 or emailed to comments@nefmc.org (Attention/Subject Line: "Comments on Draft Amendment 5").

Directions to the above public hearings are available by contacting the Council Office.

AMENDMENT 5 TO THE HERRING FMP: PUBLIC HEARING DOCUMENT

Why is the Council developing Amendment 5?

The need for the Council to develop Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP) arose shortly after the development of Amendment 1 to the Herring FMP, which included a limited access program for the herring fishery and established a seasonal purse seine/fixed gear area in the inshore Gulf of Maine, along with implementing other measures to address the long-term management of the fishery. Since the implementation of Amendments 1, 2, and 4, concerns about the fishery have led the Council to determine that additional action is warranted to further address issues related to the long-term health of the herring resource, how the resource is harvested, how catch/bycatch in the fishery are accounted for, and the important role of herring as a forage fish in the Northeast region. These concerns are reflected in the unprecedented level of interest in managing this fishery by New England's commercial and recreational fishermen, eco-tourism and shoreside businesses, and the general public. The primary purpose of this amendment, therefore, is to improve catch monitoring and ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Another purpose of the amendment is to implement measures to improve the long term monitoring of catch in the Atlantic herring fishery. Additionally, a purpose of this amendment is to specifically address river herring bycatch, while ensuring that the amendment is consistent with the provisions of the MSA, including the National Standard to minimize bycatch and bycatch mortality to the extent practicable.

What is the timeline for completing Amendment 5?

The Council is conducting public hearings during March 2012 to solicit comments on the management measures under consideration in Amendment 5 to the Herring FMP. The Council will be accepting public comments on the Draft Amendment 5 document through April 9, 2012. This document summarizes the management measures under consideration as well as the expected impacts of the measures. The larger, more comprehensive Draft Amendment document, including the Draft Environmental Impact Statement (DEIS) and all supporting information and analysis, is available from the Council's website (www.nefmc.org/herring).

The DEIS for Amendment 5 is currently under review by the National Marine Fisheries Service (NMFS) for consistency with the National Environmental Policy Act (NEPA). Once this document is approved by NMFS and published for review, NMFS will commence an additional 45-day comment period on Draft Amendment 5 and its DEIS. Any significant differences between the Council's Draft Amendment 5 document and the Draft EIS will be identified for the public.

What is the timeline for completing Amendment 5? (continued)

When selecting final management measures for inclusion in Amendment 5, the Council will review and consider *all* public comments – those received during the Council's public hearings as well as any additional comments received during the 45-day comment period on the Amendment 5 DEIS. The Council will also consider comments and recommendations from its Herring Committee, Herring Advisory Panel, and Herring Plan Development Team. Final decisions regarding Amendment 5 cannot be made by the Council until the 45-day comment period on the DEIS has ended and all comments can be summarized/reviewed by the Council.

This approach allows additional time for the public to review and comment on the measures under consideration and the draft Amendment 5 document. While it remains unclear at this time when the 45-day comment period on the Amendment 5 DEIS will begin, it is assumed that the Council will not be able to select final management measures at its April 24-26, 2012 meeting. However, there will likely be time scheduled at the April Council meeting to review/discuss comments received during the Council's public hearings. There may also be a public hearing on the DEIS in conjunction with the April Council meeting, if this meeting falls within the 45-day comment period.

Adequate time must be provided for the public to review the document and provide comments, and for the Council to review the comments and consider final action. Currently, it is anticipated that the Council will select final management measures for Amendment 5 at its June 19-21, 2012 meeting in Portland, ME. If this occurs, the final Amendment 5 document will be submitted to NMFS during July/August 2012, and the approved management measures will become effective as quickly as the rulemaking process allows. The Council intends for Amendment 5 to be implemented as close to the start of the 2013 fishing year as possible (January 1, 2013).

How can interested parties comment on the measures proposed in Amendment 5?

The Council has scheduled eight public hearings for Amendment 5, which are listed on the back of the cover page for this document. The public hearings are being held for Amendment 5 based on the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). You may attend any of the public hearings to submit comments for the record.

You may also submit comments on Draft Amendment 5 by email to comments@nefmc.org (Attention/Subject Line: Herring Amendment 5 Comments).

Public comments on Draft Amendment 5 will be accepted by the Council through 5:00 p.m. EST on April 9, 2012.

Written comments should be submitted to:

Mr. Paul Howard
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950
(978) 465-0492

The Draft Environmental Impact Statement (DEIS) for Amendment 5 is still under review and pending approval from NMFS. Once the Draft EIS is approved, NMFS will move forward with a 45-day comment period, consistent with the requirements of the National Environmental Policy Act (NEPA). The Draft EIS and its contents are not expected to be significantly different from the Council's current draft Amendment 5 document; further revisions are being made to ensure compliance with NEPA and other applicable law, but the management measures under consideration, background information, and analysis are expected to be consistent with the Council's document and this public hearing document.

Once both opportunities for public comment are complete (Council MSA public hearings and 45-day comment period on the Draft EIS), the Council will review all public comments and select final management measures to be submitted in Amendment 5. Decision-making by the Council will occur at either the April or June 2012 Council Meetings, depending on when the Draft EIS is approved and when the 45-day comment period ends. This process is intended to keep Amendment 5 moving forward as expeditiously as possible and provides even more opportunity for review/comment on the measures under consideration and their analyses.

What are the Goals and Objectives of Amendment 5?

The Council intends for the management measures proposed in Amendment 5 to address one or more of the following goals/objectives:

GOAL

To develop an amendment to the Herring FMP to improve catch monitoring and ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA)

OBJECTIVES

I. To implement measures to improve the long-term monitoring of catch (landings and bycatch) in the herring fishery;

II. To implement other management measures as necessary to ensure compliance with the MSA;

III. To implement management measures to address bycatch in the Atlantic herring fishery;

IV. In the context of Objectives I-III (above), to consider the health of the herring resource and the important role of herring as a forage fish and a predator fish throughout its range.

What are the Goals and Objectives of the Amendment 5 catch monitoring program?

The Council has identified ***catch monitoring*** as a primary management issue for consideration in Amendment 5 and approved a specific set of goals and objectives for the catch monitoring program. A catch monitoring program for the Atlantic herring fishery that supplements and improves the existing program can take on many forms and include several different approaches; these are reflected in the management options/alternatives under consideration in Amendment 5.

In general, the goals (numbered) and objectives (bulleted) of the catch monitoring program established in Amendment 5 are:

1. **To create a cost effective and administratively feasible program for provision of accurate and timely records of catch of all species caught in the herring fishery;**
   - Review federal notification and reporting requirements for the herring fishery to clarify, streamline, and simplify protocols;
2. **Develop a program providing catch of herring and bycatch species that will foster support by the herring industry and others concerned about accurate accounts of catch and bycatch, i.e., a well-designed, credible program;**
   - Avoid prohibitive and unrealistic demands and requirements for those involved in the fishery, i.e., processors and fishermen using single and paired midwater trawls, bottom trawls, purse seines, weirs, stop seines, and any other gear capable of directing on herring;
   - Improve communication and collaboration with sea herring vessels and processors to promote constructive dialogue, trust, better understanding of bycatch issues, and ways to reduce discards;
   - Eliminate reliance on self-reported catch estimates;
3. **Design a robust program for adaptive management decisions;**
4. **Determine if at-sea sampling provides bycatch estimates similar to dockside monitoring estimates;**
   - Assure at-sea sampling of at-sea processors' catches is at least equal to shoreside sampling;
   - Reconcile differences in federal and states' protocols for dockside sampling, and implement consistent dockside protocols to increase sample size and enhance trip sampling resolution.

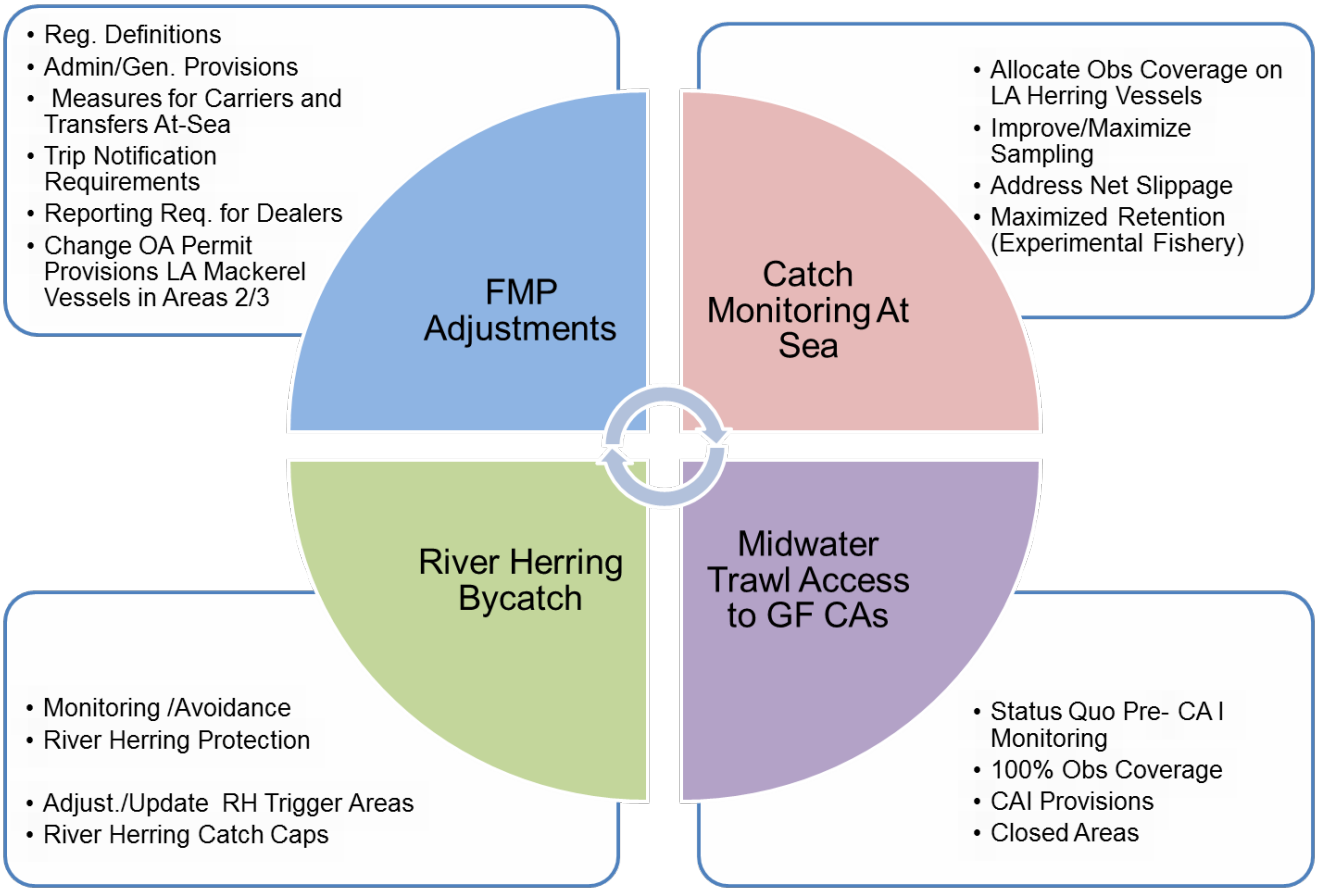
What management measures are under consideration in Amendment 5?

The management alternatives/options under consideration in Amendment 5 to the Atlantic Herring FMP can be grouped into four major "categories": (1) Proposed Adjustments to the Fishery Management Program; (2) Measures to Address Catch Monitoring At-Sea; (3) Management Measures to Address River Herring Bycatch; and (4) Management Measures to Address Midwater Trawl Access to Groundfish Closed Areas.

The figure below illustrates the range of management measures under consideration in Amendment 5 and their related subcategories (various options under consideration). Each management measure "category" is connected with a color in the figure below, and these colors are carried forward through this public hearing document to assist in understanding the alternatives and their relationship to the larger "categories."

The Council is seeking public comment on all management alternatives/options under consideration in Amendment 5, which are described in detail in the following pages of this public hearing document.

Illustration of Management Measures Under Consideration in Amendment 5



Which management measures may apply to you?

The Council is seeking your comments and recommendations regarding which herring vessel permit categories should be subject to the management measures implemented in Amendment 5.

- **Categories A, B, and C (Limited Access):** In general, the Council intends for the major elements of the catch monitoring program proposed in this amendment to apply to the limited access herring fishery, i.e., the 100 or so Category A/B/C vessels that catch more than 99% of Atlantic herring in a given year. However, because Category A/B boats catch the vast majority of herring (about 97-98%), the Council may evaluate costs and benefits associated with some of the measures when determining whether or not Category C vessels will be subject to *all* of the requirements of the catch monitoring program. The Council is seeking your comments regarding this issue.
- **Category D (Open Access):** While Category D vessels (open access) are not proposed to be subject to the Amendment 5 catch monitoring program, there are other measures under consideration that could affect these vessels and increase the scope of the impacts of this amendment. For example, the Council is considering an option that would require Category D vessels to adhere to the management measures established in this amendment to address river herring bycatch and is seeking your comments on this issue.

Number of Vessels by Atlantic Herring Permit Category 2008-2010

		Year		
		2008	**2009**	**2010**
Herring Permit Category	**A**	45	45	42
	B	5	4	4
	C	58	55	55
	D	2,409	2,394	2,258

Source: NMFS Permit databases, May 2011

The following table summarizes the management measures under consideration in Amendment 5, to which vessel categories they may apply, and the options that the Council is considering for determining the permit categories to which the measures may apply.

Herring Permit Holders that May Be Subject to Amendment 5 Measures

Proposed Measures/Alternatives	Category A/B (LA Directed)	Category C (LA Incidental)	Category D (Open Access)
Section 3.1 – Adjustments to Fishery Management Program			
Regulatory Definitions	✓	✓	✓
Administrative/General Provisions	✓	✓	✓
Measures to Address Carrier Vessels	Apply to all carrier vessels regardless of permit category		
Transfer At-Sea Option 2 (A and B Only)	✓	Prohibited	Prohibited
Transfer At-Sea Option 3 (Herring-permitted vessels only)	✓	✓	✓
Trip Notification Requirements (pre-trip and pre-landing)	✓	✓	Only D vessels that use MWT gear and/or qualify for new OA permit for Areas 2/3*
Dealer Reporting Requirements	N/A	N/A	N/A
Changes to OA Provisions for Limited Access Mackerel Vessels in Areas 2/3	N/A	N/A	✓
Section 3.2.1 – Alternatives to Allocate Observer Coverage on LA Vessels			
• Alternative 2 – 100% Coverage	✓	Option Under Consideration/TBD	N/A
• Alternative 3 – SBRM Coverage as Minimum	✓	Option Under Consideration/TBD	N/A
• Alternative 4 – Coverage based on Council Targets	✓	Option Under Consideration/TBD	N/A
Additional Measures to Improve Sampling At-Sea	✓	Option Under Consideration/TBD	N/A
Section 3.2.3 – Measures to Address Net Slippage			
• Option 2 – Released Catch Affidavit	✓	Option Under Consideration/TBD	N/A
• Option 3 – Closed Area I Sampling Provisions	✓	Option Under Consideration/TBD	N/A
• Option 4 – Catch Deduction and Possible Trip Termination	✓	Option Under Consideration/TBD	N/A
MR Experimental Fishery	✓	Option Under Consideration/TBD	N/A
Section 3.3 – Measures to Address River Herring Bycatch			
Alternative 2 – Monitoring/Avoidance Options: -100% Observer coverage -CAI Sampling -Trigger-Based Monitoring -Two-phase bycatch avoidance	✓	Option Under Consideration/TBD	Option to include all D permit holders
Alternative 3 – Protection Options -Closed Areas -Trigger-Based Closed Areas	✓	Option Under Consideration/TBD	Option to include all D permit holders
Section 3.4 – Measures to Address Midwater Trawl Access to Groundfish Closed Areas	Applies to all vessels fishing with midwater trawl gear, regardless of permit category		

Management Measures: FMP Adjustments

Regulatory Definitions (Transfer at Sea and Offload)

Section 3.1.1 of Draft Amendment 5 – p. 16

The Council is considering establishing regulatory definitions for *transfer-at-sea* and *offload* specifically for the Atlantic herring fishery and is seeking your comments on the proposed definitions.

A. No Action Option

If no action is taken regarding this measure, no new regulatory definitions would be established in Amendment 5 for the Atlantic herring fishery (although some existing definitions may be revised to reflect consistency with other measures in this amendment).

B. Proposed Regulatory Definitions

Under this option, Amendment 5 would establish a regulatory definition of *transfer at sea* and a regulatory definition of *offload* for the purposes of the Atlantic herring fishery to clarify provisions related to each vessel engaged in transfer operations and to clarify reporting provisions.

This measure would define a herring transfer at sea as: *a transfer from an Atlantic herring vessel (i.e. in the vessel hold or on deck), codend, purse seine to another vessel for personal use as bait, to an Atlantic herring carrier or at-sea processor, or to another permitted herring vessel. Two vessels hauling one codend is pair trawling and is not considered a transfer at sea.*

This measure would also modify the definition of *offload* to add the following:

For the purposes of the Atlantic herring fishery, an offload or offloading means to remove, begin to remove, to pass over the rail, or otherwise take fish away from any vessel for sale to either a permitted At-sea Atlantic Herring dealer (as defined in the options proposed in the Amendment 5 document) or a permitted land-based Atlantic herring dealer.

Management Measures: FMP Adjustments (continued)

Administrative/General Provisions

Section 3.1.2 of Draft Amendment 5 – p. 16

The Council is seeking your comments on the proposed administrative/general provisions under consideration in Amendment 5. These provisions are intended to help create a cost-effective and administratively-feasible management program to develop accurate and timely records of catch of all species caught in the Atlantic herring fishery and to enhance the catch monitoring to ensure that management can be timely, efficient, and adaptive.

A. No Action Option

Under the no action option, no changes would be made to the current provisions regarding vessels working cooperatively in herring fishing operations, VMS provisions, or reporting through vessel trip reports (VTRs).

The regulations at §648.204(b) state that both vessels involved in a pair trawl operation must be issued the herring permit appropriate for the amount of herring jointly possessed by both of the vessels participating in the pair trawl operation. This means that the more restrictive possession limit of the vessels participating in a pair trawl operation is the limit of the total amount of herring that the vessels may jointly fish for, possess, or land in any calendar day. For example, if Vessel 1 has a Category A permit, which has no possession limit, and Vessel 2 has a Category C permit, with a possession limit of 55,000 lbs./day, then the vessels are only permitted to jointly fish for, possess, and land 55,000 lbs./day. Under this option, no changes would be made to the current restrictions on vessels working cooperatively in the Atlantic herring fishery.

If no action is taken, the current VMS "power down" provision would not be eliminated for limited access herring vessels. Limited access herring vessels would be able to continue turning off their VMS units when in port.

B. Option: Proposed Administrative/General Provisions

This option would implement the provisions described below – 2A, 2B, and 2C – to clarify possession limits for all vessels working cooperatively in a fishing operation, eliminate the VMS power-down provision for limited access herring vessels, and establish a new permit for herring carriers that sell fish:

2A. Expand Possession Restrictions to All Vessels Working Cooperatively in the Herring Fishery (Include Purse Seine Vessels and Vessels that Transfer Herring At-Sea)

This measure would expand the provisions §648.204(b) to include paired purse seine operations and transfers at sea between vessels. In summary, all vessels working cooperatively in the herring fishery are subject to the most restrictive possession limit associated with any of the vessels.

Management Measures: FMP Adjustments (continued)

2B. Eliminate the VMS "Power Down" Provision for Limited Access Herring Vessels

Under this option, Amendment 5 would prohibit limited access herring vessels (and carrier vessels that utilize VMS) from turning off their VMS units when in port unless specifically authorized by NMFS through a Letter of Exemption, consistent with VMS provisions for the multispecies, scallop, and surf clam/ocean quahog fleet:

- The Northeast Fisheries Regulations allow vessels holding certain permits to turn off their VMS units during periods when the vessel will be out of the water or during extended periods of no fishing activity. The request must be made in advance of the intended exemption period, and a "Letter of Exemption" (LOE) must be issued by NMFS. Vessels may not turn VMS units off until they receive a LOE approval from NMFS.
- **All Vessels.** May request a Letter of Exemption from NMFS if the vessel is expected to be out of the water for more than 72 consecutive hours.

Limited Access Multispecies, Limited Access Scallop and Surfclam/Ocean Quahog Vessels (Proposed to Add Limited Access Herring Vessels). May sign out of the VMS program for a minimum of 30 consecutive days by obtaining a Letter of Exemption from NMFS. The vessel may not engage in any fisheries until the VMS unit is turned back on.

2C. Establish a New At-Sea Herring Dealer Permit

Under this option, Amendment 5 would establish a new Federal At-Sea Herring Dealer permit that would be required for carrier or other vessels that sell Atlantic herring to any entity.

- The definition of "Atlantic Herring Dealer" in Section 648.2 (*Definitions*) would be modified to include carrier vessels that may sell fish.
- This permit would require compliance with federal dealer reporting requirements (Section 648.7) at any time the vessel is in possession of the at-sea dealer permit. A "dealer identifier" would have to be developed for at-sea for the purposes of reporting. Vessels that have both the At-Sea Herring Dealer Permit and a herring fishing permit would be required to fulfill the reporting requirements of both permits while in possession of both permits.

Management Measures: FMP Adjustments (continued)

Measures to Address Carrier Vessels

Section 3.1.3.2 of Draft Amendment 5 – p. 20

In Amendment 5, reporting provisions will be modified to clarify that herring carrier vessels are required to report a NMFS-specified trip identifier (for example, VTR serial number) to the dealer receiving the offload. Carrier vessels acting as dealers would be required to report the NMFS-specified trip identifier from the catcher vessels in their dealer reports. This clarification is intended to improve the reporting of herring transferred at-sea.

Amendment 5 also will eliminate the VTR reporting requirement for herring carrier vessels when they are engaged in carrying activities. Currently, carrier vessels are required to submit VTRs to NMFS, which indicate 'no catch' for the days during which they were carrying and the vessel name and permit number of the catcher vessel for which they were carrying fish. All catch is to be reported by and attributed to the vessels harvesting the catch. Eliminating the VTR reporting requirement is intended to help prevent the double counting of landings that may occur if a dealer mistakenly attributes the landings to the carrier vessel and not the harvesting vessel.

In addition to the above clarifications to existing provisions for Atlantic herring carrier vessels, the Council is considering options to provide carrier vessels with more flexibility that the current Letter of Authorization (LOA) for carrying herring currently allows. The Council is seeking your comments on the options described below.

Option 1: No Action (Status Quo for Carrier Vessels)

If the no action option is selected, no additional requirements/provisions for herring carrier vessels would be implemented in Amendment 5 (with the exception of the two provisions/clarifications described in the introductory section above).

Vessels acting as Atlantic herring carriers are required to have a valid Letter of Authorization (LOA) from the Regional Administrator and are not required to report catch via the IVR/VMS reporting system implemented by NMFS in 2011. When herring is transferred to another vessel, the vessel that catches the fish (the catcher vessel) is required to report the catch via the VMS system if it possesses a limited access permit or through the IVR system if it possesses an open access permit (the carrier should not report catch to minimize double counting).

Option 2: Require VMS on Carrier Vessels for Declaration Purposes and Eliminate Seven-Day LOA Enrollment Restriction

In addition, under this option, vessels that want to act as Atlantic herring carriers could obtain a LOA from NMFS to do so for the entire fishing year, but they would also be required to utilize a vessel monitoring system (VMS) and comply with the VMS provisions for limited access herring vessels. Carrier vessels would be required to use their VMS pre-trip declaration to indicate whether or not they will be engaged in herring carrying activity.

Because carrier vessels would be required to utilize VMS for trip declaration purposes, this option would allow them to engage in other activities while in possession of the herring carrier LOA (versus being restricted to carrying activities only for the minimum seven-day enrollment period). Prior to each fishing trip, the carrier vessels would utilize VMS declarations to indicate what activity they intend to engage in during the trip. If the vessel declares "carrier other," then it cannot carry Atlantic herring on that fishing trip.

- Herring vessels on standard fishing trips would declare HER-HER for a herring fishing trip, or DOF when not participating in the fishery.
- Carrier vessels that possess the Carrier LOA could declare HER-CAR. These vessels would be subject to the provisions of the LOA and would not be allowed to carry fishing gear or other species on that trip.
- Carrier vessels that possess the Carrier LOA could declare OTH-CAR. These vessels would not be allowed to carry fishing gear or Atlantic herring on that trip.

Option 3: Dual Option for Carriers (VMS or Current LOA)

This option would provide flexibility for herring carriers to choose to either:

A. Utilize a VMS for declaration, eliminate the minimum seven-day enrollment period for carrying (LOA restriction), and engage in other activities during LOA enrollment (identical to the provisions described in the previous option); or

B. Maintain the status quo (minimum seven day enrollment period with current LOA restrictions).

Measures to Address Transfers of Atlantic Herring At-Sea

Section 3.1.3.3 of Draft Amendment 5 – p. 22

In Amendment 5, the Council is considering measures to minimize transfers of herring at sea and/or standardize reporting requirements for vessels transferring/receiving Atlantic herring. Options under consideration are described below and are not necessarily independent of each other.

Option 1: No Action

If no action is taken, the current provisions for transferring herring at-sea (status quo) would remain effective (summarized below):

- A vessel that transfers herring at sea to a vessel that receives it for personal use at bait must report all catch via the required reporting system (daily VMS for limited access vessels and weekly IVR for open access vessels) and must report all transfers on the Fishing Vessel Trip Report (VTR).
- A vessel that transfers herring at sea to an authorized carrier vessel must report all catch via the required reporting system (daily VMS for limited access vessels and weekly IVR for open access vessels) and must report all transfers on weekly VTRs. Each time the vessel offloads to the

carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

- A vessel that transfers herring at sea to an at-sea processor must report all catch via the required reporting system (daily VMS for limited access vessels and weekly IVR for open access vessels) and must report all transfers on weekly VTRs. Each time the vessel offloads to the at-sea processing vessel is defined as a trip for the purposes of the reporting requirements and possession allowances. For each trip, the vessel must submit a VTR and the at-sea processing vessel must submit the detailed dealer report.
- A transfer between two vessels issued valid Atlantic herring permits requires each vessel to submit a VTR, filled out as required by the LOA to transfer herring at sea, as well as a real-time catch report (daily VMS for limited access vessels and weekly IVRs for open access vessels) for the amount of herring each vessel catches.
- The transferring vessel may not fish for, catch, transfer, or possess more herring than allowed by the vessel permit category. Each vessel has the responsibility to record how fish is transferred at sea on their weekly VTR reports.

Option 2: Restrict Transfers At-Sea to Only Vessels with Category A or B Limited Access Herring Permits

This measure would allow only vessels participating in the limited access directed fishery for Atlantic herring (Category A or B permits) to transfer herring at sea.

- Transferring and receiving vessels would be required to possess a limited access Category A or B permit for the herring fishery.
- Herring carrier vessels operating under a Carrier LOA would be exempt from this requirement.

Option 3: Prohibit Transfers At-Sea to Non-Permitted Vessels

This measure would allow only vessels that possess a federal Atlantic herring permit to transfer herring at sea. Non-permitted vessels would be prohibited from receiving herring at-sea, even for personal use as bait.

- Transferring and receiving vessels would be required to possess a Category A, B, C, or D permit for the herring fishery. The Category D permit is an open access permit, so any vessel can obtain this permit, but possession of this permit subjects the vessel to VTR and other reporting requirements.

Management Measures: FMP Adjustments (continued)

Trip Notification Requirements

Section 3.1.4 of Draft Amendment 5 – p. 24

The Council is considering several options (described below) to expand current trip notification requirements in the Atlantic herring fishery and is seeking your comments on the options under consideration. When the Council selects final measures for Amendment 5, either Option 1 (no action), Option 2, or Option 3 could be selected individually, or Options 2 and 3 could be selected in combination with each other.

Option 1: No Action

If the no action option is selected, trip notification requirements for the herring fishery would remain the same upon implementation of Amendment 5. Current notification requirement are described below.

- The current notification requirement for vessels to request an observer at least 72 hours before leaving port applies to all Category A and B vessels fishing on a declared herring trip with midwater trawl or purse seine gear regardless of area fished and Category C and D vessels fishing with midwater trawl gear in Areas 1A, 1B, and/or 3.
- Under the status quo, limited access herring vessels are required to declare a herring trip via VMS prior to leaving port when they participate in the herring fishery.
- Category A and B vessels fishing on a declared herring trip with midwater trawl or purse seine gear regardless of area fished, and Category C vessels fishing with midwater trawl gear in Areas 1A, 1B, and/or 3 are also required to notify NMFS Law Enforcement via VMS of the time and place of offloading at least six hours prior to crossing the VMS demarcation line on their return trip to port (or six hours prior to landing if the vessel does not fish seaward of the demarcation line).
- Category D vessels that do not use midwater trawl gear do not have any trip notification requirements. However, if a Category D vessel possesses a VMS because of other Federal permit requirements, it is recommended that the vessel declare out of fishery (DOF) prior to leaving port when participating in the herring fishery.

**Vessels can provide pre-trip notification for multiple trips at one time.*

Management Measures: FMP Adjustments (continued)

Option 2: Modify and Extend the Pre-Trip Notification Requirements

The following modifications to pre-trip notifications are proposed in this option:

1. ***Modifications to the Pre-Trip Notification System (for Observers):*** This option would require all limited access herring vessels (as well as Category D vessels fishing with midwater trawl gear in Areas 1A, 1B, and/or 3) and all herring carrier vessels to notify the Observer Program through the Pre-Trip Notification System (PTNS) **prior to any trip where the operator may harvest, possess, or land Atlantic herring.**

In order to possess, harvest, or land herring, representatives for Category A, B, and C fishing vessels, as well as Category D vessels fishing with midwater trawl gear in Areas 1A, 1B, and/or 3 must provide notice to NMFS through the PTNS **at least 48 hours** prior to beginning the trip, and must provide information including the vessel name, permit number/permit category, contact person name and contact phone number, date sail, time sail, port of departure, gear type, and area intending to fish (i.e., herring management area, river herring area, closed area, etc., consistent with the management measures ultimately adopted in this amendment), as well as target species (target species will be particularly helpful to try to identify directed herring versus directed mackerel trips). There are several methods available for the pre-trip notification: internet; email; and telephone.

If a vessel has been issued a limited access herring permit, or if the vessel has an open access herring permit and is fishing with midwater trawl gear in Areas 1A, 1B, and/or 3, but does not provide notification to NMFS before beginning the fishing trip, the vessel is prohibited from possessing, harvesting, or landing Atlantic herring on that trip. If a trip is cancelled, a vessel representative must notify NMFS of the cancelled trip, even if the vessel is not selected to carry an observer. All waivers or selection notices for observer coverage will be issued to the vessel by VMS so as to have on-board verification of the waiver or selection.

Category D vessels that may fish under a higher possession limit in Areas 2/3 only (under consideration in the Draft Amendment 5 document) would be subject to the same notification requirements as Category C vessels (described in this section) regardless of gear type used.

**Vessels can provide pre-trip notification for multiple trips at one time.*

2. ***Pre-Trip VMS Declaration:*** This option would also add a gear declaration to the existing pre-trip VMS notifications for all herring fishing vessels using VMS to declare in/out of the herring fishery.

Management Measures: FMP Adjustments (continued)

Option 3: Extend Pre-Landing Notification Requirement

This option would require limited access herring vessels and herring carrier vessels that opt to use VMS (see the Draft Amendment 5 document) to notify NMFS Law Enforcement via VMS of the time and place of offloading at least six hours prior to crossing the VMS demarcation line on their return trip to port (or six hours prior to landing if the vessel does not fish seaward of the demarcation line).

Category D vessels that may fish under a higher possession limit in Areas 2/3 only (under consideration in the Draft Amendment 5 document) would be subject to the same notification requirements as Category C vessels (described in this section) regardless of gear type used.

This option may be implemented as a stand-alone measure or in combination with Option 2 described on the previous page, which proposes to modify and extend the pre-trip notification requirements for limited access herring vessels.

Reporting Requirements for Federally Permitted Herring Dealers

Section 3.1.5 of Draft Amendment 5 – p. 26

In Amendment 5, the Council is considering measures to address reporting requirements for federally permitted Atlantic herring dealers. The Council is seeking your comments on the options under consideration.

Option 1: No Action (Status Quo Dealer Reporting Requirements)

Under this option, reporting requirements for federally permitted Atlantic herring dealers would remain the same. Dealers, including at-sea processors, must submit, for each transaction, an electronic dealer report each week. Reports are due by midnight (Eastern Time) each Tuesday for the week that ended the previous Saturday at midnight. Reports must include the *correct* vessel name and Federal permit number of each vessel that harvested any fish received along with the correct weight units for purchased fish. Dealers must also report the VTR serial number used by each vessel that harvested fish. Dealers are required to submit a report even if there is no activity during a week.

Reporting Herring Landed by a Carrier Vessel

Dealers must attribute catch to the vessel that harvested the herring, which may not necessarily be the vessel that landed the herring. Vessels acting as herring carriers must obtain the VTR serial number from the catcher vessel. Subsequently, dealers must request the name, permit number, and VTR serial number of the catcher vessel from the carrier vessel, and report the fish as being harvested by the catcher vessel. Dealers should not report landings from a carrier vessel, as it may lead to double counting landings and could lead to trip limit reductions in a particular management area.

Reporting Haddock Landed from Herring Vessels

Dealers, including at-sea processors, that cull or separate all other fish from the herring catch must separate and retain all haddock offloaded from vessels that have a Category A or B permit fishing on a declared herring trip and from vessels that have a Category C or D permit fishing with midwater trawl gear in Areas 1A, 1B, and/or 3. Any haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after it has been separated from the herring, for at least 12 hours for dealers and processors on land, and for 12 hours after landing on shore by at-sea processors for inspection by law enforcement officials. The dealer or at-sea processor must report all such haddock on the weekly electronic dealer report and must use the appropriate disposition code for the haddock. The weekly dealer report must clearly indicate the vessel name and permit number of the vessels that caught the retained haddock.

Option 2: Require Dealers to Accurately Weigh All Fish

This option would require federally permitted Atlantic herring dealers to accurately weigh all fish.

Option 2 may be selected in combination with any one or more of the sub-options described below.

Sub-Option 2A: This sub-option would require federally permitted Atlantic herring dealers to accurately weigh all fish. If dealers do not sort by species, they would be required to document (annually in dealer applications) how they estimate the relative composition of a mixed catch, to facilitate quota monitoring and cross-checking with other data sources.

Sub-Option 2B: This sub-option would require federally permitted Atlantic herring dealers to accurately weigh all fish. If dealers do not sort by species, they would be required to document (for individual landing submissions) how they estimate the relative composition of a mixed catch, to facilitate quota monitoring and cross-checking with other data sources.

Sub-Option 2C: This sub-option would require federally permitted Atlantic herring dealers to obtain vessel representative confirmation of SAFIS transaction records to minimize data entry errors at the first point of sale. It would require vessel owners/operators to review and validate all catch information reported for their vessels in Fish-on-Line (FOL) on a weekly

basis, including VMS, VTR, and dealer data. If data issues are noted by the vessel owner/operator they would indicate a data issue and provide comments describing the issue, this would create an issue report to NMFS in FOL. NMFS would follow up on all issue reports to resolve discrepancies by working with vessel operators and dealers to correct data submissions. If no data issues are noted, the vessel's owner/operator would indicate such.

Additionally, NMFS recommends increasing the frequency of VTRs and dealer reports to improve the effectiveness of Sub-Option 2C. VTRs would be required to be submitted within 24 hours of the end of a trip and dealer reports would be required to be submitted within 24 hours of receipt or purchase. These changes would increase the timeliness of reports and would provide data to NMFS for validation sooner than they are available currently. While these changes would not likely have a significant impact on information used in weekly monitoring, they would improve the validation efforts that are currently conducted by NMFS and improve the overall state of data in these fisheries.

Changes to Open Access Permit Provisions for Limited Access Mackerel Vessels in Areas 2/3

Section 3.1.6 of Draft Amendment 5 – p. 28

The Council is considering options to increase the open access possession limit in Areas 2/3 for vessels with limited access permits for Atlantic mackerel that did not qualify for a limited access herring permit.

The limited access program for the Atlantic mackerel fishery was developed by the Mid-Atlantic Council and is based on a multi-tiered approach to a limited access permit structure, with each tier specifying different criteria for limited access qualification. Qualification for different limited access mackerel permits was proposed, in part, to address the overlap between the herring and mackerel fisheries and minimize problems that may result if herring vessels do not receive limited access permits for mackerel.

Management Measures: FMP Adjustments (continued)

The following table describes the anticipated mackerel limited access vessels and the Atlantic herring permits which are held (based on 2010 data). Currently, there are a total of 244 vessels with Herring Category D (open access) permits which are projected to qualify for a Limited Access mackerel permit; however most of these vessels would qualify for a Tier 3 Mackerel permit. While many vessels may qualify, these vessels account for only a small amount of herring catch.

In recent years, about 95% of all Atlantic mackerel landed has been landed by vessels that are expected to qualify for a Tier 1 mackerel limited access permit. Based on the analysis of 2010 data, there are expected to be about two Tier 1 mackerel vessels with a Category D herring permit and three Tier 1 mackerel vessels with no herring permit.

Herring Permits Held by Vessels Expected to Qualify for Mackerel Limited Access Permits

		Herring Permit Category				
		A	**B**	**C**	**D**	**None**
Mackerel Tier	**1**	20	0	5	2	3
	2	0	1	5	26	12
	3	3	2	15	216	93

Note: Data are preliminary.

The intent of the options under consideration to address mackerel vessels is to minimize the potential for herring bycatch (regulatory discarding) in the limited access mackerel fishery. The Council is seeking your comments on the following options.

Option 1: No Action

Under this option, no action would be taken in Amendment 5 to address herring/mackerel fishery interactions and concerns about the potential for herring bycatch in the directed mackerel fishery. This option would maintain the status quo with respect to mackerel vessels with an open access herring permit.

- The open access incidental catch permit for herring (Category D) would continue to apply to all management areas.
- Vessels that obtain the open access incidental catch herring permit would continue to be restricted by a possession limit of 3 mt of herring per trip (6,600 pounds) in all management areas and limited to one landing per calendar day up to the 3 mt possession limit.
- When catch is projected to reach 95% of the sub-ACL in a management area and the directed fishery closes, incidental catch in the area would be limited to 2,000 pounds per trip, as it is currently.

Management Measures: FMP Adjustments (continued)

Option 2: Increase the Open Access Possession Limit to 20,000 Pounds in Areas 2/3 for Vessels that also Possess a Federal Limited Access Mackerel Permit

Under this option, two open access permits for herring would be created, one for all management areas and one for mackerel fishery participants in Areas 2/3 only:

1. The current provisions for the Category D permit, including the 3 mt possession limit, reporting requirements, and landings restrictions, would apply to an open access permit for all management areas, as described in the no action option;
2. A new open access incidental catch permit would be created for limited access mackerel fishery participants in Areas 2/3 only that do not have a limited access herring permit; this permit would be associated with a 20,000 pound possession limit for herring; all other provisions currently associated with the current open access Category D permit would apply:
    - Vessels that do not qualify for a limited access herring permit and possess a federal limited access permit for Atlantic mackerel would be eligible for this herring permit.
    - **Vessels that obtain this permit would be restricted to fishing for herring in Areas 2/3 only**, under a possession limit of 20,000 pounds of herring and limited to one landing per calendar day up to the 20,000 pound possession limit.
    - For quota/ACL monitoring purposes, reporting requirements for vessels that possess this permit would be consistent with requirements for limited access Category C vessels.
    - When catch is projected to reach 95% of the sub-ACL in a management area and the directed fishery closes, incidental catch in the area would be limited to 2,000 pounds per trip, as it is currently.

Note: The Council may determine that mackerel limited access permit holders should be treated differently, depending on their level of activity in both the herring and mackerel fisheries and the limited access mackerel permit that they may possess.

Option 3: Increase the Open Access Possession Limit to 10,000 Pounds in Areas 2/3 for Vessels that also Possess a Federal Limited Access Mackerel Permit

This option is identical to Option 2 (above), except that vessels that obtain the new open access incidental catch permit under this option **would be restricted to fishing for herring in Areas 2/3 only**, under a possession limit of 10,000 pounds of herring and limited to one landing per calendar day up to the 10,000 pound possession limit.

Management Measures: Catch Monitoring At-Sea

Alternatives to Allocate Observer Coverage on Limited Access Herring Vessels

Section 3.2.1 of Draft Amendment 5 – p. 30

The Council is seeking your comments on several alternatives to allocate observer coverage on limited access herring vessels (proposed Categories A/B/C – Council is seeking comments regarding the limited access permit categories to which these alternatives should apply). In general, each management alternative under consideration includes:

1. Targets/priorities for allocating coverage;
2. Provisions/process for reviewing/allocating/prioritizing coverage;
3. Options for funding observer coverage; and
4. Provisions for utilizing service providers and authorizing waivers in specific circumstances that may prevent deployment of an observer.

Alternative 1: No Action Alternative

The no action alternative represents the status quo for allocating observer coverage on limited access herring vessels. This alternative would allocate observer coverage on limited access herring vessels through the current optimization/allocation process.

Alternative 2: Require 100% Observer Coverage on Limited Access Herring Vessels

Alternative 2 would require at-sea observers on every trip taken by limited access herring vessels unless they are declared out of the herring fishery (through VMS). Options under consideration to address the necessary elements of Alternative 2 are described below.

Priorities for Allocating Sea Days/Target Coverage Levels

Under Alternative 2, the priorities/targets for coverage would be 100% of declared herring trips on limited access Category A, B, and C vessels. (The Council is seeking comments on whether this alternative should apply to Category C vessels.)

Process for Reviewing/Allocating Observer Days

Under Alternative 2, no changes would be made to the current process for reviewing and allocating observer coverage. Additional days to meet the 100% requirement on limited access herring vessels would be funded through other sources (see following options).

Management Measures: Catch Monitoring At-Sea (continued)

Funding Options

Option 1: No Action

Under this option, no action would be taken in Amendment 5 to generate funds or require specific funding for observer coverage required on limited access herring vessels. It is assumed that Federal funds would be utilized to fully support the administration of the fishery management plan and data collection required through the provisions in this amendment. While observer coverage may be ***desired*** or ***targeted*** at a higher rate, realized annual coverage would be based on the allocation of Federal resources and would be subject to prioritization in the face of funding limitations. This option equates to the status quo with respect to funding observer coverage in the limited access herring fishery.

Option 2: Federal and Industry Funds

This option would require that observer coverage on limited access herring vessels be funded by Federal resources, whenever they are available. To the extent that Federal resources are not available to fund observer coverage at levels consistent with the Amendment 5 provisions, limited access herring vessels would be responsible for covering costs associated with contracting service providers for the additional observer coverage.

Provisions for Utilizing Observer Service Providers and Authorizing Waivers

Because Alternative 2 requires 100% observer coverage on limited access herring vessels, provisions would be included that authorize the use of non-government service providers for sea sampling in the event that Federal funds are not sufficient to provide 100% coverage and/or the fishing industry is required to fund some/all of the sea sampling.

Prior to any trip when declared into the herring fishery (declared "HER"), limited access herring vessel owners, operators, and/or representatives would be required to provide notice to NMFS and request an observer through the pre-trip notification system, consistent with the provisions described in the Draft Amendment 5 document. If observer coverage must be procured through an independent service provider, NMFS would notify the vessel owner, operator, and/or representative of the requirement within 24 hours of the vessels' notification to NMFS of the prospective herring trip. The vessel would be prohibited from fishing for, taking, possessing, or landing any Atlantic herring without carrying an observer for that trip unless the vessel has been issued a waiver. Any requirement to carry an observer on a particular trip may be waived by NMFS. All waivers for observer coverage will be issued to the vessel by VMS so as to have on-board verification of the waiver.

Management Measures: Catch Monitoring At-Sea (continued)

Observer Service Provider Certification, Approval, Responsibilities

Regulations specifying the use of observer service providers are provided in 50 CFR 648.11(h) and (i) – *Observer service provider approval and responsibilities* and *Observer certification* and would apply to service providers utilized by Atlantic herring vessels for sea sampling if/when federally funded observers cannot be made available. These provisions are consistent with those for service providers in other Federal fisheries in the Northeast region (ex., sea scallops).

Option Under Consideration: State Agencies as Service Providers for Observer Coverage

In Amendment 5, the Council is considering an option to authorize State agencies to be service providers for catch monitoring (sea sampling/observer coverage). The Council is seeking your comments on this option.

Option 1: No Action. Under the no action option, States would not be authorized in Amendment 5 as service providers for observer coverage. If a State Agency intends to provide sea sampling services for Atlantic herring vessels, it would apply to NMFS to become an authorized service provider, consistent with the provisions specified in 50 CFR 648.11(h) and (i)– *Observer service provider approval and responsibilities* and *Observer certification*.

Option 2: States Authorized as Service Providers. Under this option, Amendment 5 would authorize all States in the Northeast Region as service providers for sea sampling on limited access Atlantic herring vessels. States would not be required to apply to NMFS for an authorization and comply with the provisions specified in 50 CFR 648.11(h) and (i) – *Observer service provider approval and responsibilities* and *Observer certification*. To ensure data compatibility, States that are authorized as service providers must ensure that data collection standards and methods are consistent with NEFOP standards and methods for the herring fishery.

Issuance of Waivers If/When Observers Cannot be Deployed

In the event that an observer is required for a particular fishing trip but cannot be provided by the NEFOP, NMFS would notify the vessel within 24 hours of the vessel's notification of the prospective herring trip. If this amendment does not require the industry to pay for observer sea days that cannot be funded using Federal resources, then either the vessel would be prohibited from fishing for, taking, possessing, or landing any Atlantic herring without carrying an observer for that trip, or NMFS would issue a waiver for the trip within 24 hours.

As part of the selection of final management measures for Amendment 5, the Council may specify instances and/or identify specific fishing trips that would not be authorized for waivers by NMFS regardless of whether an observer can be deployed. The Council is seeking public comment on this issue.

Management Measures: Catch Monitoring At-Sea (continued)

If this amendment requires the industry to pay for observer sea days that cannot be funded using Federal resources, the vessel owner/operator/manager would be required to arrange for carrying an observer from one of the service providers approved by NMFS (50 CFR 648.11(h) and (i)).

The owner/operator/manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48 hours' notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified herring trip. A list of approved service providers will be published on the NMFS/NEFOP website. If a certified observer cannot be procured within 24 hours of the advanced notification due to the unavailability of an observer, the vessel owner/operator/manager may request a waiver from NMFS/NEFOP from the requirement for observer coverage on that trip, but only if all of the available service providers have been contacted in an attempt to secure observer coverage, and no observer is available. In this case, if a waiver is to be issued by NMFS, consistent with the provisions in this amendment, then it will be issued within 12 hours.

Alternative 3: Require SBRM Observer Coverage Levels as Minimum Levels

This alternative would require that **at a minimum**, the annual levels of observer coverage recommended by the NEFSC's Standardized Bycatch Reporting Methodology (SBRM) analysis be achieved annually for the SBRM fleets identified in this amendment. The process for determining coverage levels using the SBRM methodology is described under the no action alternative. Under Alternative 3, SBRM sea day allocations for "herring fleets" (identified below) would represent minimum requirements for sea days that must be covered during the upcoming year.

SBRM Fleets to Which This Alternative Applies

Based on the Herring PDT's detailed analysis presented in Appendix III (Volume II), the SBRM fleets to which this alternative applies include:

- **New England Midwater Trawl;**
- **Mid-Atlantic Midwater Trawl; and**
- **New England Purse Seine.**

Priorities for Allocating Sea Days/Target Coverage Levels

The priorities for allocating sea days would be based on the current process (no action alternative, Draft Amendment 5 document).

Process for Reviewing/Allocating Observer Days

Under Alternative 3, no changes would be made to the current process for reviewing and allocating observer coverage. As specified in the SBRM Omnibus Amendment, when a shortfall occurs, a prioritized sea day allocation is made. Under Alternative 3, re-prioritizing or shifting the allocation of observer days on SBRM herring fleets would be prohibited by the Council or NMFS during the annual SBRM review/prioritization process.

Management Measures: Catch Monitoring At-Sea (continued)

Funding Options

The funding options under consideration for Alternative 3 are the same as those for Alternative 2 (see previous alternative).

Option 1: No Action

Option 2: Federal and Industry Funds

Provisions for Utilizing Observer Service Providers and Authorizing Waivers

Under Alternative 3, SBRM observer allocations would be mandated, and shifting days away from the herring fleets during the prioritization process would be prohibited. As a result, additional funding may be necessary to achieve the coverage levels specified by the SBRM, especially if the optimization process limits the amount of Federal resources available to fund sampling at these levels. The Council is therefore considering an option to establish provisions for utilizing service providers in the event that Federal funds are not sufficient. The options to establish provisions for sea sampling service providers under Alternative 3 are the same as those proposed for Alternative 2 (see the Draft Amendment 5 document).

Alternative 4: Allocate Observer Coverage Based on Council-Specified Targets/Priorities

This alternative would require that observer coverage on limited access herring vessels be allocated annually based on the following targets/priorities identified by the New England Fishery Management Council: ***a 30% CV on catch estimates for Atlantic herring and haddock, and a 20% CV on catch estimates for river herring (catch = total removals).***

Priorities for Allocating Sea Days/Target Coverage Levels

Under this alternative, allocating observer days on limited access Atlantic herring vessels would be based on a process similar to the SBRM, designed to target 30% CV on catch estimates for Atlantic herring and haddock, and a 20% CV on catch estimates for river herring. These targets differ from the current SBRM performance standards in that: (1) river herring is incorporated as a priority species and a basis for allocating observer coverage; (2) the goal of this alternative is to achieve precision targets for total catch estimates (*retained and discarded* – not just discarded); (3) the precision standard for river herring catch estimates more conservative than the current SBRM standards (20% CV versus 30% CV); and (4) a precision target for haddock is identified separately (versus large-mesh groundfish in the current SBRM).

The Council emphasized the need to be practical when determining an appropriate sampling design for at-sea monitoring, especially given available resources. When designing the sampling program, priority should be given to the species of greatest concern, from a biological perspective. It is acknowledged that all species will be sampled regardless of the priorities, and CVs of 30% or even less may be achieved for many of the other species.

Management Measures: Catch Monitoring At-Sea (continued)

River herring, haddock, and Atlantic herring have all been identified by the Council as priority species under this alternative.

Process for Reviewing/Allocating Observer Days (Alternative 4)

Option 1 – NEFSC Supplemental SBRM Analysis

Under this option, the NEFSC would prepare a supplemental SBRM analysis to relate SBRM fleets/coverage levels to the limited access herring vessels and evaluate the potential allocation of additional days on these vessels to achieve a 20% CV on river herring catch estimates and a 30% CV on catch estimates for Atlantic herring and haddock. The timing of the supplemental analysis would mirror the annual SBRM prioritization process, and the supplemental analysis/report would be presented to the Council by the NEFSC in conjunction with the annual SBRM Sea Day Analysis and Prioritization.

The NEFSC would utilize approaches similar to those in the SBRM to consider how to effectively increase precision estimates on total river herring catch (kept and discarded) for the herring fleets identified in this alternative. The supplemental report would evaluate CVs for river herring, haddock, and Atlantic herring catch estimates based on the previous year's data, relate the SBRM Sea Day Analysis and SBRM fleets identified in this alternative to the limited access herring vessels, and provide information about the number and distribution of additional observer days to achieve the standards for the limited access herring fleet. The Council would review the additional analysis in the context of prioritizing sea days throughout the region and could evaluate the costs/benefits associated with requiring days above those allocated through the SBRM process to achieve the goals/objectives of the sampling program in this amendment.

The intent of this option is to provide a supplemental process to evaluate the sampling goals and performance standards identified in this amendment without compromising or formally changing the SBRM methodologies or the annual optimization process. This option relies on analyses developed concurrently by the SBRM analysts at the NEFSC and focuses specifically on just the fleets identified in this alternative.

Option 2 – Herring PDT Supplemental Analysis

Under this option, the Herring Plan Development Team (PDT) would prepare a supplemental analysis to relate SBRM fleets/coverage levels to the limited access herring vessels and evaluate the potential allocation of additional days on these vessels to achieve a 20% CV on river herring catch estimates and a 30% CV on catch estimates for Atlantic herring and haddock.

The Herring PDT could utilize different approaches (not just SBRM methods) to evaluate how to effectively increase precision estimates on river herring, haddock, and Atlantic herring catch on limited access herring vessels. The PDT would not be limited to SBRM methodologies under this option. The supplemental Herring PDT Report evaluate CVs for river herring, haddock, and Atlantic herring catch estimates based on the previous

Management Measures: Catch Monitoring At-Sea (continued)

year's data, relate the SBRM Sea Day Analysis and SBRM fleets identified in this alternative to the limited access herring vessels, provide information about the number and distribution of additional observer days to achieve the standards for the limited access herring fleet, and provide an estimate of the potential costs of those days.

The intent of this option is to provide a supplemental process to evaluate the sampling goals and performance standards identified in this amendment without compromising or formally changing the SBRM methodologies or optimization process. This option requires the Herring PDT to meet annually to develop analyses concurrently while the NEFSC develops the SBRM analyses related to the allocation of sea days across all fisheries in the region. Timing is an important consideration for this option. The intent would be for the timing of the supplemental analysis to mirror the annual SBRM prioritization process; however, the Herring PDT's supplemental analysis/report would benefit from building on the SBRM analysis. The Council would review the additional analysis in the context of prioritizing sea days throughout the region and could evaluate the costs/benefits associated with requiring days above those allocated through the SBRM process to achieve the goals/objectives of the sampling program in this amendment.

Funding Options

The funding options under consideration for Alternative 4 are the same as those for Alternative 2 (see description of Alternative 2).

Option 1: No Action

Option 2: Federal and Industry Funds

Provisions for Utilizing Observer Service Providers and Authorizing Waivers

Under Alternative 4, observer allocations would be based on Council-specified priorities/targets. As a result, additional days may be necessary to achieve the coverage levels desired by the Council, especially after the SBRM optimization process. The Council is therefore considering an option to establish provisions for utilizing service providers in the event that Federal funds are not sufficient. The options to establish provisions for sea sampling service providers under Alternative 3 are the same as those proposed for Alternative 2 (see description of Alternative 2).

Summary of Alternatives Under Consideration

The following table summarizes the alternatives under consideration to allocate observer coverage on limited access herring vessels.

Summary of Alternatives Under Consideration to Allocate Observer Coverage on Limited Access Herring Vessels

ALTERNATIVE	PRIORITIES/ TARGETS FOR ALLOCATING OBSERVER DAYS	PROCESS FOR REVIEWING/ ALLOCATING DAYS	FUNDING	OBSERVER SERVICE PROVIDERS/WAIVERS	ADDITIONAL COMMENTS
ALT 1: NO ACTION	• SBRM • CAI and other areas/times required in A5	• No Action (SBRM)	• No Action (Federal, subject to resource limitations and priorities)	• No Action (N/A)	• Final EIS for Amendment 5 will provide update related to SBRM litigation
ALT 2: 100% OBSERVER COVERAGE	• 100% of declared herring trips for A/B/C vessels	• No Action • SBRM process plus additional days required on A/B/C vessels	• Option 1: No Action • Option 2: Federal and Industry Funds	• Consistent with scallop/groundfish regs; additional option to consider States as service providers; waivers at discretion of NMFS; Council may specify instances when waivers may/may not be granted	
ALT 3: REQUIRE SBRM COVERAGE LEVELS AS MINIMUM	• SBRM-recommended coverage levels would be mandated as minimum levels – no reprioritizing • CAI and other areas/times required in A5	• No Action (SBRM)	• Same as Alt 2	• Same as Alt 2	• Herring PDT Analysis evaluates the distribution of limited access herring vessels across the current SBRM fleets to identify the fleets to which this alternative applies
ALT 4: ALLOCATE COVERAGE BASED ON COUNCIL TARGETS	• 30% CV for haddock/herring and 20% CV on for RH catch estimates for A/B/C vessels • CAI and other areas/times required in A5	• Option 1: Supplemental NEFSC/SBRM Analysis • Option 2: Herring PDT Supplemental Analysis	• Same as Alt 2	• Same as Alt 2	• Herring PDT Analysis provides example of supplemental analysis that can be provided to the Council to determine priorities when allocating observer days on limited access herring vessels

Management Measures: Catch Monitoring At-Sea (continued)

Management Measures to Improve/Maximize Sampling At-Sea

Section 3.2.2 of Draft Amendment 5 – p. 38

Additional management measures are being considered in Amendment 5 to enhance regulations pertaining to the current at-sea monitoring program. The Council is considering options to maximize the sampling of catch by NMFS-approved observers on board limited access Atlantic herring vessels (proposed Categories A/B/C – Council is seeking comments regarding the limited access permit categories to which these options should apply).

Option 1: No Action

Under the no action option, no additional provisions would be implemented in Amendment 5 to improve/maximize sampling by at-sea observers.

Current regulations for vessels carrying NMFS-approved sea samplers/observers on board (Section 648.11(d)) specify that owners/operators of fishing vessels must:

1. Provide accommodations and food that are equivalent to those provided to the crew.
2. Allow the sea sampler/observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the sea sampler's/observer's duties.
3. Provide true vessel locations, by latitude and longitude, as requested by the observer/sea sampler, and allow the sea sampler/observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.
4. Notify the sea sampler/observer in a timely fashion of when fishing operations are to begin and end.
5. Allow for the embarking and debarking of the sea sampler/observer, as specified by the Regional Administrator, ensuring that transfers of observers/sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea samplers/ observers involved.
6. Allow the sea sampler/observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.
7. Allow the sea sampler/observer to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

Management Measures: Catch Monitoring At-Sea (continued)

Option 2: Implement Additional Measures to Improve Sampling

Under this option, the following additional provisions (some or all) would be implemented in Amendment 5 to improve sampling by NMFS-approved observers at-sea:

2A. Requirements for a Safe Sampling Station

Vessel operators would be required to provide at-sea observers with a safe sampling station adjacent to the fish deck– this may include a safety harness (if footing is compromised and grating systems are high above the deck), a safe method to obtain samples, and a storage space for baskets and sampling gear. Vessels must maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

2B. Requirements for "Reasonable Assistance"

Vessel operators would be required to provide NMFS-approved observers with reasonable assistance to enable observers to carry out their duties, including but not limited to obtaining samples and sorted discards. "Reasonable assistance" could be defined as:

- Measuring decks, codends, and holding bins;
- Collecting bycatch when requested by the observers; and/or
- Collecting and carrying baskets of fish when requested by observers.

2C. Requirements to Provide Notice

Vessels operators would be required to provide observers notice when pumping may be starting and when to allow sampling of the catch, and when pumping is coming to an end.

2D. Requirements for Trips with Multiple Vessels

When observers are deployed on herring trips involving more than one vessel, observers would be required on any vessel taking on fish wherever/whenever possible.

2E. Communication on Pair Trawl Vessels

In pair trawl operations, additional communication would be required between the boats if fish are being pumped to both vessels with to keep the observer informed of catch.

2F. Visual Access to the Net/Codend

Vessel operators would be required to provide and assist NMFS-approved observers in obtaining visual access to the codend (or purse seine bunt) and any of its contents after pumping has ended, before the pump is removed. On trawl vessels, the codend and any remaining contents should be brought on board after pumping. If this is not possible, the vessel operator would be required to work with the observer to ensure that the observer can see the codend and its contents as clearly as possible. The observer will document this process and what he/she is able to see/sample in the observer log.

Management Measures: Catch Monitoring At-Sea (continued)

Measures to Address Net Slippage

Section 3.2.3 of Draft Amendment 5 – p. 40

In Amendment 5, the Council is considering options to address net slippage on board limited access Atlantic herring vessels and is seeking your comments on these options (proposed Categories A/B/C– Council is seeking comments regarding the limited access permit categories to which these options should apply).

For the purposes of Amendment 5, *slippage* is defined as:

Unobserved catch, i.e., catch that is discarded prior to being observed, sorted, sampled, and/or brought on board the fishing vessel. Slippage can include the release of fish from a codend or seine prior to completion of pumping or the release of an entire catch or bag while the catch is still in the water.

- Fish that cannot be pumped and that remain in the net at the end of pumping operations are considered to be operational discards and not slipped catch. Observer protocols include documenting fish that remain in the net in a discard log before they are released, and existing regulations require vessel operators to assist the observer in this process. Management measures are under consideration in this amendment to address this issue and improve the observers' ability to inspect nets after pumping to document operational discards.
- Discards that occur at-sea after catch brought on board and sorted are also not considered slipped catch.

Option 1: No Action

Under the no action option, no additional provisions would be implemented in Amendment 5 specifically to address net slippage.

Existing sampling requirements for herring vessels in Closed Area I would continue to apply under the no action option. These are based on the November 30, 2010 Rule for the Closed Area I provisions (CFR §648.80) and include (for any trip in CAI with an observer):

- A requirement to pump aboard all fish from the net for inspection and sampling by the observer.
- If the net is released for any of the reasons allowed in the rule, the vessel operator would be required to complete and sign a Released Catch Affidavit providing information about where, when, and why the net was released, as well as a good-faith estimate of the total weight of fish caught on the tow and weight of fish released. The Released Catch Affidavit must be submitted within 48 hours of completion of the fishing trip.

Management Measures: Catch Monitoring At-Sea (continued)

Option 2: Require Released Catch Affidavit for Slippage Events

Under this option, vessel operators would be required to provide additional information about whether a net was partially/fully slipped, the reason for the slippage, and the estimated weight of fish that were released on any trip with slippage events when a NMFS-approved observer is on board.

This option requires that a **Released Catch Affidavit** be created for slippage events on both trawl and purse seine vessels with limited access herring permits on all declared herring trips with a NMFS-approved observer on board, to be signed by vessel operators under penalty of perjury. The Released Catch Affidavit will contain detailed information including (1) the reason for slippage; (2) an estimate of the quantity and species composition of the slipped fish; and (3) the location and time that the slippage event occurred. When an observer is present on the vessel during a slippage event, the event would be fully documented with photographs. Released catch that is identified as Atlantic herring also should be reported as discarded herring through the herring ACL-monitoring program (IVR or VMS) as well as the VTRs.

Option 3: Closed Area I Sampling Provisions

This option would apply management measures similar to those for herring vessel access to Multispecies Closed Area I based on the November 30, 2010 Rule for the Closed Area I provisions (CFR §648.80). The following provisions would apply to limited access herring vessels (all gear types) on declared herring trips in all herring management areas carrying a NMFS-approved observer on board (for any trip with an observer):

- Vessels would be required to pump aboard all fish from the net for inspection and sampling by the NMFS-approved observer. Vessels that do not pump fish would be required to bring all fish aboard the vessel for inspection and sampling by the observer. Unless specific conditions are met (see below), vessels would be prohibited from releasing fish from the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer.
- Vessels may make short test tows in the area to check the abundance of target and bycatch species without pumping the fish on board if the net is reset without releasing the contents of the test tow. In this circumstance, catch from the test tow would remain in the net and would be available to the observer to sample when the subsequent tow is pumped out.
- Fish that have not been pumped aboard may be released if the vessel operator finds that:
    1. pumping the catch could compromise the safety of the vessel;
    2. mechanical failure precludes bringing some or all of the catch aboard the vessel; or
    3. spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch.

Management Measures: Catch Monitoring At-Sea (continued)

- If the net is released for any of the reasons stated above, the vessel operator would be required to complete and sign a Released Catch Affidavit providing information about where, when, and why the net was released, as well as a good-faith estimate of the total weight of fish caught on the tow and weight of fish released. The Released Catch Affidavit must be submitted within 48 hours of completion of the trip.

Option 4: Catch Deduction (and Possible Trip Termination) for Slippage Events

The Council is considering options for management measures that may apply a deduction against the herring sub-ACL in a management area if a slippage event is observed and/or may require trip termination if multiple slippage events occur in one management area. These options would apply on any trips by limited access herring vessels carrying a NMFS-approved observer on board.

Option4A: Catch Deduction and Possible Trip Termination

Under this option, the following provisions would apply to limited access herring vessels (all gear types) carrying a NMFS-approved observer on board (for any trip with an observer):

For slippage events that occur if the vessel operator finds that (1) pumping the catch could compromise the safety of the vessel or (2) mechanical failure precludes bringing some or all of the catch aboard the vessel:

- It will be assumed that the sea herring not pumped on board will equal 100,000 lbs. of herring, to be counted as part of the catch and against the sub-ACL for that management area. Vessel operators will be responsible for reporting this catch through the quota monitoring mechanism (VMS) and their VTRs, under penalty of perjury. The slipped catch will be identified separately so that the number of slippage events per management area can be tracked and any resulting discrepancies between datasets can be more easily resolved.
- Once ten slippage events are observed in a particular management area, each additional slippage event for reasons specified in (1) and (2) above will cause trip termination and the vessel will be required to return to port.

Option4B: Closed Area I Provisions with Catch Deduction and Possible Trip Termination

This option would apply management measures similar to those for herring vessel access to Multispecies Closed Area I based on the November 30, 2010 Rule for the Closed Area I provisions (CFR §648.80). The following provisions would apply to limited access herring vessels (all gear types) on declared herring trips in all herring management areas carrying a NMFS-approved observer on board (for any trip with an observer):

- Vessels would be required to pump aboard all fish from the net for inspection and sampling by the observer. Vessels that do not pump fish would be required to bring all fish aboard the vessel for inspection and

Management Measures: Catch Monitoring At-Sea (continued)

sampling by the observer. Unless specific conditions are met (see below), vessels would be prohibited from releasing fish from the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer.

- Vessels may make short test tows in the area to check the abundance of target and bycatch species without pumping the fish on board if the net is reset without releasing the contents of the test tow. In this circumstance, catch from the test tow would remain in the net and would be available to the observer to sample when the subsequent tow is pumped out.
- Fish that have not been pumped aboard may be released if the vessel operator finds that:
    1. pumping the catch could compromise the safety of the vessel;
    2. mechanical failure precludes bringing some or all of the catch aboard the vessel; or
    3. spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch.
- If the net is released for any of the reasons stated above, the vessel operator would be required to complete and sign a Released Catch Affidavit providing information about where, when, and why the net was released, as well as a good-faith estimate of the total weight of fish caught on the tow and weight of fish released. The Released Catch Affidavit must be submitted within 48 hours of completion of the trip.

For slippage events that occur if the vessel operator finds that (1) pumping the catch could compromise the safety of the vessel or (2) mechanical failure precludes bringing some or all of the catch aboard the vessel:

- It will be assumed that the sea herring not pumped on board will equal 100,000 lbs. of herring, to be counted as part of the catch and against the sub-ACL for that management area. Vessel operators will be responsible for reporting this catch through the quota monitoring mechanism (IVR or VMS) and their VTRs, under penalty of perjury. The slipped catch will be identified separately so that the number of slippage events per management area can be tracked and any resulting discrepancies between datasets can be more easily resolved.
- Once ten slippage events are observed in a particular management area, each additional slippage event for reasons specified in (1) and (2) above will result in trip termination and the vessel will be required to return to port.

Management Measures: Catch Monitoring At-Sea (continued)

Option 4C: Closed Area I Provisions with Trip Termination Only (10 Events)

Under this option, the following provisions would apply to limited access herring vessels (all gear types) carrying a NMFS-approved observer on board (for any trip with an observer):

- Vessels would be required to pump aboard all fish from the net for inspection and sampling by the observer. Vessels that do not pump fish would be required to bring all fish aboard the vessel for inspection and sampling by the observer. Unless specific conditions are met (see below), vessels would be prohibited from releasing fish from the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer.
- Vessels may make short test tows in the area to check the abundance of target and bycatch species without pumping the fish on board if the net is reset without releasing the contents of the test tow. In this circumstance, catch from the test tow would remain in the net and would be available to the observer to sample when the subsequent tow is pumped out.
- Fish that have not been pumped aboard may be released if the vessel operator finds that:
    1. pumping the catch could compromise the safety of the vessel;
    2. mechanical failure precludes bringing some or all of the catch aboard the vessel; or
    3. spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch.
- If the net is released for any of the reasons stated above, the vessel operator would be required to complete and sign a Released Catch Affidavit providing information about where, when, and why the net was released, as well as a good-faith estimate of the total weight of fish caught on the tow and weight of fish released. The Released Catch Affidavit must be submitted within 48 hours of completion of the trip.
- NMFS would track the number of slippage events observed in each management area. Once ten (10) slippage events occur in any management area, each additional slippage event will result in trip termination and the vessel will be required to return to port.

Option4D: Closed Area I Provisions with Trip Termination Only (5 Events)

Option 4D is the same as Option 4C (above) except trip termination would result once five (5) slippage events occur in any management area.

Management Measures: Catch Monitoring At-Sea (continued)

Maximized Retention Alternative (Experimental Fishery)

Section 3.2.4 of Draft Amendment 5 – p. 44

The Council is considering an alternative to require maximized retention (MR) of catch through an experimental fishery when NMFS-approved observers are on board Atlantic herring limited access vessels. The Council is seeking your comments regarding whether MR should be explored further as well as any details/provisions of an experimental fishery that may be important to consider.

Alternative 1: No Action

Under the no action alternative, no provisions would be implemented in Amendment 5 to evaluate MR in the herring fishery. Herring vessels would continue to operate under the regulations and possession limits for any fisheries for which they possess permits.

Alternative 2: Evaluate Maximized Retention (MR) Through the Annual Issuance of Exempted Fishing Permits

Under this alternative, the experimental fishery process would be utilized to determine whether MR is appropriate for the Atlantic herring fishery, and if so, which species should be part of the MR program and which FMPs should be amended to allow for long-term implementation of the program.

Under this alternative, for four years following the implementation of Amendment 5, Category A, B, and C Atlantic herring vessels would be issued an Exempted Experimental Fishing Permit (EFP) by the Sustainable Fisheries Division (SFD) at NERO as part of the annual herring permit renewal process. The EFP would provide the regulatory relief necessary to allow the currently non-permitted landings to take place when the vessels are required to comply with MR provisions. Regulations implementing the details of the experimental fishery would address the handling of unwanted/unmarketable catch and provisions regarding the counting and sale of such catch.

During the EFP years (four years), limited access herring vessels would be required to comply with the MR provisions specified in this section on any trip with a NMFS-approved observer on board.

General Provisions

- For the first four years after implementation of Amendment 5, limited access Category A, B, and C vessels would be required to obtain an exempted experimental fishery permit (EFP) to fish for Atlantic herring in any management area(s). Conditions of the EFP include a requirement to retain all species identified for MR on any trip with a NEFOP or NMFS-certified observer on board (discarding would be prohibited on observed trips).
- The EFP would allow the herring vessel to keep all catch of the species identified for the MR program on observed trips only, including catch

Management Measures: Catch Monitoring At-Sea (continued)

above trip limits/quotas for the MR species. The sale of the non-permitted species (and landings above the possession limit/quota) caught by herring limited access vessels for *human consumption* would be prohibited on MR trips. Atlantic herring dealers and processors would also be prohibited from purchasing these fish to be sold for human consumption. This does not apply to sale for use as bait because herring catches that are landed for sale as bait are generally offloaded by pumping the fish from the vessel hold into tanker trucks. It is not possible to require all such landings to be culled and sorted and would be inequitable to make downstream purchasers of such bait legally liable for the presence of these fish in their bait.

- All observed trips in the fishery would become MR trips and would form a "study group" for the fishery. Catch/landings data would be collected and documented by observers, as well as by vessels based on the reporting and monitoring provisions associated with the vessels' permits and specified in this amendment.
- During Year 3, the Herring PDT would begin to analyze the data collected by observers through the MR program and: evaluate the strengths/weaknesses and costs/benefits of a MR program; determine the need for a long-term MR program in the herring fishery; evaluate the appropriateness of each species selected for MR; and develop recommendations for the Herring Committee/Council regarding future regulatory action. The technical review and ensuing discussion regarding the need for management action would likely be time-consuming and would occur throughout most of the third year of the program as data from the experimental program continued to be collected.
- During Year 4, the Council would receive input from the herring industry and advisors and would review the Herring PDT's recommendations to determine whether or not a long-term MR program should be established for the Atlantic herring fishery. The experimental fishery for MR and the EFP requirements and provisions would expire after four years regardless of the determination. Other catch monitoring and reporting requirements implemented in this amendment would continue to be effective.
- If the Council supports a long-term MR program, then development of the corresponding management actions would begin during Year 4 of the experimental fishery program with the intention of implementing the program as soon as all regulatory mechanisms are in place. This includes an amendment to the Herring FMP to design the program and implement the specific requirements as well as amendments to all other relevant species FMPs in the Northeast Region (NEFMC, MAFMC, and ASMFC) to authorize the catch/landing of the species in the herring fishery (including allowances for landings above possession limits and/or quotas).

Management Measures: Catch Monitoring At-Sea (continued)

Options for Exemptions to Maximized Retention Provisions

If the MR alternative is adopted and the experimental fishery is conducted, there may be instances that a vessel cannot pump all fish aboard. The Council could consider incorporating exemptions into the EFP provisions that allow a vessel to release some catch under certain circumstances, and possibly with specific consequences. Any or all of the following provisions could be incorporated into the EFP for maximized retention:

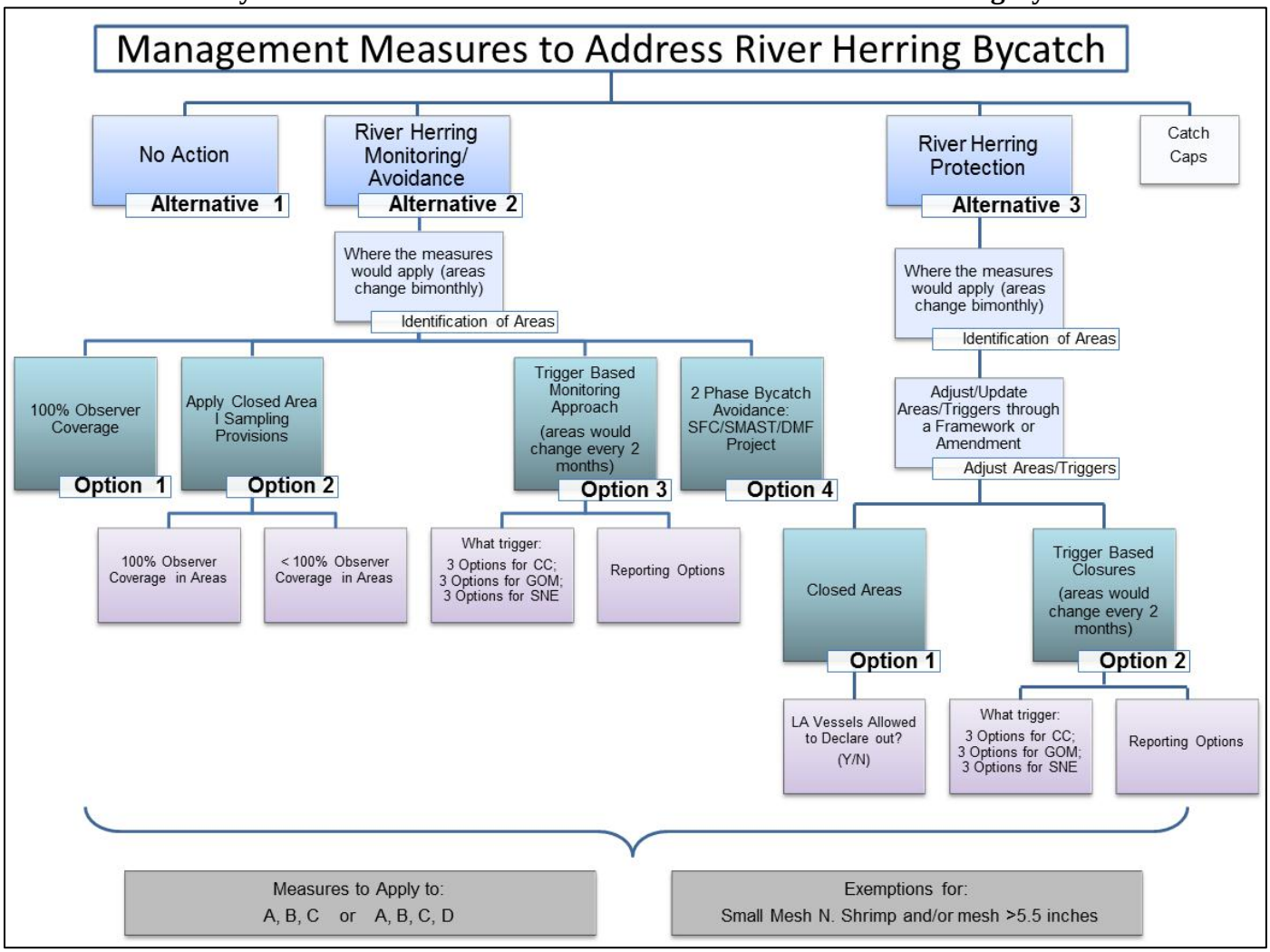
- Fish that have not been pumped aboard may be released if the vessel operator finds that:
  1. pumping the catch could compromise the safety of the vessel;
  2. mechanical failure precludes bringing some or all of the catch aboard the vessel; or
  3. spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch.
- A Released Catch Affidavit would be required for slippage events on both trawl and purse seine vessels, to be signed by vessel operators under penalty of perjury. The Released Catch Affidavit would contain detailed information including (1) the reason for slippage; (2) an estimate of the quantity and species composition of the slipped fish; and (3) the location and time that the slippage event occurred. Since an observer will be present on the vessel when the maximized retention provisions apply, slippage events would require an affidavit and would be fully documented by the observer with photographs.

Management Measures: River Herring Bycatch

Summary of Measures Under Consideration to Address River Herring Bycatch

The Council is considering several management measures to address river herring bycatch in Amendment 5. Each of these alternatives relates to a general management goal: (1) river herring monitoring/avoidance; and (2) protection. While there may be some overlap and flexibility in combining management measures to achieve more than one of these goals, a range of options is being considered to achieve the goal identified within each of these alternatives. Many of the options under consideration to address river herring bycatch are also being considered as part of the larger catch monitoring program in Amendment 5. The figure below provides an illustrative summary of the range of management alternatives/options under consideration to address river herring bycatch. The Council is seeking your comments on these alternatives/options, which are described in detail in the following pages.

Summary of Measures Under Consideration to Address River Herring Bycatch



Management Measures: River Herring Bycatch (continued)

Alternative 1: No Action

Under this alternative, no additional management measures would be implemented in Amendment 5 to address river herring bycatch. The catch monitoring provisions and other measures established in the Herring FMP and in this amendment would continue to apply.

Alternative 2: River Herring Monitoring/Avoidance

Section 3.3.2 of Draft Amendment 5 – p. 46

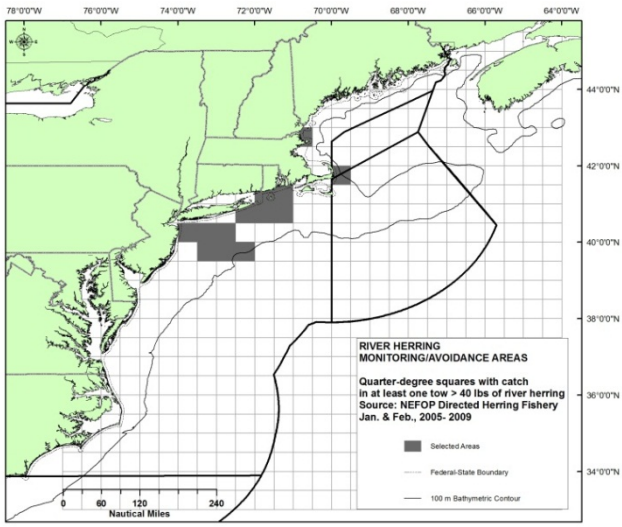
The management goal associated with this alternative is to monitor river herring bycatch and encourage bycatch avoidance. Under this alternative, additional management measures would apply during certain times and in certain areas where river herring encounters with the herring fishery were observed between 2005 and 2009 (proposed areas are defined in the figures on the following page). The intent of the additional management measures would be to increase sampling (above and beyond the requirements of the Amendment 5 catch monitoring program) and closely monitor the catch of river herring by the Atlantic herring fleet (defined by permit category). The long-term goal is to adopt river herring bycatch avoidance strategies in the times/areas where interactions with the herring fishery are observed/anticipated.

Identification of River Herring Monitoring/Avoidance Areas (Alternative 2)

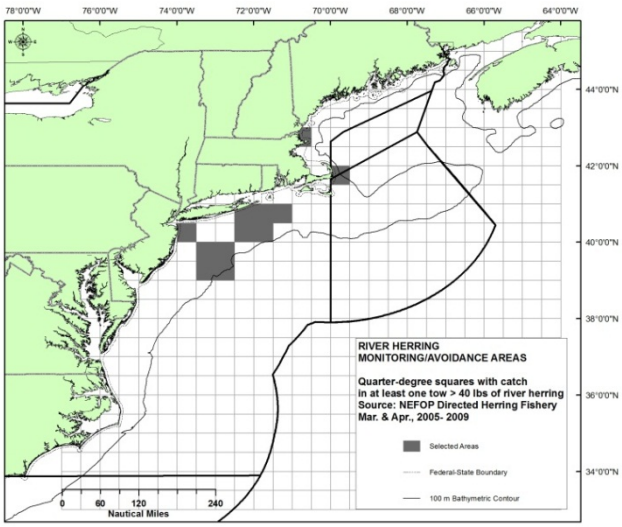
The areas identified in this alternative would be considered **River Herring Monitoring/Avoidance Areas**. In Amendment 5, the Monitoring/Avoidance Areas would be identified bimonthly as the quarter degree squares with at least one observed tow of river herring catch greater than 40 pounds, using 2005-2009 Northeast Fisheries Observer Program data from trips with greater than 2,000 pounds of kept Atlantic herring (figures on following page). These areas can be modified in the future through a Herring FMP amendment, framework adjustment, or the herring fishery specifications process.

Alternative 2: Proposed River Herring Monitoring/Avoidance Areas

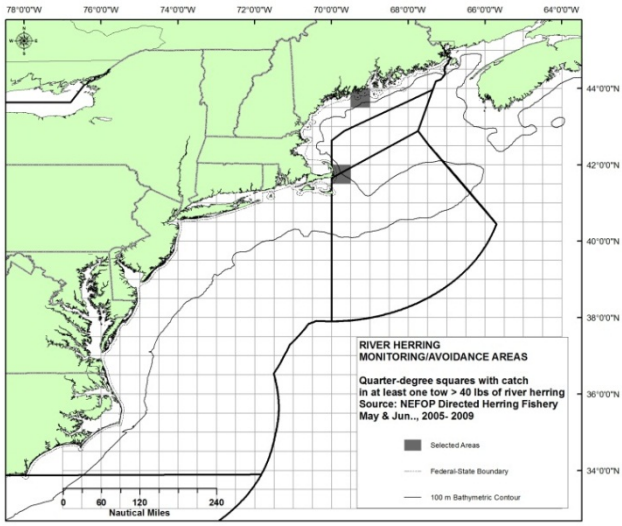
January – February



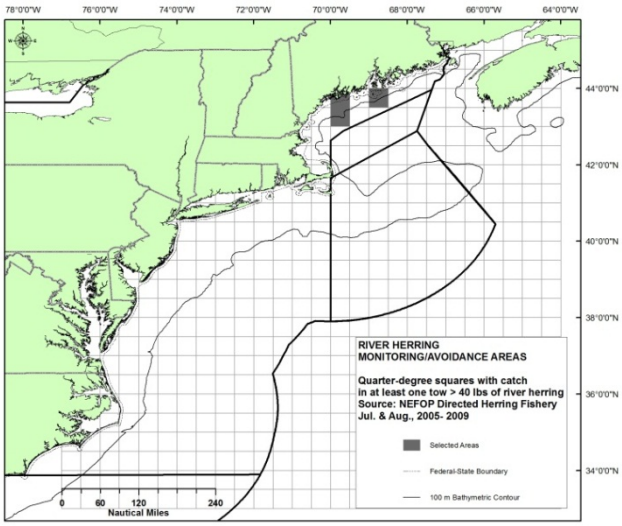
March – April



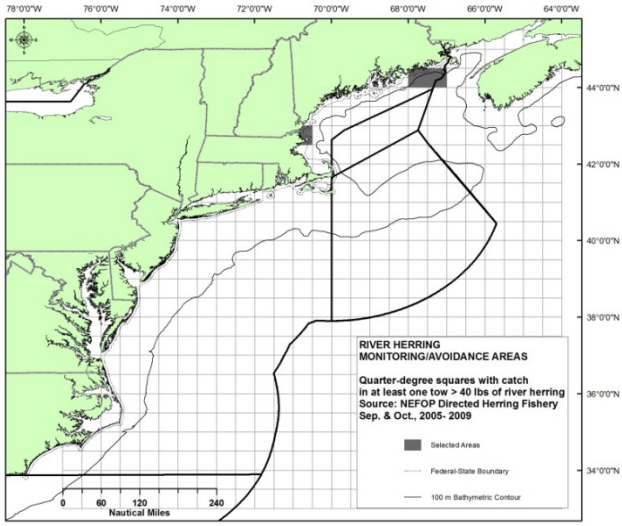
May – June



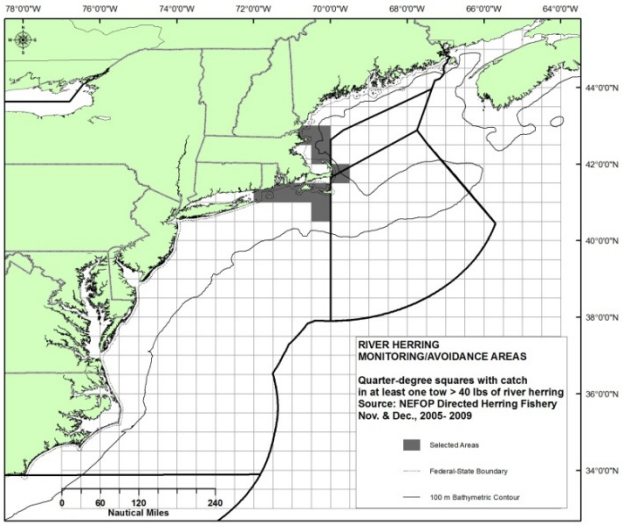
July – August



September – October



November – December



Management Measures: River Herring Bycatch (continued)

Alternative 2: Management Options Under Consideration (Monitoring/Avoidance)

Section 3.3.2.2 of Draft Amendment 5 – p. 50

Option 1: 100% Observer Coverage

This option would require 100% observer coverage on any trips in the River Herring Monitoring/Avoidance Areas identified in this alternative. Atlantic herring vessels subject to this measure would be required to carry a NMFS-approved observer on any trip where fishing may occur in the River Herring Monitoring/Avoidance Areas.

Sub-Option A: **This option applies to limited access herring vessels only – Categories A/B/C when on a declared herring trip**. Vessels would be required to indicate their intention to fish in the River Herring Monitoring/Avoidance Areas when scheduling a NMFS-approved observer through the pre-trip notification system (see the Draft Amendment 5 document for a description of options under consideration to address trip notification requirements). To ensure 100% coverage, these vessels would be prohibited from fishing in the River Herring Monitoring/Avoidance Areas without a NMFS-approved observer on board.

Sub-Option B: **This option applies to <u>all</u> herring vessels – Limited Access Categories A/B/ C when on a declared herring trip, as well as Open Access Category D.** All herring vessels would be required to indicate their intention to fish in the River Herring Monitoring/Avoidance Areas when scheduling a NMFS-approved observer through the pre-trip notification system. Category D vessels would only be required to use the pre-trip notification system to schedule an observer if they intend to fish in a River herring Monitoring/Avoidance Area. To ensure 100% coverage, all herring vessels would be prohibited from fishing in the River Herring Monitoring/Avoidance Areas without a NMFS-approved observer on board.

Option 2: Apply Closed Area I Sampling Provisions

This option would apply management measures in River Herring Monitoring/Avoidance Areas similar to those for herring vessel access to Multispecies Closed Area I based on the November 30, 2010 Rule for the Closed Area I provisions (CFR §648.80). Under this option, the following provisions would apply to Atlantic herring vessels subject to this measure when fishing in the River Herring Monitoring/Avoidance Areas with a NMFS-approved observer on board:

- When fishing in a River Herring Monitoring/Avoidance Area with a NMFS-approved observer on board, vessels would be required to pump aboard all fish from the net for inspection and sampling by the observer. Vessels that do not pump fish would be required to bring all fish aboard the vessel for inspection and sampling by the observer. Unless specific conditions are met (see below), vessels would be prohibited from

Management Measures: River Herring Bycatch (continued)

releasing fish from the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the NMFS-approved observer.

- Vessels may make short test tows in the area to check the abundance of target and bycatch species without pumping the fish on board if the net is reset without releasing the contents of the test tow. In this circumstance, catch from the test tow would remain in the net and would be available to the observer to sample when the subsequent tow is pumped out.
- Fish that have not been pumped aboard may be released if the vessel operator finds that:
  1. pumping the catch could compromise the safety of the vessel;
  2. mechanical failure precludes bringing some or all of the catch aboard the vessel; or
  3. spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch.
- If the net is released for any of the reasons stated above, the vessel operator would be required to complete and sign a Released Catch Affidavit providing information about where, when, and why the net was released, as well as a good-faith estimate of the total weight of fish caught on the tow and weight of fish released. The Released Catch Affidavit must be submitted within 48 hours of completion of the trip.
- Following the release of the net for one of the three exemptions specified above, the vessel would be required to exit the River Herring Monitoring/Avoidance Area. The vessel may continue to fish but may not fish in the River Herring Monitoring/Avoidance Areas for the remainder of the trip.

Sub-Option A – Require 100% Observer Coverage: Atlantic herring vessels subject to this measure would be required to carry a NMFS-approved observer on any trip where fishing may occur in the River Herring Monitoring/Avoidance Areas. Vessels would be required to indicate their intention to fish in the River Herring Monitoring/Avoidance Areas when scheduling a NMFS-approved observer through the pre-trip notification system. To ensure 100% coverage, vessels would be prohibited from fishing in the River Herring Monitoring/Avoidance Areas without a NMFS-approved observer on board.

Sub-Option B – Less Than 100% Observer Coverage: Under this sub-option, observer coverage would be distributed on limited access herring vessels based on the provisions in Amendment 5 (see alternatives in the Draft Amendment 5 document). Atlantic herring vessels subject to this measure would be required to indicate their intention to fish in the River Herring Monitoring/Avoidance Areas when scheduling a NMFS-approved observer through the pre-trip notification system but would not be prohibited from fishing in the River Herring Monitoring Areas if a NMFS-approved observer is not deployed.

Management Measures: River Herring Bycatch (continued)

Sub-Option C: **This option applies to limited access herring vessels – Categories A/B/C when on a declared herring trip.**

Sub-Option D: **This option applies to all herring vessels – Categories A/B/C when on a declared herring trip, as well as Category D.**

Option 3: Trigger-Based Monitoring Approach

This option would apply additional management measures in River Herring Monitoring/Avoidance Areas when a specified river herring catch trigger is reached. The catch triggers apply to three general areas – Statistical Area 521 (Cape Cod, CC), the Gulf of Maine (GOM), and southern New England (SNE) – see figure on the following page. When the catch trigger in a specified area(s) is reached, then one of the monitoring options described above (Option 1 or Option 2) will apply to the Monitoring/Avoidance Areas within that geographic area where the trigger is reached.

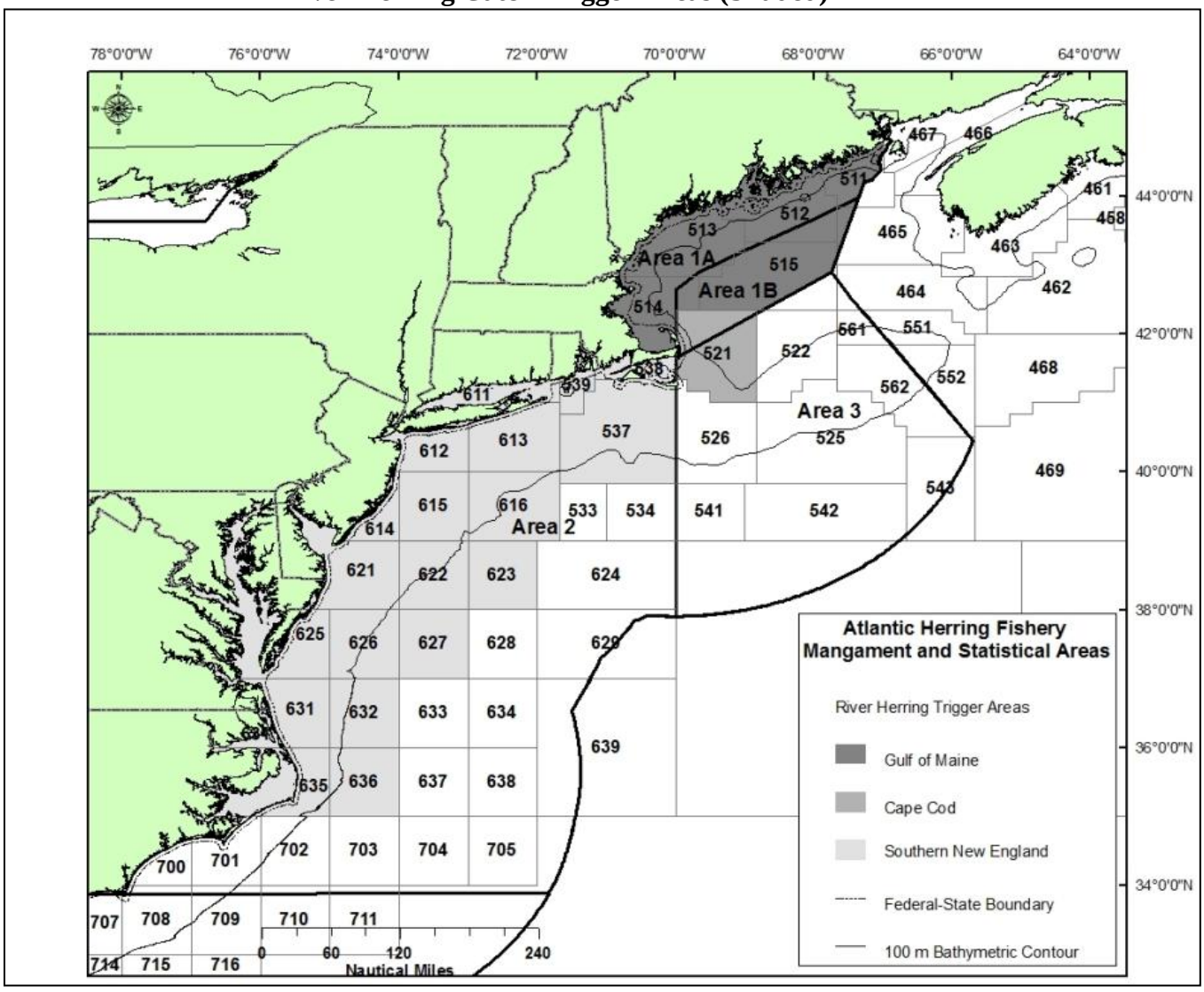
Sub-Options: River Herring Catch Triggers

Several sub-options are under consideration for specifying the river herring catch triggers in each of the geographic areas identified in the figure on the following page. The sub-options are based on the Herring PDT's work to generate the best estimates of river herring removals in recent years and are summarized below in the following table. The sub-options include river herring catch estimates based on the maximum, median, and mean annual estimate of river herring catch expanded from observer data from 2005-2009.

Sub-Options for River Herring Catch Triggers (Pounds)

Area	SUB-OPTIONS		
	3A (Max)	3B (Median)	3C (Mean)
CC	1,159,700	93,400	269,600
GOM	294,000	92,400	127,100
SNE	729,500	585,000	478,500

River Herring Catch Trigger Areas (Shaded)



**Under the trigger-based option, when a river herring catch trigger is reached in one of the shaded areas in the figure above (Gulf of Maine, Cape Cod, Southern New England), one of the monitoring/avoidance management options under consideration (described in the previous pages) would apply in that area for the remainder of the fishing year. Catch triggers in the areas shown in the figure above would be monitored based on extrapolations of river herring removals from catch reports (see the following reporting options under consideration).*

The Council is seeking your comments on this approach.

Management Measures: River Herring Bycatch (continued)

Monitoring the River Herring Catch Triggers – Reporting Options

During the fishing year, river herring catch in each of the trigger areas identified above will be monitored and estimated using observer data from all trips by herring vessels subject to this rule unless the vessel has declared out of the fishery (DOF) through VMS. Observed estimates of river herring catch will be expanded to an estimate of total river herring catch in each of the trigger areas. The estimation procedure will be developed by the NERO, in cooperation with the NEFSC and Council staff, and through consultation with the Council. The final calculation process will be provided on the NERO web page. Area-specific river herring catch estimates will be published on the NERO web page regularly.

Reporting Option 1: Report Total Catch by Trigger Area

In addition to reporting herring by herring management area through the ACL-monitoring system, herring vessels subject to this rule must report total catch (kept and discarded) by river herring catch trigger area so that the appropriate expansions can be made from the observed catch in those areas. For the purposes of this requirement, the **river herring catch trigger areas** are defined as the following statistical areas:

- Gulf of Maine (GOM) – Areas 511, 512, 513, 514, 515, 464, 465 (same as modified GOM haddock stock area established in Framework 46)
- Cape Cod (CC) – Area 521
- Southern New England (SNE) – Areas 537, 538, 539, 611, 612, 613, 614, 615, 616, 621, 622, 623, 625, 626, 627, 631, 632, 635, 636

Reporting Option 1 – Example Catch Report

This report is required by all limited access herring vessels on all declared herring trips. For each day of a declared trip, this report must be submitted by 9 AM the following day. Negative reports (0 lb) must be submitted when no fish were caught.

Note: VTR serial number must be the same number reported to the seafood dealer receiving the landings at the end of the trip. If you use multiple pages of the VTR on the trip, record the serial number from the first VTR page used.

Vessel Trip Report (VTR) Serial Number: _____
Date fish caught: Month (01-12) _____
Day (01-31) _____
Gear used to fish: (MWT, PS, BT) _____

SPECIES	AREA 1A	AREA 1B	AREA 2	AREA 3
Herring Kept (lb)	_____	_____	_____	_____
Herring Discarded (lb)	_____	_____	_____	_____

==========

All Fish Kept (lb) GOM RH Area _____ CC RH Area _____ SNE RH Area _____

All Fish Discarded (lb) GOM RH Area _____ CC RH Area _____ SNE RH Area _____

Note: Reporting by river herring area is required for all limited access vessels. Include total lb of all herring and non-herring. GOM RH Area includes Stat Areas 464, 465, and 511 thru 515. CC RH Area is Stat Area 521. SNE RH Area includes Stat Areas 537, 538, 539, 611, 612, 613, 614, 615, 616, 621, 622, 623, 625, 626, 627, 631, 632, 635, and 636.

All Fish Kept (lb) GOM Haddock Area _____ GB Haddock Area _____

Note: Reporting by haddock area is only required for vessels using mid-water trawl gear in Areas 1A, 1B, and/or 3. Include total lbs of all herring and non-herring.

GOM Haddock Area includes Stat Areas 464, 465, and 511 thru 515.
GB Haddock Area includes Stat Areas 521, 522, 525, 526, 561, and 562.

Management Measures: River Herring Bycatch (continued)

Reporting Option 2: Report Total Catch by Statistical Area

Under this option, in addition to reporting herring by herring management area through the ACL-monitoring system, herring vessels subject to this rule must report total catch (kept and discarded) by statistical area so that the appropriate expansions can be made from the observed catch in those areas to monitor both the haddock catch caps (Framework 46) and any river herring catch trigger areas that may be established.

Reporting Option 2 – Example Catch Report

```
This report (example for Reporting Option 2) is required by all
limited access herring vessels on all declared herring trips.  For
each day of a declared trip, this report must be submitted by 9 AM the
following day.  Negative reports (0 lb) must be submitted when no fish
were caught.

Note: VTR serial number must be the same number reported to the
seafood dealer receiving the landings at the end of the trip.  If you
use multiple pages of the VTR on the trip, record the serial number
from the first VTR page used.

Vessel Trip Report (VTR) Serial Number: _____________________________
Date fish caught: Month (01-12)            _____
             Day   (01-31)      _____
Gear used to fish: (MWT, PS, BT)      _____

SPECIES                    AREA 1A    AREA 1B    AREA 2     AREA 3

============================================================
Herring kept (lbs)         _______    _______    _______    _______
Herring discarded (lbs)  _______ _______    _______    _______
============================================================
Report all fish kept (herring and non-herring species) and the Stat
Area in which the fish were caught.  If fish were caught in multiple
Stat Areas in one day, report the fish kept (lbs) in each Stat Area.

All Fish Kept (lbs)   _____ Stat/Chart Area ____

All Fish Kept (lbs)   _____ Stat/Chart Area ____

All Fish Kept (lbs)   _____ Stat/Chart Area ____
```

Management Measures: River Herring Bycatch (continued)

Management Measures That Apply When Trigger is Reached

(Alternative 2)

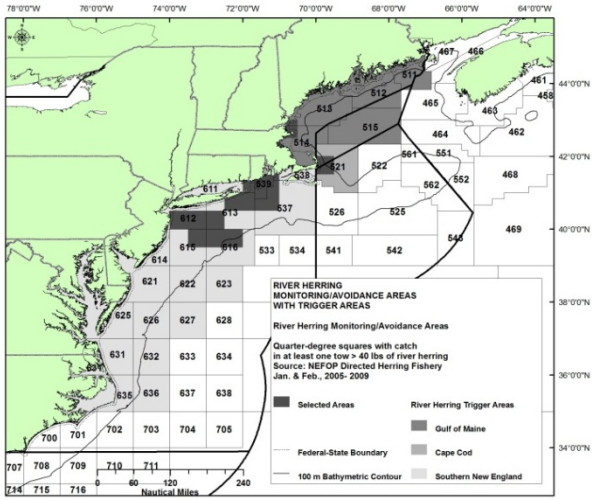
When the river herring catch trigger in a specified area(s) is reached, then one of the monitoring options previously described (Option 1 – 100% observer coverage, or Option 2 – Closed Area I sampling provisions) would apply to the River Herring Monitoring/Avoidance Areas within that area where the trigger is reached for the remainder of the fishing year.

For example, if the Gulf of Maine river herring catch trigger is reached in March, then the shaded quarter degree squares in the inshore Gulf of Maine shown in the figures on the following page could be subjected to increased monitoring/sampling during the months identified in the figures for the remainder of that fishing year. Similarly, if the southern New England river herring catch trigger is reached in August, then the shaded squares shown in the southern New England trigger area could be subject to increased monitoring during November and December.

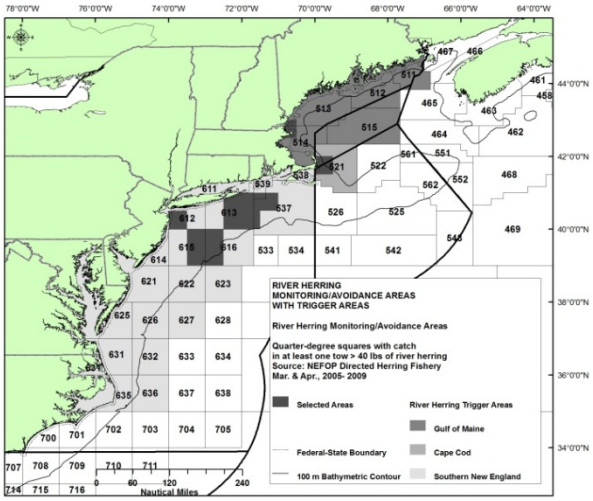
The figures on the following page illustrate which Monitoring/Avoidance Areas are associated with the river herring catch trigger areas.

Alternative 2, Option 3: Trigger Areas and Monitoring/Avoidance Areas

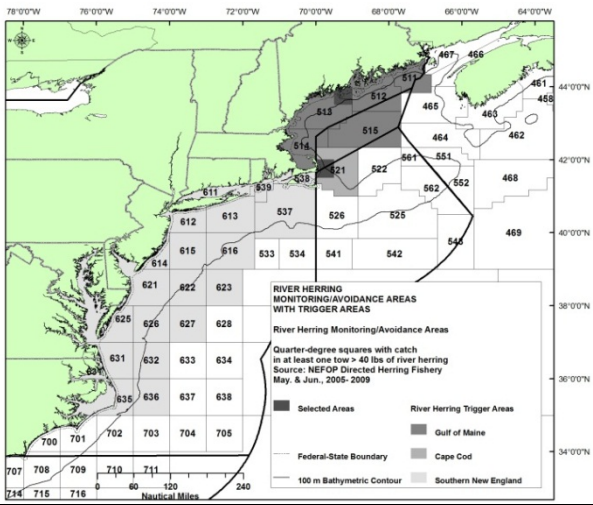
January – February



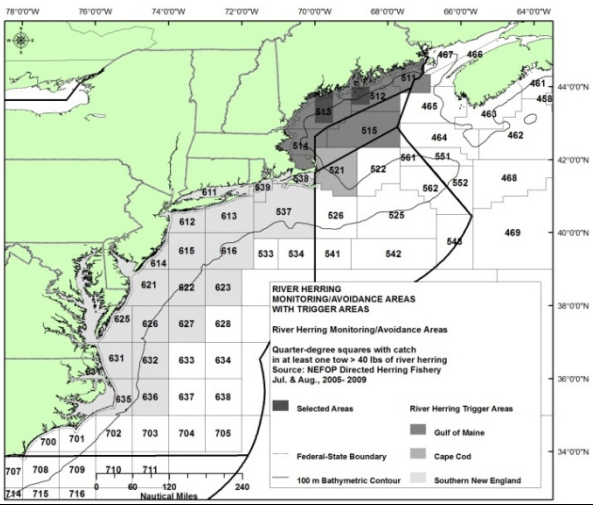
March – April



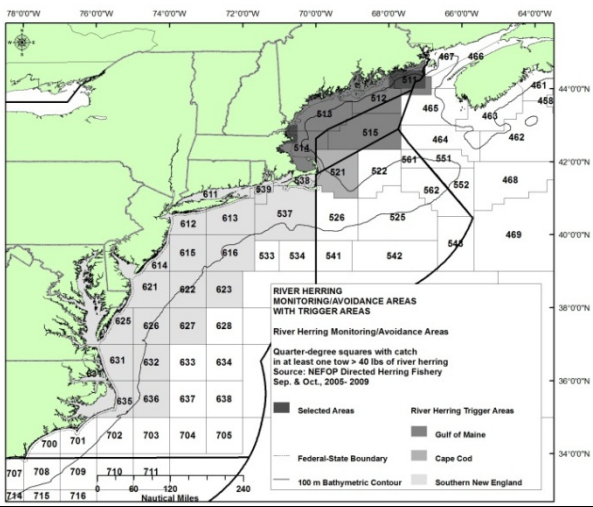
May – June



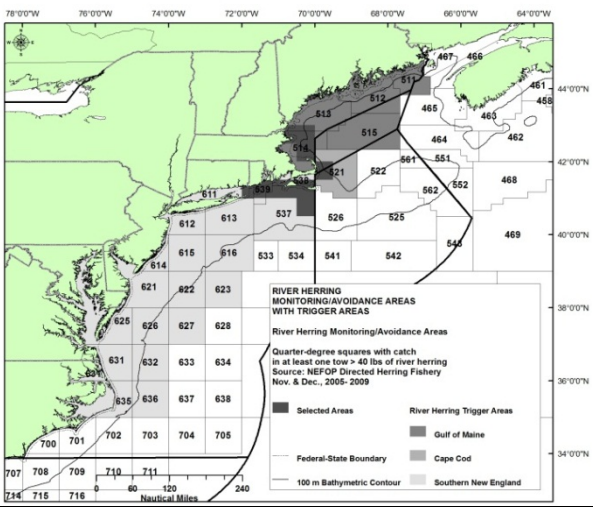
July – August



September – October



November – December



Management Measures: River Herring Bycatch (continued)

Option 4: Two-Phase Bycatch Avoidance Approach Based on SFC/SMAST/DMF Project

Section 3.3.2.2.4 of Draft Amendment 5 – p. 61

This option may be implemented as a stand-alone approach for addressing river herring bycatch in Amendment 5, or it may be implemented in combination with other measures/options under consideration.

This option would implement a two-phase river herring bycatch avoidance program developed in cooperation with the fishing industry, represented by the Sustainable Fisheries Coalition (SFC) working in partnership with Massachusetts Division of Marine Fisheries (MA DMF) and UMASS Dartmouth School of Marine Science and Technology (SMAST). The current (ongoing) SFC river herring bycatch avoidance project has been funded by the National Fish and Wildlife Foundation (NFWF, see additional information below).

Under this option, a long-term river herring bycatch avoidance strategy would be implemented in the Atlantic herring fishery through a two-phase approach:

1. **Phase I (Amendment 5) –**
    A. Identify Preliminary Bycatch Avoidance Areas (proposed Monitoring/Avoidance Areas in Alternative 2);
    B. Focus/increase monitoring/sampling in the Monitoring/Avoidance Areas (through Amendment 5 catch monitoring program and/or additional management measures);
    C. Establish mechanism for adjusting Monitoring/Avoidance Areas and implementing long-term river herring bycatch avoidance strategies in the future through a framework adjustment to the Herring FMP;
    D. Work with SFC, SMAST, and MA DMF to support the current project, encourage the collection of additional information, and promote the development of long-term bycatch avoidance strategies

During the continued development, and upon the implementation of Amendment 5, the Council, through its staff and the Herring PDT, will continue to work with the SFC, SMAST, and MA DMF to evaluate progress related to the SFC river herring bycatch avoidance program. As details emerge and additional information becomes available, the PDT will update the Herring Committee/Council and assess various elements of the project, including data (nature, quality, and timeliness), and fleet compliance and communication. The Herring PDT will work with the SFC/SMAST/DMF during this time to evaluate the appropriateness of the River Herring Monitoring/Avoidance Areas and will develop recommendations for any adjustments to those areas, which would occur during Phase II (see following).

Management Measures: River Herring Bycatch (continued)

2. Phase II (2013 Framework Adjustment) –

Upon completion of the SFC bycatch avoidance project (late 2012), the Council will review the results and develop a framework adjustment to implement any additional bycatch avoidance strategies that it deems to be appropriate. If the SFC/SMAST/DMF project is successful, the Council may develop a framework adjustment during Phase II to implement some or all elements of the project as part of a long-term bycatch reduction strategy in the Atlantic herring fishery. During Phase II, the Council would:

A. Formally evaluate the SFC/SMAST/DMF project and its results (through the Herring PDT, Herring Committee, and Council, with input from project participants and the Herring Advisory Panel) upon the project completion (during 2013);

B. Receive recommendations from the Herring PDT and Herring Committee (with input from the AP) regarding the need for/appropriateness of follow-up action to implement a long-term strategy for river herring bycatch reduction through a framework adjustment (mid-late 2013);

C. Conduct an initial Framework Adjustment meeting during 2013 or 2014 – An initial framework meeting would be required by this amendment during 2013 or early 2014 in order to formally evaluate the results of the SFC/SMAST/DMF project and develop follow-up management action as necessary. During this process, and depending on the results of the SFC/SMAST/DMF project, the Council may determine that follow-up action is not necessary or appropriate. To emphasize the importance of this issue and express the Council's intent to follow-through with further consideration of management action, however, the initial framework meeting would be **required** in 2013 or early 2014 regardless of whether additional action is deemed necessary/appropriate.

D. Conduct a final Framework Adjustment meeting during 2013/2014 (optional, if the Council determines that a follow-up framework action is necessary/appropriate, based on the outcome of the SFC/SMAST project and the Herring PDT/Committee recommendations)

While it is unclear exactly what will result from the SFC/SMAST/DMF project, it is expected that some strategies for reducing bycatch in the fishery will emerge, possibly through a flexible system of communications to enact real-time "move-along rules." Consequently, elements to be specified in the Phase II framework adjustment (if the Council determines that a framework adjustment is appropriate) could include (but are not limited to):

- Adjustments to the River Herring Monitoring/Avoidance Areas;
- The mechanism and process for tracking fleet activity, reporting bycatch events, compiling data, and notifying the fleet of changes to the area(s);
- The definition/duration of "test tows," if test tows would be utilized to determine the extent of river herring bycatch in a particular area(s);

Management Measures: River Herring Bycatch (continued)

- The threshold for river herring bycatch that would trigger the need for vessels to be alerted and move out of the area(s);
- The distance that vessels would be required to move from the area(s); and
- The time that vessels would be required to remain out of the area(s).

Options for Exemptions Under Alternative 2

Before selecting final management measures, the Council will review river herring bycatch data (provided in this document) and consider exemptions to the Options 1, 2, and 3 under Alternative 2 (described in the Draft Amendment 5 document) for vessels participating in either the small mesh northern shrimp fishery (CFR 680.80 (a)(5)) or vessels fishing with mesh greater than 5.5 inches, or both.

The Council is seeking public comment on this issue and may determine that either or both of these fisheries should be exempt from the river herring management options when it selects final management measures for Amendment 5.

Alternative 3: River Herring Protection

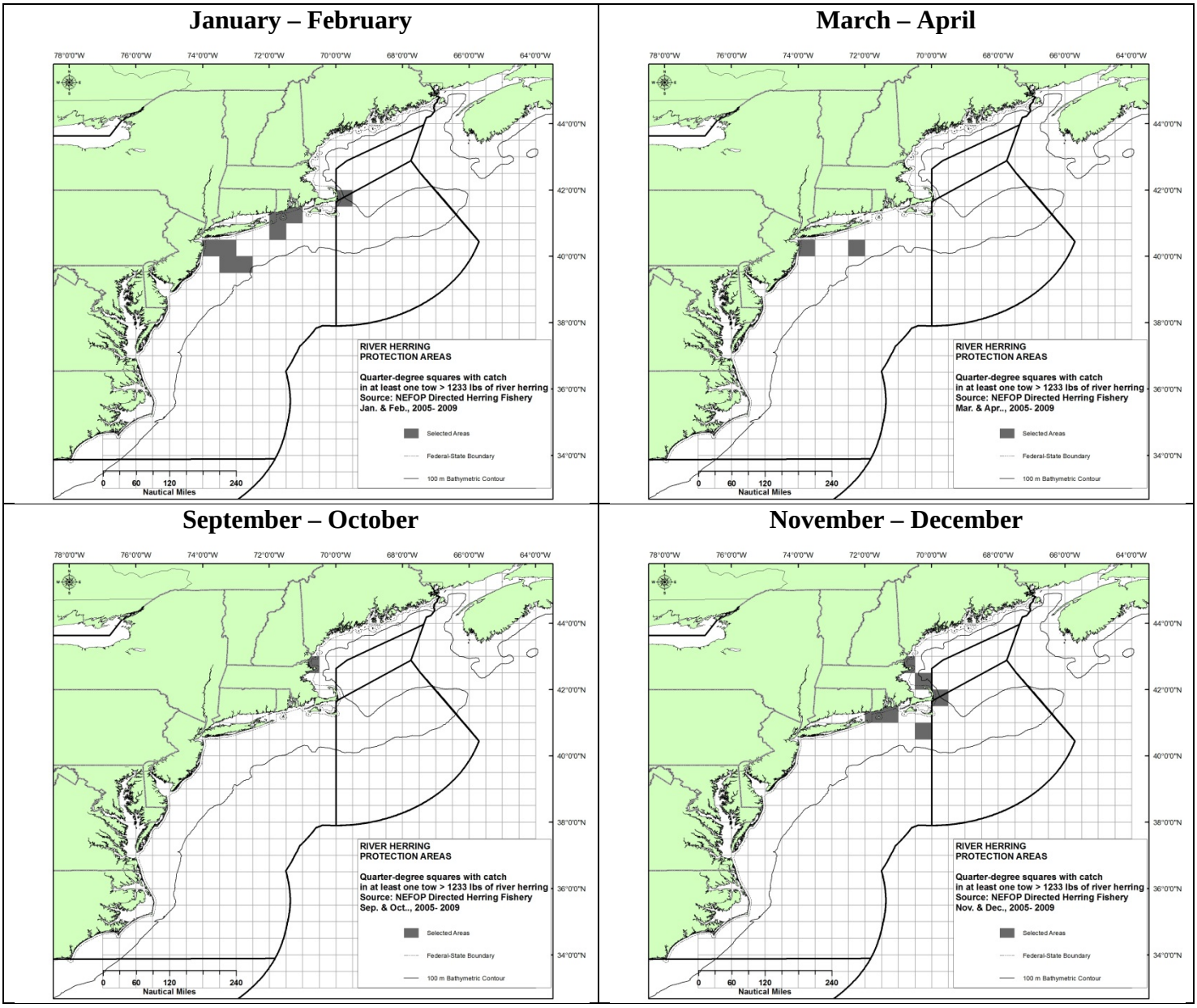
Section 3.3.3 of Draft Amendment 5 – p. 63

The management goal associated with this alternative is to protect river herring. This alternative includes seasonal closures that are intended to minimize river herring encounters in the herring fishery based on times/areas where the largest encounters with the fishery were observed between 2005 and 2009.

Identification of Protection Areas (Alternative 3)

The areas identified in this alternative will be considered River Herring Protection Areas. In Amendment 5, the Protection Areas will be identified bimonthly as the quarter degree squares with at least one observed tow of river herring catch greater than 1,233 pounds, using 2005-2009 Northeast Fisheries Observer Program data from trips with greater than 2,000 pounds of kept Atlantic herring (see following figures). These areas can be modified in the future through a Herring FMP amendment, framework adjustment, or the herring fishery specifications process. Under this alternative, no River Herring Protection Areas would be established in this amendment during May – August.

Alternative 3: Proposed River Herring Protection Areas



Under Alternative 3, no River Herring Protection Areas would be established from May-August.

Management Measures: River Herring Bycatch (continued)

Alternative 3: Management Options Under Consideration

Section 3.3.3.2 of Draft Amendment 5 – p. 66

Option 1: Closed Areas

This option would prohibit directed fishing for herring in the areas/times that are identified as River Herring Protection Areas. Under this option, all herring permit holders (Category A, B, C, and D) would be prohibited from fishing for, possessing, catching, transferring, or landing herring from the River Herring Protection Areas on all fishing trips. Vessels that possess A, B, C, or D herring permits and are fishing with mesh greater than 5.5 inches (and with no small mesh on board) would be exempt from the closed area provisions.

Sub-Option: **Mechanism for limited access herring vessels to declare out of the fishery for a period of time**

This option would prohibit directed fishing for herring in the areas/times that are identified as River Herring Protection Areas. Under this option, all herring permit holders (Category A, B, C, and D) would be prohibited from fishing for, possessing, catching, transferring, or landing herring from the River Herring Protection Areas on all fishing trips. Vessels that possess A, B, C, or D herring permits and are fishing with mesh greater than 5.5 inches (and with no small mesh on board) would be exempt from the closed area provisions. If a Category A, B, or C vessel declares out of the herring fishery ("DOF") prior to leaving port, that vessel may fish in the RH Protection Areas but may not harvest, possess, or land herring on that trip (this provision would also apply to mackerel vessels that obtain a permit to allow them to catch more than the current open access allowance of 3 mt – see previous options for mackerel vessels).

Management Measures: River Herring Bycatch (continued)

Option 2: Trigger-Based Closed Areas

This option would close the River Herring Protection Areas identified in this alternative when a specified river herring catch trigger is reached. The areas that would be closed are the Protection Areas contained within the geographic range of the trigger areas.

The catch triggers apply to three general areas – Statistical Area 521 (Cape Cod, CC), the Gulf of Maine (GOM), and southern New England (SNE) – see the figure illustrating the trigger areas on p. 45.

Sub-Options: River Herring Catch Triggers

Several sub-options are under consideration for specifying the river herring catch triggers in each of the geographic areas identified in the figure below. The sub-options are the same as those proposed under Alternative 2.

Area	SUB-OPTIONS FOR CATCH TRIGGERS (POUNDS)		
	3A (Max)	3B (Median)	3C (Mean)
CC	1,159,700	93,400	269,600
GOM	294,000	92,400	127,100
SNE	729,500	585,000	478,500

Monitoring the River Herring Catch Triggers – Reporting Options

The reporting options are the same as those proposed under Alternative 2, Option 3 and are described below (see pp. 47-48 for examples).

During the fishing year, river herring catch in each of the trigger areas identified above will be monitored and estimated using observer data from all trips by herring vessels subject to this rule unless the vessel has declared out of the fishery (DOF) through VMS. Observed estimates of river herring catch will be expanded to an estimate of total river herring catch in each of the trigger areas. The estimation procedure will be developed by the NERO, in cooperation with the NEFSC and Council staff, and through consultation with the Council. The final calculation process will be provided on the NERO web page. Area-specific river herring catch estimates will be published on the NERO web page regularly.

Management Measures: River Herring Bycatch (continued)

Reporting Option 1: Report Total Catch by Trigger Area

In addition to reporting herring by herring management area through the ACL-monitoring system, herring vessels subject to this rule must report total catch (kept and discarded) by river herring catch trigger area so that the appropriate expansions can be made from the observed catch in those areas. For the purposes of this requirement, the **river herring catch trigger areas** are defined as the following statistical areas:

- Gulf of Maine (GOM) – Areas 511, 512, 513, 514, 515, 464, 465 (same as modified GOM haddock stock area established in Framework 46)
- Cape Cod (CC) – Area 521
- Southern New England (SNE) – Areas 537, 538, 539, 611, 612, 613, 614, 615, 616, 621, 622, 623, 625, 626, 627, 631, 632, 635, 636

See Example Catch Report for Option 1 on p. 47.

Reporting Option 2: Report Total Catch by Statistical Area

Under this option, in addition to reporting herring by herring management area through the ACL-monitoring system, herring vessels subject to this rule must report total catch (kept and discarded) by statistical area so that the appropriate expansions can be made from the observed catch in those areas to monitor both the haddock catch caps (Framework 46) and any river herring catch trigger areas that may be established.

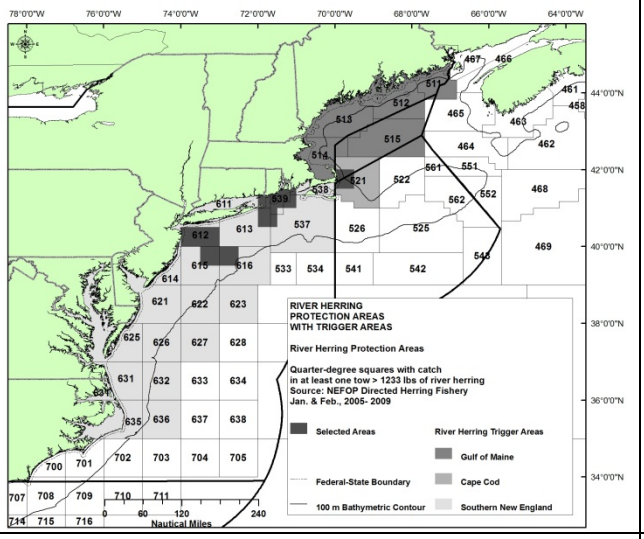
See Example Catch Report for Option 2 on p. 48.

Management Measures That Apply When Trigger is Reached

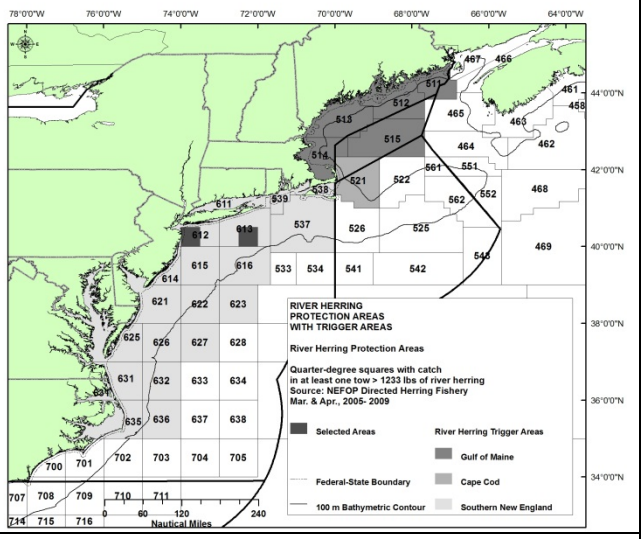
When the river herring catch trigger in a specified area(s) is reached, then the River Herring Protection Areas within that geographic area where the trigger is reached will be closed on a bimonthly basis. The closures will apply to all Protection Areas within the trigger area(s) for the remainder of the fishing year. The figures on the following page illustrate which Protection Areas are associated with the trigger areas. For example, if the Gulf of Maine river herring catch trigger is reached in March, then the shaded quarter degree square in the inshore Gulf of Maine would close during September and October, and the two square in the same trigger area shown in the last figure would close for November and December. Similarly, if the southern New England River Herring Catch Trigger is reached in August, then only the shaded squares shown in the southern New England trigger area would close in November and December (no closures in the southern New England area would occur during September/October).

Alternative 3, Option 2: Trigger Areas and Protection Areas

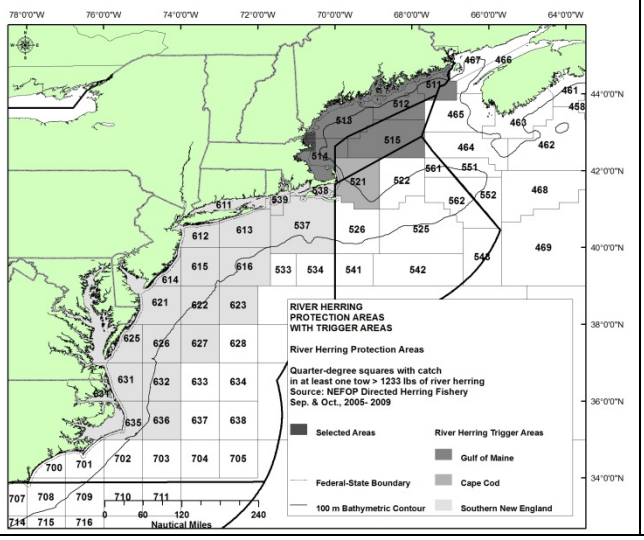
January – February



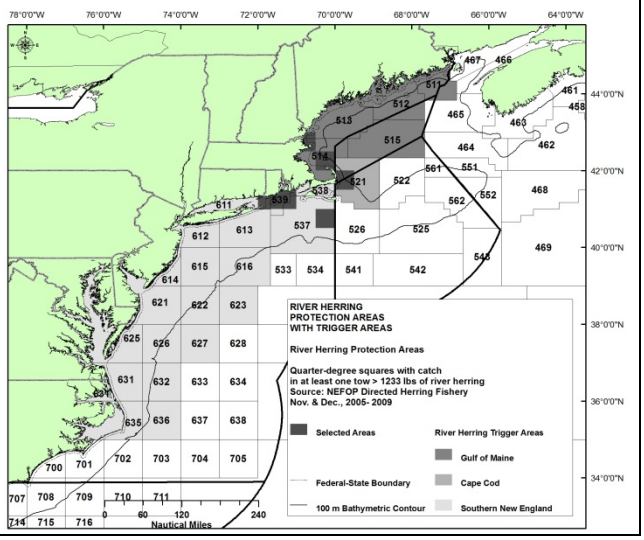
March – April



September – October



November – December



**Under the trigger-based option, when a river herring catch trigger is reached in one of the shaded areas in the figure above (Gulf of Maine, Cape Cod, Southern New England), closure of the River Herring Protection Areas would apply in that trigger area for the remainder of the fishing year. Catch triggers in the areas shown in the figure above would be monitored based on extrapolations of river herring removals from catch reports (the reporting options under consideration are previously described).*

The Council is seeking your comments on this approach.

Management Measures: River Herring Bycatch (continued)

Options for Exemptions Under Alternative 3

Before selecting final management measures, the Council will review river herring bycatch data (provided in this document) and consider exemptions to the Options under Alternative 2 (described in this section) for vessels participating in either the small mesh northern shrimp fishery (CFR 680.80 (e)) or vessels fishing with mesh greater than 5.5 inches, or both.

The Council is seeking public comment on this issue and may determine that either or both of these fisheries should be exempt from the river herring management options when it selects final management measures for Amendment 5.

Mechanism for Adjusting/Updating River Herring Areas/Triggers

Section 3.3.4 of Draft Amendment 5 – p. 74

River herring management areas (for monitoring, avoidance, and/or protection) and/or river herring catch triggers (if established in this amendment) can be modified/updated through an amendment or framework adjustment to the Herring FMP. The areas and triggers should be reviewed by the Herring Plan Development Team every three years as part of the Atlantic herring fishery specifications process. Any modifications/adjustments, as deemed necessary by the Council, should accompany the specifications package (i.e., joint specifications/framework adjustment package). The MAFMC and ASMFC would be consulted during the adjustment process.

River Herring Catch Caps

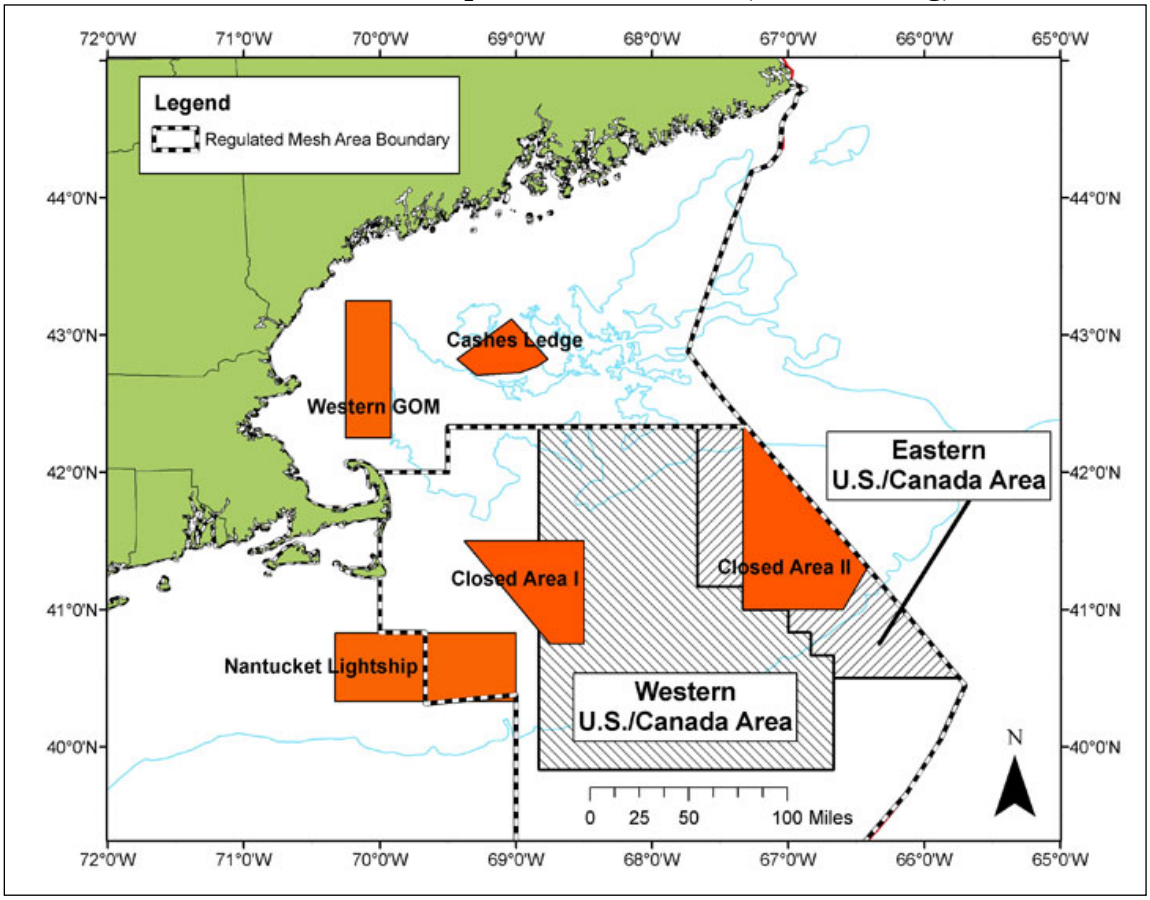
Section 3.3.5 of Draft Amendment 5 – p. 74

The Council will consider establishing a river herring catch cap for the Atlantic herring fishery as one of several potential measures to reduce bycatch. The catch cap will be considered by the Council through a framework adjustment to the Herring FMP or the Atlantic herring fishery specifications process after the ASMFC completes its stock assessment.

Management Measures: Midwater Trawl Access to Groundfish Closed Areas

The alternatives under consideration to establish criteria for midwater trawl (single and paired) access to year-round groundfish closed areas are described in the following subsections. The Council is seeking your comments on the alternatives under consideration.

Year-Round Multispecies Closed Areas (Solid Shading)



Alternatives 1 and 2

Section 3.4.1 of Draft Amendment 5 – p. 77

Alternative 1 – No Action

Under the no action alternative, current criteria for midwater trawl vessel access to the groundfish closed areas would be maintained. This includes access to the groundfish closed areas, with additional provisions for observer coverage and increased sampling in Closed Area I (based on the November 30, 2010 Rule for the Closed Area I provisions (CFR §648.80)) as well as provisions implemented through Framework 46 to the Northeast Multispecies (Groundfish) FMP.

Management Measures: Midwater Trawl Access to Groundfish Closed Areas (continued)

Under the no action alternative, vessels issued a Federal herring permit and fishing with midwater trawl gear in Closed Area I must declare to NMFS their intent to fish in the closed area at least 72 hours prior to beginning a trip and carry onboard a NMFS-approved observer. Vessels fishing in Closed Area I with midwater trawl gear cannot release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer (e.g., an Atlantic herring at-sea processing vessel or an Atlantic herring carrier vessel), or discard fish at sea. In addition, all of the fish caught using midwater trawl gear in Closed Area I must be brought aboard the vessel and made available for sampling and inspection by the observer, except in the case of mechanical failure or spiny dogfish clog the net. However, if fish are released from the codend for any of these reasons, without being sampled by a NMFS-approved observer, the vessel must leave the Closed Area I and submit a Closed Area I Midwater Trawl Released Codend Affidavit to NMFS.

Vessels issued a Category A/B herring permit and on a declared herring trip, regardless of gear or area fished, and or a vessel issued a Category C permit and/or an Category D permit (open access) that fishes with midwater trawl gear in Areas 1A, 1B, and 3 are prohibited from discarding haddock at sea. Herring processors and dealers are required to separate out, and retain such haddock for at least 12 hours for inspection by authorized NMFS officers. These vessels can also possess and land up to 100 lb. of other NE multispecies. However, haddock or other NE multispecies separated from the herring catch may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption.

Alternative 2 – Pre-Closed Area I Provisions

Under this alternative, criteria for midwater trawl vessel access to the groundfish closed areas would be based on provisions prior to the implementation of the Closed Area I rule. Herring midwater trawl vessels would be allowed to access all of the year-round groundfish closed areas without further limitations (the haddock catch cap and 100-pound multispecies possession limit would still apply, consistent with the Framework 46 provisions implemented in September 2011).

Vessels issued a Federal herring permit would no longer be required to give 72 hours' notice before beginning a trip to the NMFS observer program, and would no longer be required to carry a NMFS-approved observer in order to fish in Closed Area I. In addition, there would no longer be any requirements for fish caught using midwater trawl gear to be brought on board the vessel and be sampled by an observer.

Vessels issued a Category A or B herring permit and on a declared herring trip, regardless of gear or area fished, and or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear in Areas 1A, 1B, or 3 are still prohibited from discarding haddock at sea. Herring processors and dealers are required to separate out, and retain such haddock for at least 12 hours for inspection

Management Measures: Midwater Trawl Access to Groundfish Closed Areas (continued)

by authorized NMFS officers. These vessels can also still possess and land up to 100 lb of other NE multispecies. However, haddock or other NE multispecies separated from the herring catch may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption.

Because this alternative implements less restrictive management measures than current provisions, implementing this measure would require action under the Multispecies FMP, so Amendment 5 would need to serve as a joint groundfish action (Framework Adjustment to the Multispecies FMP).

Alternative 3: 100% Observer Coverage

Section 3.4.2 of Draft Amendment 5 – p. 78

This option would require herring midwater trawl (single and paired) vessels to carry a NMFS-approved observer on board on any trip in the groundfish year-round closed areas.

Midwater trawl vessels subject to this measure would be required to carry a NMFS-approved observer on any trip where fishing may occur in the year-round multispecies closed areas. Vessels would be required to indicate their intention to fish in the multispecies closed areas when scheduling an observer through the pre-trip notification system. To ensure 100% coverage, vessels would be prohibited from fishing in the closed areas without a NMFS-approved observer on board.

The Closed Area I sampling provisions (based on the November 30, 2010 Rule for the Closed Area I provisions (CFR §648.80)) and haddock catch cap/Framework 46 provisions would continue to apply under this alternative.

Alternative 4: Closed Area I Provisions

Section 3.4.3 of Draft Amendment 5 – p. 79

This alternative would apply the current provisions for midwater trawl vessels in Closed Area I to all of the groundfish year-round closed areas, based on the November 30, 2010 Rule for the Closed Area I provisions (CFR §648.80). Under this alternative, the following provisions would apply to midwater trawl (single and paired) vessels fishing in the groundfish year-round closed areas on any trips with a NMFS-approved observer on board (options for levels of observer coverage in the year-round groundfish closed areas are described below):

- When fishing in a groundfish year-round closed areas with a NMFS-approved observer on board, midwater trawl vessels would be required to pump aboard all fish from the net for inspection and sampling by the observer. Vessels that do not pump fish would be required to bring all fish aboard the vessel for inspection and sampling by the observer. Unless specific conditions are met (see below), vessels would be

Management Measures: Midwater Trawl Access to Groundfish Closed Areas (continued)

prohibited from releasing fish from the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer.

- Vessels may make short test tows in the area to check the abundance of target and bycatch species without pumping the fish on board if the net is reset without releasing the contents of the test tow. In this circumstance, catch from the test tow would remain in the net and would be available to the observer to sample when the subsequent tow is pumped out.
- Fish that have not been pumped aboard may be released if the vessel operator finds that:
    1. pumping the catch could compromise the safety of the vessel;
    2. mechanical failure precludes bringing some or all of the catch aboard the vessel; or
    3. spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch.
- If the net is released for any of the reasons stated above, the vessel operator would be required to complete and sign a Released Catch Affidavit providing information about where, when, and why the net was released, as well as a good-faith estimate of the total weight of fish caught on the tow and weight of fish released. The Released Catch Affidavit must be submitted within 48 hours of completion of the fishing trip.
- Following the release of the net for one of the three exemptions specified above, the vessel would be required to exit the groundfish year-round closed area. The vessel may continue to fish but may not fish in the groundfish year-round closed area for the remainder of the trip.

Option 4A Require 100% Observer Coverage: Under this alternative/option, midwater trawl (single and paired) vessels would be required to carry a NMFS-approved observer on **all trips** where fishing may occur in the groundfish year-round closed areas. Vessels would be required to indicate their intention to fish in the groundfish year-round closed areas when scheduling a NMFS-approved observer through the pre-trip notification system. To ensure 100% coverage, midwater trawl vessels would be prohibited from fishing in the groundfish year-round closed areas without a NMFS-approved observer on board. The sampling provisions described above would apply on all trips in the year-round closed areas since 100% observer coverage in these areas would be required.

Option 4B Less Than 100% Observer Coverage: Under this alternative/option, observer coverage would be distributed on limited access herring vessels based on the provisions in Amendment 5 (see alternatives in the Draft Amendment 5 document, Alternatives to Allocate Observer Coverage on Limited Access Herring Vessels). If the alternative for 100% observer coverage is adopted, then this sub-option would only apply to

Management Measures: Midwater Trawl Access to GF CAs, Continued

midwater trawl vessels with open access permits. Midwater trawl vessels would be required to indicate their intention to fish in the groundfish year-round closed areas when scheduling a NMFS-approved observer through the pre-trip notification system but would not be prohibited from fishing in the groundfish year-round closed areas if an observer is not deployed (with the exception of Closed Area I). The sampling provisions described above would apply on all trips in the year-round closed areas with a NMFS-approved observer on board.

Alternative 5: Closed Areas

Section 3.4.4 of Draft Amendment 5 – p. 80

This alternative closes the year-round groundfish closed areas to midwater trawl vessels participating in the herring fishery. Under this alternative, access to groundfish closed areas by midwater trawl vessels (single and paired) that are not declared out of the fishery (DOF) would be prohibited except with an experimental fishing permit (EFP).

The Council would strongly endorse experimental fisheries in the groundfish closed areas that include some or all the following provisions:

- Full observer coverage (one or more NMFS-approved observers per vessel, as necessary to ensure that every haul is observed)
- Electronic monitoring systems to augment observer data
  - Tow characteristics (i.e., total catch, GPS, height of foot-rope)
  - Video record of catch pre-sorted on deck for observer analysis
- Possible additional elements of EFP for groundfish closed area access
  - Pair trawling in closed areas prohibited
  - No more than 20 midwater trawl trips per closed area per fishing year
  - Fishing with net foot-rope less than 20 feet off the bottom prohibited
  - Monitoring protocols including mandatory reporting of vessel electronics information and shoreside gear inspections to determine the depth fished by midwater trawl gear and whether contact with the bottom has occurred
  - Groundfish bycatch triggers exclude vessels from access to the closed areas
    - Groundfish bycatch is detected in an amount greater than 100 pounds for any vessel trip – all midwater trawling in such closed area suspended for a minimum of 48 hours
    - Overfished stock – Regional Administrator determines bycatch to be 0.1% of TAC for stock – one year exclusion
    - Other groundfish – Regional Administrator determines bycatch to be 0.5% of TAC for stock – one year exclusion

Additional Measures that can be Implemented through a Framework Adjustment

Section 3.5 of Draft Amendment 5 – p. 80

If any new management measures are adopted in Amendment 5, changes to those measures and related adjustments would be added to the list of measures that can be implemented through a framework adjustment to the Herring FMP in the future. For example, if the Council selects Alternative 2 to address river herring bycatch (Monitoring/Avoidance Areas and one of the options for monitoring catch in those areas), then adjustments to the Monitoring/Avoidance Areas and the management measures that pertain to those areas would be added to the list of measures that can be implemented through a framework adjustment in the future.

During the comment period on the Draft EIS, the public should consider whether or not any of the new measures proposed in this amendment should be modified in the future through a framework adjustment. For the final Amendment 5 document and Final EIS, this section will be based on the management measures adopted by the Council.

Currently, this document proposes to add river herring catch caps as one measure that could be implemented in the future through a framework adjustment to the Herring FMP. The ability to do this will depend on whether or not the mechanism to establish river herring catch caps is adopted by the Council in this amendment. The Herring PDT provided a detailed discussion paper addressing the development of river herring catch caps, including a discussion of the potential challenges associated with implementing and monitoring, as well as the potential impacts of catch caps. The Herring PDT's discussion paper can be found in Volume II of Amendment 5 (Appendix VII) and forms the basis for future development of river herring catch caps through a framework adjustment, or through the herring specifications process.

What are the impacts of the measures under consideration in Amendment 5?

The impacts of the management alternatives under consideration in Amendment 5 are assessed and discussed relative to each of the valued ecosystem components (VECs) in the Amendment 5 document. The VECs for consideration in Amendment 5 include: Atlantic Herring; Non-Target Species and Other Fisheries; Physical Environment and Essential Fish Habitat (EFH); Protected Resources; and Fishery-Related Businesses and Communities. VECs represent the resources, areas, and human communities that may be affected by the management measures under consideration in this amendment. VECs are the focus of an EIS since they are the "place" where the impacts of management actions are exhibited.

The impacts of the measures under consideration in Amendment 5 on each of the VECs are generally summarized in this public hearing document. Much of the detailed analyses to support the development of the alternatives/options under consideration in Amendment 5 were provided by the Herring PDT and form the basis for determining the potential impacts of the measures on each of the VECs. The complete analyses and supporting technical documents are included in the appendices to the Amendment 5 document (Volume II). The no action alternative represents status quo conditions for the Atlantic herring fishery management program and forms the basis for comparison and assessment of all management options/alternatives under consideration.

Atlantic Herring: The Atlantic herring fishery is managed through an overall annual catch limit (ACL, reduced from the overfishing limit and acceptable biological catch to address scientific uncertainty and management uncertainty) and sub-ACLs for management areas that are designed to prevent overfishing on individual stock components. The ACLs and sub-ACLs are set through a specifications process every three years, based on the best available scientific information. The Atlantic herring resource is not overfished, and overfishing is not occurring. Due to the ongoing management of the herring fishery through ACLs/sub-ACLs, selection of no action relative to most of the alternatives/options in Amendment 5 would not be expected to directly impact the herring resource. This is because the measures are not likely to affect the amount of herring available for harvest and/or total removals. However, some of the indirect long-term benefits likely to result from the alternatives/options under consideration in Amendment 5 (discussed below) would not be realized if no action is taken.

The long-term benefits to the Atlantic herring resource from the alternatives/options under consideration in Amendment 5 are somewhat indirect but stem from improved catch monitoring and data documenting removals from the fishery. The measures to improve catch monitoring, address river herring bycatch, and/or establish criteria for midwater trawl vessel access to groundfish closed areas should reduce the likelihood for errors in reporting, and consequently, in the calculation of catch statistics. Relative to taking no action, by implementing some of the alternatives/options proposed in Amendment 5, improving catch reporting could lead to better catch data for stock assessments and may also reduce scientific uncertainty over the long-term. This will lead to more effective long-term management of the herring resource.

What are the impacts of the measures under consideration in Amendment 5?

Overall, the alternatives/options proposed in Amendment 5 are likely to have a low positive impact on the herring resource. The measures most likely to affect the herring resource are the alternatives to allocate observer coverage on limited access herring vessels and the management measures to address net slippage. These measures have potential to increase the likelihood of better documenting herring catch (total removals). As catch information improves, discard estimates can be incorporated into future stock assessments for Atlantic herring, thereby potentially reducing some uncertainties associated with the assessment data/models, improving biomass and fishing mortality estimates, and enhancing the Council's ability to successfully manage the herring resource at long-term sustainable levels. The quantification of previously unaccounted mortality could improve the data used in assessments, thereby decreasing scientific uncertainty, albeit to an unknown degree. In addition, reducing the likelihood for errors in the calculation of catch statistics through increased sampling could reduce management uncertainty (uncertainty about catch estimates is a component of management uncertainty), again enhancing long-term management of the Atlantic herring fishery.

Non-Target Species and Other Fisheries: *Non-target species* refers to species other than herring which are landed by federally permitted vessels while fishing for herring. These non-target species may be caught by the same gear while fishing for herring, and may be sold assuming the vessel has proper authorization or permit(s). For the purposes of Amendment 5, the term *other fisheries* refers to those fisheries which are directly affected or related to the operation of the Atlantic herring fishery; namely river herring, the Atlantic mackerel fishery, and the Northeast (multispecies) groundfish fishery. In the Atlantic herring fishery, river herring (alewife, blueback herring) are bycatch species that are not landed when caught. Due to the overlap of the species, measures proposed in Amendment 5 to address river herring bycatch are likely to have similar impacts on shad (American shad and hickory shad). Atlantic mackerel is a primary alternate species caught by herring vessels and is commonly landed. The Northeast multispecies (groundfish) fishery is a primary alternate fishery for some herring vessels, and the areas of operation of both fisheries overlap. The potential impacts of the alternatives/options under consideration in Amendment 5 are evaluated with respect to non-target species and other fisheries throughout the Amendment 5 document.

While many of the measures under consideration in Amendment 5 relate to improving catch reporting in the directed herring fishery, positive impacts (indirect) are expected for non-target species and other fisheries depending on which alternatives/options are ultimately selected. The catch monitoring measures that are likely to have the most positive impact on non-target species and other fisheries are the alternatives that allocate observer coverage on limited access herring vessels and the measures under consideration to address net slippage. The alternatives proposed to allocate observer coverage on limited access herring vessels are intended to improve sampling in the limited access herring fishery and increase precision associated with catch/bycatch estimates of non-target species and other fisheries. There may be indirect long-term benefits that would likely result from improvements to

What are the impacts of the measures under consideration in Amendment 5?

catch sampling, increased sampling, a reduction in unobserved catch, and an increase in the accuracy of bycatch estimates that result from observer sampling. These benefits are discussed throughout the Amendment 5 document and relate to improving catch data for stock assessments and enhancing long-term management. Measures to address net slippage are intended to provide observers with a better ability to fully sample the catch on herring vessels. To the extent that the proposed measures can improve the observers' access to all of the fish in the net, the observers' ability to identify species composition of operational discards and other discarded fish may improve. This may improve estimates of bycatch/discards of non-targeted species in the herring fishery and ultimately lead to a more reliable discard estimate that can be factored into stock assessments and utilized for better managing non-target species.

The management measures to address river herring bycatch were developed by the Council in response to concerns about the impacts of bycatch of this important species in the directed herring fishery. The status of river herring is unknown, although a stock assessment by ASMFC will be finalized in 2012. The ASMFC-managed directed river herring fishery is under a coastwide landings moratorium effective January 1, 2012. States with approved sustainable harvest plans have exemptions from the moratorium. These States include Maine, New Hampshire, New York, North Carolina, and South Carolina. NOAA considers both species, alewife and blueback herring, as species of concern and is reviewing whether they should be listed under the Endangered Species Act. The selection of the no action alternative with respect to river herring measures is not likely to be aligned with the coastwide moratorium and exemption process; however, the measures in place under the ASMFC and States would continue for both shad and river herring if the no action alternative is selected. It is likely, however, that the increased monitoring and data collection benefits or reductions in fishing effort in some times/areas that may be realized under the alternatives under consideration to address river herring bycatch may not be realized under the no action alternative. However, as previously noted, the catch monitoring measures in Amendment 5 are also expected to have positive impacts on river herring and other non-target species.

The alternatives to establish criteria for midwater trawl vessel access to the year-round closed areas may have a positive impact on non-target species and other fisheries, depending on which alternative is selected. The potential for positive impacts is greatest for the groundfish species, as these areas were selected by the Council to reduce groundfish mortality and rebuild groundfish stocks. Catch information presented in the Amendment 5 document indicates that the majority of groundfish bycatch by midwater trawl vessels is haddock, the catch of which on midwater trawl vessels is already managed through a catch cap. The groundfish year-round closed areas were selected and closed to groundfish fishing to reduce fishing mortality and offer protection to groundfish stocks and spawning grounds. Eliminating midwater trawl fishing from these areas could provide a positive impact in that it would further reduce fishing activity in the areas and help to ensure that catch of non-target species and other fisheries in the area is minimized. The closed areas may provide mortality reductions for some

What are the impacts of the measures under consideration in Amendment 5?

non-target species, especially groundfish. This benefit, however, is dependent on individual species life history and migratory patterns along with their susceptibility to fishing gears at different life stages.

Physical Environment and Essential Fish Habitat: Under the no action alternatives/options, no additional management measures would be implemented in Amendment 5. Since these alternatives/options represent the status quo, no changes in the impacts on seabed habitats are expected, because current management measures to protect them would remain in place. Specifically, adverse effects on EFH that result from the herring fishery are estimated to be minimal and temporary, and would continue to be minimal and temporary if these alternatives/options are selected.

Most of the alternatives/options under consideration in Amendment 5 are not expected to affect the amount or location of herring fishing effort where impacts can be predicted, and therefore most of the proposed measures are not likely have any adverse effects on EFH. For instance, the measures under consideration for adjustments to the fishery management plan are generally administrative in nature, and therefore not likely to have an effect on EFH. The two options under consideration that would implement changes to the open access provisions for limited access mackerel vessels may result in some impact to EFH by increasing potential for effort in the areas beyond recent or current levels, however the magnitude of the increase in trips that would be taken would not likely be large and would not change the areas in which operation typically occurs, and therefore any increase in bottom contact resulting from this alternative would have no more than a minimal adverse impact on benthic EFH, so the impacts to EFH is expected to be slight.

The measures under consideration for catch monitoring at sea are also expected to have a neutral impact overall, as effort in the herring fishery is not expected to increase or decrease as a result, and therefore adverse effects on EFH that result from the herring fishery are estimated to be minimal and temporary, and would likely continue to be minimal and temporary if these measures are selected. The impacts of the measures to address river herring bycatch on essential fish habitat are expected to enhance monitoring requirements or close areas; enhanced monitoring requirements are not expected to result in any additional impacts to seabed habitats/EFH, and while predetermined seasonal closures could influence spatial patterns of fishing effort, the changes are difficult to predict. Because seabed contact by midwater trawl gear is rare, it is assumed that herring fishery adverse effects on EFH will continue to be minimal and temporary if monitoring and avoidance areas are implemented. Under Alternative 3 (River Herring Protection), however, a shift in fishing that results in increased effort on Georges Bank during herring spawning (September – November) might lead to an increase in seabed gear contact, and thus an increase in adverse effects to EFH. The management measures to address midwater trawl access would either increase observer coverage in some areas or close areas to midwater trawl vessels; since midwater trawl gear has been determined to only occasionally contact the bottom and its impact on benthic habitats has been determined to be minimal and temporary, the increase in observer coverage

What are the impacts of the measures under consideration in Amendment 5?

would not cause any additional impacts to EFH. Potential changes in the magnitude and location of fishing effort as a result of the closures, and thus potential changes in seabed contact rates, are difficult to predict, however.

Protected Resources: There are numerous protected species that inhabit the environment within the Atlantic Herring FMP management unit, and that, therefore, potentially occur in the operations area of the fishery. These species are afforded protection under the Endangered Species Act of 1973 (ESA; i.e., for those designated as threatened or endangered) and/or the Marine Mammal Protection Act of 1972 (MMPA), and are under NMFS' jurisdiction. Due to this ongoing management of protected resources in the areas in which the herring fishery operates, the selection of no action relative to most of the alternatives/options in Amendment 5 would not be expected to directly impact them. Not selecting the other alternatives/options, however, may result in a small lost opportunity. Overall, most of the impacts of the management measures under consideration to protected resources are likely to be neutral or present a low positive impact, as the measures will not be changing operations within the fishery in a way that would negatively or positively impact them, but may increase observer coverage or close areas, thereby benefitting the species by collecting more information that will improve management in the future or removing them from the possibility of being impacted by herring fishery operations.

From the standpoint of protection and monitoring of protected resources in the area, most of the measures under consideration for adjustments to the fishery management plan are administrative in nature, and therefore not likely to have an effect. The two options under consideration that would implement changes to the open access provisions for limited access mackerel vessels may result in some impact to protected resources by increasing potential for effort in the areas beyond recent or current levels; however, the magnitude of the increase in trips that would be taken would not likely be large and would not change the areas in which operation typically occurs, so the impacts to protected resources is expected to be slight. The measures under consideration for catch monitoring at sea are also expected to have a neutral impact overall, as effort in the fishery is not expected to increase or decrease as a result, although a few measures that would potentially capture more rare events or record information from slipped catch have the potential to present a low positive impact on protected resources. The impacts of the measures to address river herring bycatch on protected resources are harder to predict, as the shift in effort as a result of the measures may or may not concentrate effort where the species overlap; however, most of the impacts are expected to be neutral or have a low positive effect, if observer effort is increased. Finally, the management measures to address midwater trawl access generally have the potential to have a low positive impact on protected resources through the collection of more information during encounters with the herring fishery and in areas which would potentially close as a result of the measure. Some shift in effort may occur as a result of the closures, however, so some impacts are currently unknown or are expected to be neutral as a result.

What are the impacts of the measures under consideration in Amendment 5?

Fishery-Related Businesses and Communities: The Atlantic herring fishery occurs over the Mid-Atlantic shelf region from Cape Hatteras to Maine, including an active fishery in the inshore Gulf of Maine and seasonally on Georges Bank. The Atlantic herring winter fishery is generally prosecuted south of New England during the winter (January-April), and oftentimes as part of the directed mackerel fishery. There is significant overlap between the herring and mackerel fisheries during the winter months, although catches on Georges Bank (Area 3) tend to be relatively low. The herring summer fishery (May-August) is generally prosecuted throughout the Gulf of Maine and Georges Bank as fish are available. Restrictions in Area 1A (including ASMFC days out measures implemented in response to quota reductions) have pushed the fishery in the inshore Gulf of Maine to later months (late summer). Fall fishing (September-December) tends to be more variable and dependent on fish availability. A complete description of the Atlantic herring fishery, including vessels, dealers, processors, and fishing communities, is provided in the Draft Amendment 5 document.

In general, the catch monitoring program proposed in Amendment 5 is intended to improve reporting and documentation of catch – landings and discards – in the Atlantic herring fishery. The long-term impacts of improving catch monitoring is positive for fishery-related businesses and communities. As reporting and compliance improves, management uncertainty may be reduced (uncertainty about catch estimates is a component of management uncertainty) and long-term management of the herring fishery may improve. For example, some of the measures under consideration could reduce the likelihood for misallocating or double counting herring catches. Ultimately, this could lead to better catch data for stock assessments and may also reduce scientific uncertainty over the long-term. To the extent that scientific and management uncertainty can be reduced, additional yield can be made available to the herring fishery. The long-term impacts of reducing scientific and management uncertainty are likely to be positive. Some of the fishery-related impacts expected from the alternatives/options under consideration in the Amendment 5 catch monitoring program are summarized in the following bullets; the Draft Amendment 5 document should be referenced for more thorough analysis and discussion of impacts.

- The impacts of the proposed options to address carrier vessels (Section 3.1.3.1) are expected to be positive for vessels engaged in this activity. For those vessels that already have VMS units on board, there would likely be no cost increase to using that unit to declare into the herring fishery as a carrier vessel.
- The measures to address transfers-at-sea (Section 3.1.3.2) may reduce opportunities for some vessels to participate in the herring fishery by limiting their ability to transfer herring at sea (unless they are carrying herring or participating in a pair trawl operation). Because of the high cost of fuel, the requirement to return to port in order to land their catch could negatively impact herring-related businesses that have permits that would fall under a transfer restriction. The impacts of these options on fishery-related businesses and communities, therefore, may be low negative.

What are the impacts of the measures under consideration in Amendment 5?

- Extending the pre-trip and pre-landing notification requirements (Section 3.1.4) may improve allocation of observers and help ensure the timely sampling of the Atlantic herring fishery. Thus, data collected via the observer program may be more likely to achieve management goals (e.g., CV targets on discard estimates). Subsequently, management uncertainty may be reduced (uncertainty about discard estimates is a component of management uncertainty) and long-term management of the herring fishery may improve. Ultimately, this could lead to better catch data for stock assessments and may also reduce scientific uncertainty over the long-term. To the extent that management uncertainty can be reduced, additional yield can be made available to the fishery. The long-term impacts of reducing management uncertainty are positive for fishery-related businesses and communities.
- Overall, the impacts of the options to change open access permit provisions for limited access mackerel vessels (Section 3.1.6) are expected to be positive in comparison to the no action option, because of increased fishing opportunities and potential reductions in regulatory discards of herring.
- The impacts of measures to improve/maximize sampling at-sea (Section 3.2.2) are not expected to be significant for fishery-related businesses and communities. There may be some operational adjustments required by vessel operators and crew to comply with the new provisions; however, the proposed measures codify many of the practices that are already occurring at-sea when vessels take observers on-board. Interviews with captains and representatives/owners of herring businesses suggest that the proposed steps for improving or maximizing sampling at sea are currently a part of every herring vessels' normal operating practices, agreed upon by the fleet. To the extent that there are any vessels who do not comply, this option will make it easier to mandate these steps, thus making certain that observers on every boat have equal opportunity to fully sample the catch. The measures should improve the vessel owner/operator's understanding regarding expectations and the collection of information by observers during a fishing trip, and ensure safe working conditions for observers on all fishing vessels. For the most part, there should be no differential impacts (by permit category) associated with these options. The direct pecuniary economic impacts of this option on the participants in limited access herring fishery are expected to be minimal. Any economic impacts to the herring fishery will be through increased administrative and regulatory burden.
- Some of the measures under consideration to address net slippage (Section 3.2.3) may have negative impacts on fishery-related businesses and communities. Any economic impacts to the herring fishery will be through increased time spent pumping fish aboard the vessel to be sampled and inspected by a NMFS-approved observer. The pecuniary impacts on the participants in herring fishery are therefore expected to be potentially low negative when compared to taking no action. In general, the option/sub-options proposing a catch deduction/trip termination for slippage events are designed to create a disincentive for limited access herring vessels to slip catch. When choosing to slip a net or bring all fish

What are the impacts of the measures under consideration in Amendment 5?

onboard, vessel operators will compare the costs of bringing those fish aboard to the penalty associated with slippage. The costs of bringing fish aboard which would otherwise be slipped are the extra time spent in this activity and, possibly, decreases in vessel safety during poor operating conditions. To the extent that Option 3 (and Option 4) compromise safety under some circumstances, both the herring fishery and communities would be negatively affected. The extent of impacts would depend on to what extent safety was affected (e.g., injury to loss of life for crewmembers and damage to loss of vessel for the boat) and the result. These costs are the same under all of the options/sub-options under consideration. The overall impact of the options that propose catch deductions and trip termination, in comparison to no action, is therefore expected to be negative.

During final decision-making, the long-term positive impacts of improving catch monitoring must be weighed against the negative impacts of implementing the catch monitoring program (and other measures proposed in Amendment 5) on fishery-related businesses and communities. Some of the measures proposed in Amendment 5 are likely to impose a cost on the industry, and the impacts on fishery-related businesses and communities are therefore likely to be negative. The alternatives/options that are most likely to result in negative impacts on fishery-related businesses and communities are the alternatives to allocate observer coverage on limited access herring vessels, measures to address river herring bycatch, and management measures to establish criteria for midwater trawl vessel access to the year-round groundfish closed areas.

Alternatives to Allocate Observer Coverage on Limited Access Herring Vessels (Section 3.2.1 of Draft Amendment 5)

In general, the potential impacts of the alternatives to allocate observer coverage on limited access herring vessels depend on whether additional funding would be required and if so, which funding option is selected. The impacts of the funding options are discussed in the Draft Amendment 5 document and apply to any alternatives under consideration that would require additional funding. Under Funding Option 1, Alternatives 2-4 are expected to have a neutral effect on fishery-related businesses and communities with respect to the no action alternative. Under Funding Option 2, Alternative 2 is likely to have the largest negative impacts on fishery-related businesses and communities. Alternative 4 is likely to have negative impacts, although the size of these impacts depends on the Council-specified targets/priorities. Alternative 3 is likely to have neutral or low negative impacts on fishery-related business and communities. Options for Observer Service Providers are likely to have neutral impacts on fishery-related businesses.

Relative to the daily operating costs for the Atlantic herring fishery, the cost of an observer is fairly high. For example, paying for a Northeast Fisheries Observer Program (NEFOP) observer would increase the per-day costs of single midwater trawl, pair trawl, purse seine and bottom trawl by 28%, 36%, 67%, and 153% respectively (see analysis in Section 5.2.6 of the Draft

What are the impacts of the measures under consideration in Amendment 5?

Amendment 5 document). However, relative to daily revenues, the cost of an observer is lower; an observer would cost 9%, 9%, 6%, and 22% of average daily revenues for the midwater, pair trawl, purse seine, and bottom trawl vessels respectively. These figures are presented for illustration; it is possible that the type of data required in this fishery would result in higher or lower per-day costs than the $1,200 amount used to estimate costs of an NEFOP or other NMFS-approved observer.

Alternative 2 requires 100% observer coverage and would create negative impacts on herring-related businesses or communities if Federal funds were not used to pay for the additional observer coverage. Under Funding Option 1 (no action) were selected, the presumption is that Federal funds would be used. Under Funding Option 2, industry funds would be required to cover costs when Federal funds were unavailable; therefore, negative impacts on fishery participants are likely. These increased economic costs would result in less effort, lower landings, and affect the supply of herring bait in other fisheries. It would also negatively affect the businesses that supply (directed) herring-related businesses, and the communities whose economies are partially reliant on them (see the profiles for the Amendment 5 communities of interest, provided in the Draft Amendment 5 document). In 2010, a NEFOP observer costs approximately $1,200 per day (see previous section for more information). If industry members were required to pay for observers for every fishing day, this would increase operating costs by 28-153%.

Measures to Address River Herring Bycatch (Section 3.3 of Draft Amendment 5)

Relative to the no action alternative, Alternative 2 (River Herring Monitoring/Avoidance, Section 3.3.2) and Alternative 3 (River Herring Protection, Section 3.3.3) are expected to have a negative impact on fishery-related businesses and communities due to the costs associated with increased monitoring and/or area closures.

Under Alternative 2, the extent of the impacts will depend on the option selected for monitoring as well as the availability of Federal funding for observer coverage in the proposed River Herring Monitoring/Avoidance Areas. Option 1, requiring 100% observer coverage in the Monitoring/Avoidance Areas, would likely have the largest negative impact on fishery-related businesses and communities, especially if the industry is required to pay for some or all observer coverage. Option 2 would have a similar negative impact as Option 1 if the sub-option for 100% observer coverage is selected. Option 3 implements either Options 1 or 2 after a catch trigger is reached and would therefore have less impact on fishery-related businesses and communities because the additional monitoring requirements would not become effective until the catch trigger is reached; if the catch trigger is not reached in any area during the fishing year, then no additional monitoring requirements would be applied to the Monitoring/Avoidance Areas. Option 4 represents an approach that builds from some industry-based initiatives and has potential to minimize adverse effects on fishery-related businesses and communities.

What are the impacts of the measures under consideration in Amendment 5?

Under Alternative 3, some/all vessels having a Category A, B, C, or D permit may be prohibited from fishing for, possessing, catching, transferring, or landing herring from the proposed River Herring Protection Areas on all fishing trips using small mesh. The economic impact of this alternative on fishing vessels is the change in profits of these vessels, after accounting for any behavioral changes. Under a spatial closure, the directed herring fleet may undertake different averting behavior to minimize the impact of those spatial closures. Vessels may fish in other areas, likely with lower profits. Vessels may fish in other fisheries, again, likely earning lower profits, or cease fishing operations, in which case they earn zero operating profits. The exact impacts cannot be quantified at this time. However, based on current patterns of use, the impacts are expected to be neutral for vessels that use purse seine gear. The impacts are expected to be negative for vessels that use trawl gear to harvest herring.

Measures to Establish Criteria for Midwater Trawl Access to Groundfish Closed Areas (Section 3.4 of Draft Amendment 5)

Alternatives 1 and 2 are not likely to result in significant impacts on fishery-related businesses and communities. Alternative 1 would maintain the measures in place that currently govern the Atlantic herring fishery and the associated fishery-related businesses and communities. Alternative 2 would eliminate the Closed Area I sampling provisions and the requirement that vessels take an observer on any trip that may enter Closed Area I. This alternative would likely have positive impacts on fishery-related businesses and communities because it increases flexibility and fishing opportunities while decreasing the regulatory burden associated with fishing in Closed Area I.

Under Alternative 3, 100% observer coverage would be required on midwater trawl vessels fishing in the groundfish closed areas. Using $1,200 per NEFOP-day as the cost of a day of monitoring, the total costs of this observer coverage is estimated at $254,400. However, based on observer days allocated through the current SBRM process, the midwater trawl fleet is likely to receive about 30% coverage. Therefore, the additional impacts to the fishing industry are likely to be approximately $169,000 if industry-funded observers are utilized to cover the additional cost in the groundfish closed areas (see Section 5.2 of the Draft Amendment 5 document for more information). If observer coverage is industry-funded, it is possible that herring vessels will avoid fishing in these areas more often (depending on markets, fish availability, fuel prices, and other factors) because fishing in the groundfish closed areas would be more expensive.

The expected impacts of Alternative 4(A) are similar to the expected impacts of Alternative 3 because this option requires 100% observer coverage in all of the groundfish closed areas. Restrictions on fishing practices as a result of the additional requirements are likely to increase costs of fishing slightly. The other potential impact is diminishing flexibility since the vessel operator would be required to provide notice if fishing in any of the year-round closed areas was contemplated. The requirement that a vessel must leave a Closed

What are the impacts of the measures under consideration in Amendment 5?

Area acts as a disincentive to slip a nets; however, this requirement may not promote safety-at-sea.

Alternative 5 proposes to close the year-round groundfish closed areas to midwater trawl vessels participating in the herring fishery. This alternative would reduce revenues for the midwater trawl fishery, and the number of midwater trawl trips would likely also decrease. While 12% of revenues for the midwater trawl fishery were located in the five closed areas (see analysis in Draft Amendment 5 document), this effort and revenue is not likely to completely disappear. Instead, the midwater fleet is likely to fish in other, less productive areas. This will increase costs for the fleet. The purse seine fleet is likely to benefit from additional catch due to the exclusion of trawl gear from the Western Gulf of Maine Closed Area portion of Area 1A.

The tables on the following pages summarize the potential impacts of the management measures under consideration in Amendment 5, when compared to the no action alternative.

	Potential Impacts of the Proposed Adjustments to the Fishery Management Plan (Section 3.1)			
Measure Description	**VEC 1: Atlantic Herring**	**VEC 2: Non-Target Species /Other Fisheries**	**VECs 3 and 4: Essential Fish Habitat and Protected Resources**	**VEC 5: Fishery Related Businesses and Communities**
Section 3.1.1, Regulatory Definitions: Proposed regulatory definitions for *offload* and *transfer at sea*	Low Positive Measures are administrative and not likely to affect the amount of herring for harvest or fishing effort, but may improve catch reporting by clarifying how catch is handled	Neutral Measures are administrative and not likely to affect non-target species encountered in the herring fishery	Neutral Measures are administrative and not likely to affect EFH or Protected Resources that may be encountered by the herring fishery	Low Positive Measures are administrative and not likely to affect the amount of herring for harvest or fishing effort, but may improve catch reporting by clarifying how catch is handled
Section 3.1.2, Administrative/General Provisions: -Expand possession limits to vessels working cooperatively -Eliminate the VMS power down provision - At-sea Dealer Permit	Low Positive Measures are administrative and not likely to affect the amount of herring for harvest or fishing effort, but may improve catch reporting by clarifying how catch is handled	Neutral Measures are administrative and not likely to affect non-target species encountered in the herring fishery	Neutral Measures are administrative and not likely to affect EFH or Protected Resources that may be encountered by the herring fishery	Low Positive Measures are administrative and not likely to affect the amount of herring for harvest or fishing effort, but may improve catch reporting by clarifying how catch is handled
Section 3.1.3, Carrier Vessels: Option 2 - allow carriers to declare in/out through VMS to eliminate the 7-day minimum enrollment Option 3 - dual option allows SQ for carriers with no VMS	Neutral Measures are administrative and not likely to affect the amount of herring for harvest or fishing effort	Neutral Measures are administrative and not likely to affect non-target species encountered in the herring fishery	Neutral Measures are administrative and not likely to affect EFH or Protected Resources that may be encountered by the herring fishery	Low Negative/Low Positive Option 2 would increase flexibility for limited access vessel but may negatively impact open access vessels that would need to purchase ($1,750-$3,300) and operate ($40-$100/month) a VMS; Option 3 increases flexibility for all vessels without the additional cost of purchasing/ operating a VMS
Section 3.1.3.3, Transfers at Sea: Option 2 - Category A and B vessels only Option 3 - prohibit transfers to non-permitted vessels	Neutral Measures are administrative and not likely to affect the amount of herring for harvest or fishing effort	Neutral Measures are administrative and not likely to affect non-target species encountered in the herring fishery	Neutral Measures are administrative and not likely to affect EFH or Protected Resources that may be encountered by the herring fishery	Low Negative Option 2 decreases flexibility of Category C and D vessels; Option 3 decreases flexibility for all herring vessels by prohibiting vessels from selling herring at sea as lobster bait; Options 2 and 3 increase reporting burden but should have minimal negative economic impacts as less than 0.5% of catch is transferred at sea

Measure Description	Potential Impacts of the Proposed Adjustments to the Fishery Management Plan (Section 3.1) Continued			
	VEC 1: Atlantic Herring	**VEC 2: Non-Target Species /Other Fisheries**	**VECs 3 and 4: Essential Fish Habitat and Protected Resources**	**VEC 5: Fishery Related Business and Communities**
Section 3.1.4: Trip Notification Requirements Option 2 - modify/extend pre-trip notification requirements and add VMS gear declaration Option 3 - extend pre-landing notification requirement	Low Positive Herring harvest or fishing effort is not expected to change, but catch accounting and/or the tracking of catch may improve; either may improve allocation of observers and help ensure the timely sampling of the Atlantic herring fishery	Neutral Measures are administrative and not likely to affect non-target species encountered in the herring fishery	Neutral Measures are administrative and not likely to affect EFH or Protected Resources that may be encountered by the herring fishery	Low Positive Options 2 and 3 will increase reporting burden, but measures should provide consistency regarding which vessels are subject to the pre-trip and pre-landing notifications and extending notification requirements will likely improve allocation of observer coverage and management uncertainty can therefore be reduced.
Section 3.1.5: Reporting Requirements for Federally Permitted Dealers Option 2 - require dealers to weigh all fish Sub-Option 2A and 2B– requirement for annual/weekly reporting of catch composition estimation method Sub-Option 2C – vessel owner/operator confirmation of SAFIS	Low Positive/Unknown Measures are administrative and not likely to affect the amount of herring for harvest or fishing effort; weighing of fish on scales should improve catch accounting and reduce uncertainty; impacts of Sub-Options depend on dealer decisions	Low Positive/Unknown Measures are administrative and not likely to affect the amount of harvest or fishing effort; weighing of fish on scales should improve catch accounting and reduce uncertainty; impacts of Sub-Options depend on dealer decisions	Neutral Measures are not likely to affect EFH or Protected Resources; Sub-Options is not likely to improve separation of protected resources	Unknown/Low Negative Sub-Options would require extra time and effort for owner/operators; unclear how this measure will be administered/enforced; likely to be burdensome depending on how the provisions are implemented
Section 3.1.6: Changes to Open Access Provisions for Limited Access Mackerel Vessels in Areas 2/3 Option 2 - 20K pound possession limit of LA mackerel vessels with OA herring permit Option 3 - 10K pound possession limit option for LA mackerel vessels with OA herring permit	Neutral Increases the potential for targeted fishing for herring in SNE and MA areas; should not be a concern for herring because of quota management (controls F) but impact on inshore stock depends on timing of catch and stock component mixing	Unknown Impacts will depend largely on how many vessels/which tiers the Council agrees to apply these options to; will also depend on if additional measures are implemented to monitor or manage the catch of non-target species in the times and areas where vessels with the new mackerel permit may fish	Low Negative Increase in effort may lead to more encounters with EFH and/or Protected Resources, however the effort increase is expected to be minimal based on the magnitude of the overall fishery	Positive Could decrease the occurrence of regulatory discards and increase revenues for vessels that qualify for this permit category; vast majority of mackerel are landed by vessels which are not subject to the 3 mt possession limit; equity issue between LA herring and mackerel permit holders may be resolved by permitting similar levels of non-directed catch in both fisheries

	Potential Impacts of the Catch Monitoring at Sea Alternatives (Section 3.2)			
Measure Description	**VEC 1: Atlantic Herring**	**VEC 2: Non-Target Species /Other Fisheries**	**VECs 3 and 4: Essential Fish Habitat and Protected Resources**	**VEC 5: Fishery Related Business and Communities**
Section 3.2.1.2, Alternative 2 - 100% Observer Coverage: Funding Option 2 - federal and industry funds States as Service Providers Option 2 - states authorized	Positive Benefits to resource would be highest under this alternative because it increases the likelihood of better documenting herring catch the most; may improve the precision of estimates of discards and/or landed bycatch; long-term effects may have low positive effects; relationship between observer coverage and precision important to consider at high levels of coverage	Positive May be difficult, if not impossible, to generate bycatch estimates for non-target species like river herring with a CV of zero; may increase precision and capture rare events; may not be feasible; analysis of coverage shows increase in precision may not occur; although could shift funding from other fisheries	Neutral/Unknown Measures are not likely to affect EFH; the effects to Protected Resources are dependent on the amount of funding	Potentially High Negative Impacts depend on funding options for observer coverage; would only create negative impacts on herring-related businesses or communities if Federal funds were not used to pay for the additional observer coverage; full cost of 100% coverage of the A/B/C herring fishery is likely to be approximately $2.5M per year
Section 3.2.1.3, Alternative 3 - Require SBRM Coverage Levels as Minimum: Funding Option 2 - federal and industry funds	Low Positive May improve the precision of estimates of discards and/or landed bycatch; long-term effects may have low positive effects	Unknown May improve estimates of bycatch due to increased sample sizes; although could shift sampling resources away from other fisheries, meaning less precise estimates of bycatch and greater uncertainty of impacts to resource	Neutral Measures are not likely to affect EFH or Protected Resources that may be encountered by the herring fishery	Potentially Low Negative Impacts depend on funding options for observer coverage; would negatively impact herring-related businesses if the industry has to pay for coverage
Section 3.2.1.4, Alternative 4 - Council Specified Targets: Funding Option 2 - federal and industry funds	Low Positive May improve the precision of estimates of discards and/or landed bycatch; long-term effects may have low positive effects	Positive Allocation of additional observer coverage of river herring and haddock may lead to a great understanding and reliability of their bycatch estimates; would not impact the SBRM allocation scheme, and would therefore not cause other fisheries to be under-sampled	Neutral/Low Positive Measures are not likely to affect EFH; Protected Resources may benefit from additional monitoring	Potentially Negative Impacts depend on funding options for observer coverage; would negatively impact herring-related businesses if the industry has to pay for coverage; depends on the Council-specified targets/priorities

Measure Description	Potential Impacts of the Catch Monitoring at Sea Alternatives (Section 3.2) Continued VEC 1: Atlantic Herring	VEC 2: Non-Target Species /Other Fisheries	VECs 3 and 4: Essential Fish Habitat and Protected Resources	VEC 5: Fishery Related Businesses and Communities
Section 3.2.2.2, Additional Measures Improve Sampling: Option 2A - requirements for a safe sampling station Option 2B - requirements for reasonable assistance Option 2C - requirements to provide notice Option 2D - requirements for trips with multiple vessels Option 2E - pair trawl communication Option 2F - visual access to net/codend	Neutral May have little impact on the Atlantic herring resource; several of the measures may provide some additional information on the contents of slipped nets, discards, and landed catch, but likely to be qualitative	Low Positive Several of the measures may provide some additional information on the contents of slipped nets, discards, and landed catch, but likely to be qualitative	Neutral Measures are not likely to affect EFH or Protected Resources	Neutral Minimal direct economic impacts on the herring fishery; the proposed steps for improving or maximizing sampling at sea are currently a part of every herring vessels' normal operating practices, according to interviewed captains; it is unknown how this measure may affect purse seine operations; any economic impacts to the herring fishery will be through increased administrative and regulatory burden, but expected to be slight
Section 3.2.3.2, Measures to Address Net Slippage: Option 2 - require released catch affidavit for slippage events	Unknown May improve accounting of Atlantic herring catch but still represents an estimate; may therefore be redundant and unlikely to affect herring resource	Neutral May improve accounting of non-target species/other fisheries catch, but still represents an estimate	Neutral Released catch affidavits are not likely to affect EFH or Protected Resources	Neutral Minimal impacts on the directed herring fishery
Section 3.2.3.3, Measures to Address Net Slippage: Option 3 - CAI Sampling Provisions	Positive Likely to improve accounting of Atlantic herring catch; may improve statistics used in stock assessment and reduce uncertainty to an unknown degree	Low Positive Likely to improve accounting of non-target species/other fisheries	Low Positive Observer coverage levels are not likely to affect EFH; information gathering for Protected Resources may benefit from increased coverage	Potentially Low Negative Minimal direct economic impacts on the herring fishery; however there may be new challenges associated with bringing operational discards on board for some vessels; increased times spent pumping fish to be sampled and observed; it is unknown how this measure may affect purse seine operations

	Potential Impacts of the Management Measures to Address River Herring Bycatch (Section 3.3)			
Measure Description	**VEC 1: Atlantic Herring**	**VEC 2: Non-Target Species /Other Fisheries**	**VECs 3 and 4: Essential Fish Habitat and Protected Resources**	**VEC 5: Fishery Related Businesses and Communities**
Section 3.3.2.2.1, 3.3.2.2.2, and 3.3.2.2.3; Alternative 2 - Monitoring/Avoidance Management Options: Option 1 - 100% Observer Coverage Option 2 - CAI sampling provisions Option 3 - trigger based monitoring	Low Positive No direct biological impact on the herring resource; indirect long-term benefits likely to result from improvements to catch sampling, increased sampling, and a reduction in unobserved catch	Positive May improve understanding of river herring encounters in the Atlantic herring fishery through focused monitoring and could lead to possible reductions in river herring mortality if the fleet avoids those areas; more monitoring may mean more bycatch/discards information in specific areas where river herring may be missed; monitoring specific areas instead of across the full range of the species may miss important river herring encounters by the fleet	Low Positive Observer coverage levels are not likely to affect EFH; information gathering for Protected Resources may benefit from increased coverage	Negative Potential for increased costs associated with industry payment for observers; could trigger additional losses, thereby affecting bait supplies; slightly higher regulatory/compliance costs; indirect users of the river herring resource may benefit if higher stock levels of river herring are achieved; uncertainty of trigger mechanisms makes business planning difficult; complexity of trigger reporting options likely to be very challenging for fishery participants to provide accurate catch information in a real-time manner; impact may be mitigated for shrimp fishery and large-mesh bottom trawl vessels if exemption is approved
Section 3.3.2.2.4, Alternative 2 - Monitoring/Avoidance Management Options: Option 4 - two phase bycatch avoidance approach based on SFC project	Neutral No direct biological impact on the herring resource; indirect long-term benefits if the industry can work cooperatively to develop a long-term avoidance strategy	Potentially Positive Could be reductions in river herring mortality in the bimonthly avoidance areas; would need to be adequate incentives in place for the fleet to avoid the areas	Neutral The shift in effort is not likely to affect EFH or Protected Resources	Low Positive Collaboration with trusted institutions may allow herring fishery participants to participate in observations and facilitate monitoring/sampling that will lead to appropriate adjustments of Monitoring/Avoidance Areas and to the development of avoidance strategies; could ultimately reduce costs associated with bycatch avoidance because the industry would likely prioritize cost-effectiveness when developing strategies

	Potential Impacts of the Management Measures to Address River Herring Bycatch (Section 3.3)			
Measure Description	**VEC 1: Atlantic Herring**	**VEC 2: Non-Target Species /Other Fisheries**	**VECs 3 and 4: Essential Fish Habitat and Protected Resources**	**VEC 5: Fishery Related Businesses and Communities**
Section 3.3.3.2.1, Alternative 3 - River Herring Protection: Option 1 - closed areas	Low Positive Not likely to affect total removals of herring from the fishery; many of the blocks proposed for seasonal closure under Alternative 3 overlap substantially with the herring fishery, suggesting that directed herring fishing effort may be reduced, at least seasonally, in some of the areas; other fishing activity is likely to occur, though, and any short-term benefits to the resource are likely small and difficult to quantify	Positive May provide river herring protection during at-sea migrations, leading to reductions in mortality; fixed protection areas would not provide river herring mortality protection outside of protection areas; open areas could therefore have increased river herring encounter rates, depending on year-to-year variability associated with river herring distribution	Unknown Closed areas levels are not likely to affect EFH; Protected Resources impacts are unknown due to uncertainty in shift of effort	Negative Decreases in revenue in the directed fishery and/or increases in costs of fishing may occur with the closures; trawl fishery participants during the winter season may experience hardship due to the overlap with Protection Areas; may be straight-forward option to enforce; economic and social costs may be incurred though the variability of the hotspots; impact may be mitigated for shrimp fishery and large-mesh bottom trawl vessels if exemption is approved
Section 3.3.3.2.2, Alternative 3 - River Herring Protection: Option 2 - trigger based closed areas	Low Positive Not likely to affect total removals of herring from the fishery; many of the blocks proposed for seasonal closure under Alternative 3 overlap substantially with the herring fishery, suggesting that directed herring fishing effort may be reduced, at least seasonally, in some of the areas; other fishing activity is likely to occur, though, and any short-term benefits to the resource are likely small and difficult to quantify	Low Positive May provide river herring protection during at-sea migrations, reducing mortality; fixed protection areas would not provide river herring protection outside of the areas; open areas could therefore have increased river herring encounter rates, depending on year-to-year variability associated with river herring distribution; triggered closures may not be implemented quickly enough to protect river herring during migration	Unknown Closed areas levels are not likely to affect EFH; Protected Resources impacts are unknown due to uncertainty in shift of effort	Negative Decreases in revenue in the directed fishery and/or increases in costs of fishing may occur with the closures; trawl fishery participants during the winter season may experience hardship due to the overlap with Protection Areas; economic and social costs may be incurred though the variability of the hotspots, complexity of reporting catch under triggers, and uncertainty associated with reaching the triggers during the fishing year

Measure Description	Potential Impacts of the Management Measures to Address Midwater Trawl Access to Groundfish Closed Areas (Section 3.4)			
	VEC 1: Atlantic Herring	**VEC 2: Non-Target Species /Other Fisheries**	**VECs 3 and 4: Essential Fish Habitat and Protected Resources**	**VEC 5: Fishery Related Businesses and Communities**
Section 3.4.1, Status Quo Alternatives 1, 2: No Action/ Pre-CAI Provisions	Neutral/Low Negative Maintain current provisions or adopt pre-CAI provisions; Alt 2 less restrictive by eliminating CAI sampling provisions	Neutral/Low Negative Maintain current provisions or adopt pre-CAI provisions; Alt 2 less restrictive by eliminating CAI sampling provisions	Neutral Maintain current provisions or adopt pre-CAI provisions; Alt 2 less restrictive by eliminating CAI sampling provisions	Potentially Positive No impact (status quo); Alt 2 increases flexibility and fishing opportunities while decreasing the regulatory burden associated with fishing in CAI
Section 3.4.2, Alternative 3: 100% observer coverage in closed areas	Low Positive No direct biological impact on the herring resource; indirect long-term benefits likely to result from improvements to catch sampling, increased sampling, and a reduction in unobserved catch	Low Positive May improve accounting and precision of estimates of discards and/or landed bycatch for non-target species, especially groundfish (i.e. haddock, cod); almost all groundfish catch by herring vessels is haddock, which is already managed under a catch cap	Low Positive Observer coverage levels are not likely to affect EFH; information gathering for Protected Resources may benefit from increased coverage	Potentially Low Negative Impacts depend on funding options for observer coverage; would only create negative impacts on herring-related businesses or communities if Federal funds were not used to pay for the additional observer coverage
Section 3.4.3, Alternative 4: Apply CAI provisions Option 4A - 100% observer coverage Option 4B - Less than 100% observer coverage	Low Positive No direct biological impact on the herring resource; indirect long-term benefits likely to result from improvements to catch sampling, increased sampling, and a reduction in unobserved catch	Low Positive Likely to improve accounting of non-target species/other fisheries; may improve estimation of principle bycatch species (herring, haddock, river herring, etc.)	Low Positive Observer coverage levels are not likely to affect EFH; information gathering for Protected Resources may benefit from increased coverage	Potentially Low Negative Minimal direct economic impacts on the herring fishery; however there may be new challenges associated with bringing operational discards on board for some vessels; unknown how measure may affect purse seine operations; diminishing flexibility may result since the vessel operator would be required to provide notice if fishing in any of the closed areas
Section 3.4.4, Alternative 5: Closed Areas - prohibit midwater trawl fishing in year-round closed areas	Neutral/Low Positive Not likely to affect total removals because of shifts in fishing effort; may be beneficial for herring in Georges Bank closures (CAI and CAII) and in the more inshore closures in the Nantucket Lightship Closure, GOM Closure, and Cashes Ledge Closures; may offer protection for biodiversity rich areas	Positive May offer protection against groundfish mortality extended beyond existing gear exclusions; may be beneficial for haddock in GB closures (CAI and CAII) and a diverse suite of species (such as river herring, shad, and mackerel) in the more inshore closures in the Nantucket Lightship Closure, GOM Closure, and Cashes Ledge Closures; may offer protection for biodiversity rich areas	Neutral/Unknown Closed areas levels are not likely to affect EFH; Protected Resources impacts are unknown due to uncertainty in shift of effort	Negative Would likely reduce revenues for the midwater trawl fishery; number of midwater trawl trips would likely also decrease; midwater fleet is likely to fish in other, less productive areas while purse seine fleet benefits from their exclusion

Atlantic States Marine Fisheries Commission

Atlantic Herring Advisory Panel

Conference Call Summary

April 9, 2012

Present: Jenny Bichrest (ME), David Ellenton (MA, Chair), Jeff Kaelin (NJ), Peter Moore (ME), Patrick Paquette (MA), Dana Rice (ME), Mary-Beth Tooley (ME), Steve Weiner (MA), and Chris Vonderweidt (ASMFC Staff).

Observers: Lori Steele (NEFMC)

The Atlantic Herring Advisory Panel (AP) held a conference call to review New England Fishery Management Council (NEMFC) Draft Amendment 5 to the Fishery Management Plan for Atlantic Herring (Amendment 5). The Atlantic Herring Section (Section) asked the AP to provide feedback on Draft Amendment 5, which they will consider when developing written comments to the NEFMC on the document.

The AP meeting began with ASMFC staff explaining that the AP report will be forwarded to the Atlantic Herring (Section) and a subset of its members (Working Group) will review the comments before developing draft comments for submission to the New England Fishery Management Council on behalf of the Section. The Section will review the Working Group's draft comments during their meeting on April 30, 2012.

Before discussing the document itself, AP members commented that they should have discussed Amendment 5 at a daylong meeting, rather than a conference call. Members commented that this document is too complicated and large to be thoroughly reviewed on a conference call. Additionally, there was concern that not commenting on an option could be misconstrued as an endorsement of it; and the call format would not allow them to comment on all options. Finally, members were also concerned about the poor turnout with only 8 of 18 members present for the call.

Following the general discussion of call format and attendance, members reviewed the document as follows. A copy of the Amendment 5 Public Hearing Document was mailed to each AP member prior to the call and the group generally worked from this 83 page document.

3.1.1 Regulatory Definitions (Transfer at Sea and Offload)

The AP supports Option A (No Action), because Option B will complicate the process. Comments included:

- Unclear as to what the point of this section is. It is supposed to clear up and simplify the process but appears to make it more complicated.
- Ok with language that is being suggested. Agree that permits should match up and vessels should be bound by the most restrictive possession limit. Not 100% sure I fully understand it. Nothing that jumps out as more restrictive than current regulations. If one intent is to minimize the opportunity for catch to be double counted there may be some value in the changes proposed.

3.1.2 Administrative/General Provisions

The AP unanimously supports a combination of 2B (eliminate VMS "power down" provision) and 2C (establish "at sea" dealer permit) of the B options. Comments included:

- An at sea dealer permit would help with accurate reporting as long the at sea dealer is clearly identified as the one who will sell the herring. This is similar to transport truck requirement.
- Option 2B will make the power down provision consistent for all permit holders.
- Beneficial if double counting is eliminated.
- Tuna fishermen should not have to obtain a dealer permit.

3.1.3.2 Measures to Address Carrier Vessels

The AP unanimously supports 3.1.3.2.3 Option 3, dual option for carriers (VMS or LOA). Comments included:

- Option 3 is best because it allows flexibility.
- Why is the minimum 7 day enrolment period necessary?
- VMS option gives flexibility to switch from carrying to fishing.
- Carriers should not be required to have VMS.
- Do not understand this section well enough to know if carriers should have VMS or not. Makes sense that any boat landings herring should have VMS and the Government should supply them at no cost as they did for the pelagic longline fleet.

3.1.3.3 Measures to Address Transfer at Sea

The AP unanimously supports 3.1.3.3.1 Option 1, no action. Comments included:

- Status quo is preferred because the other options are too restrictive.
- How will this impact tuna fishermen who buy herring at sea for bait.

3.1.4 Trip Notification Requirements

The AP unanimously supports a combination of 3.1.4.2 Option 2 (modify & extend pre-trip notification) and 3.1.4.3 Option 3 (extend pre-landing notification). Comments included:

- D permit holders, on a directed herring trip, should be held to the same notification requirements as other permits in all management areas.
- Table 49, Page 22, indicates that only about 100 D permit holders are landing herring
- If a vessel wants to fish for herring they should notify NMFS to allow them to place an observer on board.
- These notification requirements are not burdensome.

3.1.5 Reporting Requirements for Herring Dealers

Some AP members supports 3.1.5.1 Option 1, no action and one member supported Option 2, 2B (weigh all fish, document for each landing event). Comments included:

- Option 2B is preferred because it includes an allowance for dealers to explain how they estimate the catch by species.
- This option is offensive because it implies that dealers are unsure about the weight of their product.
- It is impossible for all dealers to weigh fish the same way.
- Any requirement to weight all fish should specify that onboard dipping tanks are an acceptable means to weigh fish.
- This section is too vague and more detail would be helpful. We are unsure how this will be implemented.
- The herring industry has been a volumetric fishery and survived using our own baselines.
- A requirement to weigh all fish will lead to more confusion.
- This concept is far from being developed enough to implement. The Council needs to work with industry to flush out the details if they are serious about weighing all fish.
- The document clearly states that the impacts of these measures are unknown so why are they being proposed.

3.1.6 Changes to Open Access Permit Provisions for Limited Access Mackerel Vessels in Area 2/3

The AP unanimously supports Option 2 (increase open access possession limit to 20,000 pounds in Area 2/3 for vessels with federal limited access mackerel permit. Comments included:

- The 20K limit is close to the incidental catch allowance in the mackerel plan (25,000 pounds).
- This will reduce discards of herring in the mackerel fishery.

Catch Monitoring At Sea:

3.2.1 Observer Coverage on Limited Access Herring Vessels

The AP did not specify what their preferred options are. AP members are generally supportive of observer coverage but cannot afford to pay over a thousand dollars per observer. Comments included:

- The industry supports 100% observer coverage in the near future but the current cost is unaffordable. Industry members can pay a maximum of 325.00 per day (rate being paid by H&G fleet on West Coast.
- 100% observer coverage should only be required for a two years and discontinued once sufficient data is collected and reviewed by PDT
- Opposed to designated two-year "sunset" provision. The Council can review and change coverage requirements after sufficient data has been collected.
- There is no scientific need for 100% observer coverage. SBRM was developed to establish scientifically valid adequate coverage levels. The NEFMC Herring PDT has not recommended 100% observer coverage.
- Should require 100% coverage for A & B only but should make a real attempt to get the observer cost down. Compare how observer programs are run elsewhere.
- Do not implement until observer cost becomes affordable.
- 100% coverage would be fine if the cost was lower.
- The waiver form is important because fishermen need to be able to fish even if an observer is not available.
- NMFS should always have observers available if required.
- This is a great issue for conservation partners to help with cost and contribute towards improving monitoring.
- Require 100% coverage but make the government pay for it.

3.2.2 Measures to Improve/Maximize Sea Sampling

The AP is unanimously not opposed to Sub-Options 2A, 2B, 2C, 2D, 2E, and 2F of 3.2.2.2 Option 2. Comments included:

- Captains already comply with these when vessels have observers on board.
- The industry already has an excellent relationship with the observer program and there is no problem that necessitated development of these options.

3.2.3 Measures to Address Net Slippage

The AP was divided on this issue. Six of the call participants support 3.2.3.1 Option 1 (no action); and two members support Sub-Option 4C of 3.2.3.4 Option 4 (Closed Area I provisions with trip termination at 10 events).

Comments from members in support of Option 1, no action, included:

- We are completely opposed to Option 4, because the measures are punitive in nature and not constructive to the ongoing cooperation between captains and observers.
- It is ridiculous that shoreside monitoring is not included but these requirements are.
- We are opposed to CAI provisions. The data does not support a relationship between closed areas and incidental catch in the herring fishery.
- These measures are overkill.
- These requirements are operationally impossible. The hydraulics cannot pull the net over the side rail. Rings and tacks on a zipper line will not come through the block. You cannot purse a net on the deck.
- Slippage is a myth.
- A small volume (around 100 pounds) of operational discards are a reality for trawl and purse seine herring vessels but are more prevalent with purse seine. The way this is defined, all purse seine trips would be considered "slippage events".
- Fishermen would retain all fish in their nets if it were possible. No one wants to let catch go. You should penalize anyone 100,000 pounds for 100 pounds of operational discards.
- Before implementing these requirements, observers should document each time they cannot see the cod end of net. If it is found to be common, then the problem should be addressed in the future.

Comments from members in support of Sub-Option 4C of 3.2.3.4 Option 4 (Closed Area I provisions with trip termination at 10 events) included:

- Having an independent set of eyes seeing what is in the codend of the net will benefit monitoring and close any loophole where fishermen could conceal undesirable catch.
- All catch should be sampled and an observer cannot sample what they do not have access to.
- The trip termination provides an incentive to minimize slippage.
- There should be a clear definition of what amount constitutes "operational discards" and what amount constitutes "slippage".
- Opposed to allowing slipped catch affidavits.

3.2.4 Maximized Retention Alternative (Experimental Fishery)

The AP unanimously supports 3.2.4.1 Alternative 1, no action. Comments included:

- It is ridiculous that a 100 year old fishery would become experimental. This will only lead to punitive measures.
- This would be a waste of time and resources to pursue.

Three AP members (Jenny Bichrest, Patrick Paquette, and Steve Weiner) had schedule conflicts and left the call at noon, three hours after the call began. The following recommendations were made by the remaining call participants.

3.3 Measures to Address River Herring Bycatch

Due to time constraints, the AP did not discuss details of every Alternative, Option, and Sub-Option in Section 3.3, but preferred to instead state which Option they support with the understanding that they are opposed to the other alternatives. Simply put, AP members unanimously support 3.3.2.2.4 Option 4 (two-phase bycatch avoidance approach SMAST); and are opposed to all other alternatives in Section 3.3. Comments included:

- Move along rules work because they are not punitive and allow the fishery to operate.
- Provisions in the Magnuson-Stevens Act require the fleet minimize bycatch and require the Council and Agency to realize Optimal Yield from the directed herring fishery.
- The move along rule is preferred because it is flexible and removes fishing pressure in the area of concern. The other options in this section are too rigid and cannot be modified if concentrations of river herring occur outside of closed areas.
- The complexity of earlier options would make compliance burdensome and difficult to follow.
- Recent SMAST analysis has shown that the monitoring/avoidance and trigger areas do not overlap areas with the highest concentration of river herring. Implementation of measures in these areas could shift fishing pressure to areas with higher concentrations of river herring and have the opposite effect as intended.
- Catch caps are not feasible at this time. Should not implement them until they can be developed in a scientifically defensible way.
- The SMAST approach will minimize river herring bycatch.

3.4 Measures to Address Midwater Trawl Access to Groundfish Closed Areas

The AP unanimously supports Alternative 2, pre-closed area I Provisions. Members did not elaborate other than to state the alternative that they prefer. It was later clarified that members oppose CAI provisions in general for similar reasons to 3.2.3 above.

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

DRAFT Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Samoset Hotel
Rockland, Maine
March 2, 2012, 9 a.m.

Hearing Officer: Terry Stockwell
Other Council Members in Attendance: Mary Beth Tooley
Council Staff: Lori Steele
Attendance: Dave Ellenton, Sean Mahoney, Rick Usher, Dave Mason, Don Sproul, Rich Ruais, Barry Murgita, Shawn Rockett, Zack Klyver, Pete Douvanjo, Jim Ruhle, Chris Weiner, Barry Gibson, Arnold Nickerson, Gary Libby, Kim Libby, Ted Ames, Mike Brewer, Lisa Kushner, Frank Ohara, Robert Eugley, Dana Hammond, Karin Spitfire, Scott McNamma, Glenn Robbins, Roger Fleming, Lauren Wahl, Trevor Lyle (approximately 50 people)

Mr. Stockwell introduced Council members and staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the NEFMC Amendment 5 public hearing document.

After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5. Initially, comments were solicited section-by-section, but because of the overlapping nature of the issues/measures in Amendment 5, the floor was opened to comments on any elements of the draft amendment and public hearing document.

Public Comments

Glenn Lawrence, F/V Double Eagle (Herring Carrier): I'm not sure what the requirement means that I will have to accurately weigh all fish that I have to deliver to my customers. We are not really set up for that. It's like a building with barrels that we pump fish into. Is volume going to be OK for that?

(Ms. Steele clarified that this is the kind of input that the Council is seeking regarding the logistical issues associated with a requirement for dealers to weigh all fish.)

I was guessing that you were targeting million pound carriers that load trucks all day long. I only have a thousand bushels, and that measures out the same every time.

Rich Ruais, American Bluefin Tuna Association (ABTA): (Mr. Ruais asked for clarification regarding the comment process and indicated that he would like to comment generally on several sections of the draft amendment and asked for clarification about comments on the draft amendment versus Draft EIS)

I recognize that there will be more public hearings and then again on DEIS, so we won't be lacking for time to submit comments. ABTA will submit written comments.

Tuna fishermen are legitimate stakeholders in this issue because it's known that reason they migrate at all are for feeding and reproducing. It is also known that in New England their favorite food is herring, so how goes the herring is how goes the bluefin tuna fishery. That's why tuna fishermen started CHOIR. We are very pleased to see progress to date and will continue to follow this through.

One thing I am struck with thinking about the herring plan and the bluefin plan is that that both of them are based upon false scientific premises, and they are both huge issues. What got this problem started with pair trawling and midwater trawling in the herring plan was the scientists at the Northeast Fisheries Science Center announcing that the once extirpated stock on Georges Bank was now back and you could take a million metric tons for several years without having any impact on the spawning biomass, and that you could have a sustainable yield of about 400,000 metric tons every year. And that opened a lot of eyes and brought businessmen into the fishery. And they were prepared, when dealing in a fishery with that volume, that you want to be operating with very large vessels with a million ton capacity. That was a false premise. We know see based on the revised science that the best MSYs are going to be substantially lower than that. With bluefin, quickly, the false premise was that you could draw a line in the middle of the Atlantic Ocean and assume mixing doesn't happen and that you could rebuild the stock on the other side. We were held to strict regulation on one side of the ocean while nothing was happening on the other side. We wasted an incredible amount of money and disruption to the entire New England fishery based on that. It was an interesting parallel between the two fisheries.

ABTA is very concerned about five areas of the plan. First, implementing 100% observer coverage on A and B vessels may be the most critical component of the amendment. We don't believe you can rely on self-reporting. We are also concerned about observer effect as we move forward in time. It is not unreasonable to suggest 100% observer coverage on targeted fisheries like this. For example, the Gulf of Mexico pelagic longline fleet, because of concerns about fishing during the bluefin spawning season. To wrap this up, the Feds did find that they had the manpower to provide very high coverage. They have demonstrated they can target the resources for fisheries in dire need of ground-truthing and basic information on the fisheries. Also, the midwater trawlers have a lot of privileges in the fishery, and what comes along with this is the need to cooperate with management.

The second recommendation we feel strongly about is that the Council should implement Closed Area I provisions with trip termination after ten events to reduce dumping on Category A and B vessels.

The third concern is that the Council should implement measures to require weighing of catches across the fishery. We started this one back in the 1990s when arguments were being made that the herring FMP was one of the best plans because we had a Hard TAC, but yet there was nothing to deal with underages and overages, and that catches are not physically weighed. It's hard to make a claim that fishery is being controlled by a hard TAC when you are not weighing the fish. You need to find a way to weigh the catch through measures that are not overly burdensome to the industry or that require major investment by processors.

The second to last comment I will make is that the Council should prohibit midwater trawl vessels participating in the herring fishery from access to groundfish closed areas. We know that

midwater trawling is a bit of a misnomer, and the gear is capable of fishing on the bottom. It is not fair to groundfish fishermen or anyone else that they are allowed to fish there.

We pushed hard for seasonal GOM closure from June-September because of the localized resource depletion we saw, and the noise and fear factor the midwater trawl boats were causing that move the bluefin out. We were encouraging them to move offshore. We are sensitive to recommend now that we have been forced offshore because they still continue to fish inshore right up to the beginning of the season, and the herring stock is reduced in the Gulf of Maine as a result of that. The small tuna boats have been pushed offshore to northeast peak of Georges Bank carrying fuel bladders, and it is a very unsafe condition. And then, as soon as we find the tuna, the pair trawl vessels come there. I don't know how we solve this, whether it will take a series of time/area closures so the two fisheries can coexist, or whether managers will recognize that it was a mistake to begin with to allow vessels of that size and that efficiency to come into that fishery. It was a legitimate honest mistake based on false scientific information that suggested a much higher TAC that would have required an industrialized fishery to catch that fish.

(Chris Weiner from CHOIR asked a clarifying question regarding if/how the river herring measures may apply to Category D permit holders.)

Gary Libby, Port Clyde, ME: lobsterman, groundfisherman from Port Clyde ME. I am also shrimp fisherman.

I would like to see 100% observer coverage on A/B vessels only because they account for 97-98% of landings in the fishery. If we get that much coverage, the guys fishing under the C and D permits on smaller boats inshore would have an opportunity to go fishing without being forced to use herring observers and paying for them out of pocket, which I don't think they would be able to afford to do. That would cover the guys that are in river herring too. The catch by C and D is incidental. I think we could do an estimation of the catch of the 1-3% of the total that those guys may encounter.

The second point would about the Closed Area 1 rules. I am in favor of trip termination after ten events. There has to be some sort of accountability for either slipping or dumping. Knowing that dogfish is an exemption, I think this should be on A and B vessels once again because they are the major part of the fishery.

In terms of catch weighing, I was up in the air with this. I talked to a bait dealer in Port Clyde about this. And based on the conversation I had with him yesterday, I think that what they are doing now is accurate, and if it isn't broken, don't fix it. The dewatering has been a problem. I have been through plenty Committee meetings and discussed this one issue. I think the estimations are pretty good. I know there are a lot of folks who don't understand how you can get an accurate weight that way, but when I go lobstering, I buy bait out of barrels that hold three fish totes. And every one of those barrels all year has three fish totes in it, so it's accurate to a percentage, I'm sure. And I think it's pretty close.

The most important part of this amendment, to me, is restricting midwater trawl and pair trawls from the groundfish closed areas. I have had fishermen in Port Clyde give me their take, and they say closed is closed. They don't believe there should be any activity in these closed areas. I think that under the habitat amendment, we may be able to reach that when those areas get re-

defined. For this amendment, I don't believe that there should be access in there, but if access is allowed, I want 100% observer coverage. If it gets too expensive for the industry, I would like to see provisions put in for on-board video cameras. I used these last summer on my groundfish trips. When the observers realize there is a camera on the deck, we get better performance from the observers. They don't take tows off, they are there for every sample. If nothing else, we get better data if we use them.

Jim Ruhle, Wanchese NC: (asked a question/commented on the public hearing process and how comments from one individual are weighed/valued versus comments that are signed by multiple individuals)

The observed trips that have taken place on my boat should carry as much weight, if not more, than anything else. Observer reports should be best available data. Since Amendment 4, the level of coverage on the herring fleet has doubled to the point where you are at a very high number of observed trips. It is critical to recognize that this information is best available data. The first thing that will be said during the meeting in June is that the information has not been analyzed and we cannot incorporate it. You can, in fact, analyze it by going forward with the components of this amendment that you have data for, and state clearly that when new data is analyzed and a scientific determination is made from that information – at that point, you will act with the information that is needed to make a reasonable determination of what is going on.

I am here to represent traditional small boat bottom trawl herring fleet that primarily fishes in Rhode Island. I sat on the Herring Committee as the Mid-Atlantic Council representative through the development of Amendment 1. I am involved with a fishery now that is the cleanest fishery I have ever participated in in my life. You don't have to take my word for it. I have enough observer data on my boat that this is no longer anecdotal. When I can provide to you levels of bycatch in the directed herring fleet that are less than a fraction of a percent, in the one-eighth to one quarter of a percent, this has to be included in the information. The truth is in the data. The industry that I am involved in, even the midwater boats, have reached out to get help and verify what we are talking about. I am in the study fleet and the SMAST bycatch avoidance program, as well as traditional observer coverage that takes place. And dockside monitoring of the catch takes place – not every trip, but if I am fishing rail to rail with six boats, the catch from three will be monitored, and the catch from the other three will be identical.

The abundance of these fish is at an all-time high now. I have been fishing 47 years. 85% of Area 2 was taken from the tip of Jamestown Island to the north end of Block Island this year. It is incredible that much fish can be taken from that small of an area.

We have experienced a year this year that we have never seen before. The bycatch avoidance program would have failed this year. Every alternative in the bycatch avoidance program would have failed this year because the proposed areas have no fish in them other than dogfish. Every one was too far offshore. This year, unlike any other year we have seen, the herring traditionally migrate from the beach out 20-30 miles. This year, the fish all came down 2-3 miles, one narrow piece of water. The fish, each year class, kept replenishing themselves. The race to fish for herring this year was the best thing that could have happened because it targeted a clean fishery for any size fish you wanted.

The only way to have a successful bycatch avoidance program is to have it in real time, just like with the scallop fishery and yellowtails. And just like we did with a small group of fishermen this year, we reported daily and got an email every 2-3 days with bycatch areas. We knew where the bycatch areas were. The results of this year's SMAST program need to be expanded. The potential for that is a very positive functional program that does what you want it to do. It never works to draw boxes. All the areas you suggest in this document to close were slammed with dogfish, and there were no herring there.

As an industry, we do not target river herring. In my opinion, the assessment is going to fail because they are not separating bluebacks and alewives. They don't necessarily co-exist. There are many issues going on with river herring that have nothing to do with bycatch. My concern with river herring is to verify with the bycatch that we are not responsible. There has been significant degradation of habitat, and of rivers and streams. Look at sturgeon. You can pollute a river for river herring with light and sound. These fish are very sensitive. The regime shift that has taken place from Florida to Maine with every species – the "Northeast Push" – has got to be seen as part of this problem. The entire herring fleet can demonstrate that the bycatch levels associated to the herring trawlers is minimal.

When it comes to observer coverage, there is an easy way to fix this. I fish responsibly. We have come forward and done everything we could to verify everything we are telling you. It is not anecdotal anymore. It is scientifically-supported. The study fleet is considered almost as high level of confidence as an observed trip. That's self-reporting by the industry, with everything you get – ocean temperatures on every tow, tow times – everything you get with the study fleet is now being recognized, and I think it will continue to be so.

To determine the observer coverage, the Council can review the performance of every boat in the herring fishery. You will find that the majority of players have fished responsibly for the most of their careers. Everybody can have interaction with another resource – it occurs, but the level and number of times is another thing. There are a handful of boats that have bycatch events. They are the ones that deserve 100% observer coverage. Those of us who have demonstrated responsible fishing year after year do not. We deserve the random observer coverage that is adequate to meet SBRM levels. We are there, and it is not anecdotal anymore.

I cannot fish for any other species that I have a permit for as clean as I can for herring. Bycatch is the result of management measures. Bycatch isn't a bad thing at certain levels. It is fully misunderstood. I cannot do better than I can in the herring fishery. I am excited to go fishing every day for herring because you are going to be catching a lot of clean fish. The most rewarding part is that when you establish yourself in the marketplace, you know your price. You know how many fish you are going to catch, and you can help other fishermen find clean catch. You are doing what's right for the resource and the industry, and it's fun.

In terms of weighing the fish, all of us in RI unload the same way – we pump RSW product into trucks. That truck is how we get paid. That is all you need to know. The trucks traditionally hold 22 vats. It's 1,800 pounds per vat. You can get 1,900 pounds in it, you can get 1,700 pounds in it, but we don't have time to make the determination. Keep them at a level the driver wants. When a truck gets to where it's going, 2-3 of those vats are weighed, and then the average is carried across the truck. I haven't had a single truck come back this year far from 1,800 pounds to the vat. And that's how I get paid, and that's the only number you need to worry about. The plant isn't going to pick out 20 or 30 pounds here and there out of a vat. It's

an average, and it does work. To simplify my reporting, I have a dealer permit so that I know I report exactly what the VTR shows that I am catching. I just pass the VTR to myself, and I have not had any issues with this.

I am representing 9 boats out of RI, all single bottom trawl vessels. They will participate but don't have time to submit written comments. I don't have time to submit written comments. But take it to hear that regardless of others opinions, this is a clean fishery. Look at the data created since the implementation of Amendment 4. Use the observer data to make your determination for Amendment 5.

The Council can approve, disapprove, partially approve this amendment. My suggestion with Amendment 5 is to go forward with the non-controversial elements in June, and take the time to analyze and make the right decisions with the right data for the other components. Just establish a time certain, and you can get there.

Glenn Robbins, F/V Western Sea: I have been fishing for over 40 years. I represent the purse seiners. I have traditionally fished with a seine, and we have hardly any bycatch. In terms of trawlers, Jimmy probably does as good as anyone, and I have fished with some of the small boats with my seine down there. We have touched bottom, and we haven't caught much groundfish down there. But in the Gulf of Maine, I have run into more groundfish. I have caught pollock on Jeffreys, and I have had some codfish. I have never caught a haddock in over 40 years. But now we are starting to target herring on Georges Bank, and there is more haddock being caught. There is a problem with trawlers, we know that – and they are not midwater trawlers, they are bottom trawlers. Just as they outlawed pair trawling for codfish, they should do that with trawlers in the Gulf of Maine, especially in those closed areas – you cannot let trawlers in a closed area.

In terms of weighing fish – we used to weigh them as hogshead, then bushels, now pounds. Every time I sell a herring, I try to get the most for my buck. The carriers deliver to the islands – they don't have scales, but the totes or bins have been measured, and fish have been weighed for a long time. It will be complicated to weigh the way that they come in. Some come into port, and the fish go on a conveyor belt and get weighed after they get into a box. The best way I can see is to probably weigh the truck before and after, and subtract out a little water depending on whether it's small fish or large fish.

Mary Beth Tooley, O'Hara Corporation: I support Jim Ruhle's comments. I am speaking for the O'Hara Corp. We operate two midwater trawl/purse seine vessels and have been in the fishery for a number of years. I think that I would like to stress that we support the goals and objectives for the monitoring program – to create a cost effective and administratively feasible program. We support observer coverage in the fishery. The information that has been gathered to date has been helpful to understand our fishery. But the problem in the northeast is the cost of the program. Many people have made comments about the size of the vessels and made parallels to vessels that fish in the Bering Sea. In the Bering Sea, a pollock vessel pays $325 day for an observer, and the gross for that vessel is more than the entire gross for the herring fishery in the northeast. The greatest challenge we have is cost effectiveness.

We support observer coverage in this fishery, even to a level of 100%, but it has to be cost effective, and the industry has to be able to afford it. It is not a beneficial program for any of us if the first thing it does is get rid of every mid-sized to small vessel in the fleet because they cannot afford to go fishing anymore.

We did have a provision in the amendment for a dockside monitoring program in this fishery. It was taken out about a year ago. We think the Council should reconsider that and move forward. The Science Center had concerns, which is why it was taken out. But for a volume fishery like herring, it is the best way to sample the fish and the fishery, and we think the Council should reconsider that.

Ed Snell, jig fisherman from southern ME: I also have seven seasons of experience on party fishing boats and whale watch boats.

I support 100% observer coverage for A and B permits. When they catch that much of the fishery, it only makes sense. I also support closures for river herring. There is data that suggests that a significant reason for decline of inshore groundfish stocks is because the groundfish were there feeding on staging river herring. Having those nearshore fisheries are vital for small boat fishermen, as well as bluefin tuna fishermen, and whale watch boats because they only have four hours to make their trips. Having the whales close to shore is valuable.

It makes no sense for midwater trawlers to be in groundfish closed areas. Closed areas are closed areas. Lobster fishermen should not be using haddock for bait.

Some of the problems we have is because these boats fish rail to rail. That kind of concentration is detrimental and disrupts the migrations of a lot of fish looking to feed on herring.

I am young fishermen, and I am not going to inherit any money from midwater trawl boats, but I will inherit what they leave behind.

Barry Gibson, NE Regional Director for Recreational Fishing Alliance (RFA): RFA urges 100% observer coverage on Category A and B boats. The amount of discards these boats are capable of fully warrants observer coverage, and this is done in other parts of the country.

Second, RFA encourages trip termination after 10 dumping or slippage events in Closed Area I to dis-incentivize non-legitimate dumping incidents.

Third, we feel the Council should implement measures to require the actual weighing of catch rather than estimates.

Finally, RFA feels that access by midwater trawlers to groundfish closed areas should be prohibited. I served on Council from 1986-1995, a number of those years as Chairman of the Groundfish Committee, when we developed these areas and implement restrictions to protect spawning cod and other groundfish. As we know, herring nets are quite capable of catching groundfish of any size. These fish need these areas to reproduce, something we are all encouraging, especially given the results of the latest cod assessment and recent projections on haddock and other species. RFA believes that we need to do everything we can to protect groundfish and bolster the stocks.

Karin Spitfire, river herring advocate: I am a river herring advocate. I eat fish. I have been eating sardines and herring my whole life. In 2007, I heard the herring quotas were cut in half and I started paying attention. I am here to provide an outsider point of view for a minute.

Since the Grand Banks collapsed in the 70s, we are down to shellfish and herring. All the other species are a dribble of their former abundance. Fishermen were not included in the dialogue or regulation and science until recently. The fishermen who used to see herring talked about being able to walk across the coves on top of them along the coast of ME.

It is also astonishing to me that fish are still being managed by species instead of a holistic ecosystem approach. This is 2012, and we know that everything is connected to everything. I want you to choose the most restrictive amendments. I want 100% observation on Category A and B because they are the bulk of the herring catch. Based on what I have heard today, I don't need to weigh the fish. The river herring areas should be closed. Groundfish closed areas should be closed and restricted to herring vessels as well as the groundfish fisheries. I couldn't understand the information about the dumping restrictions, but I would like that to be the most restrictive on Category A and B vessels. I am asking for this because we all know that this is already a big compromise. There are many people who would ban midwater trawlers altogether, and that isn't even on the table. It is also a big compromise because the data we are using are based on what fish we have left and has no relationship to what we had before the fisheries got to this state, when we couldn't possibly have counted herring or cod.

Zack Klyver, Bar Harbor Whale Watch: We favor Section 3.2.1.2 Alternative 2, Option 2 – 100% observer coverage and government/industry funding. We got involved in this issue because of a bycatch event we saw in 2003, where we saw hundreds of thousands of pounds of whiting on the water. We saw the impact of what can go wrong. We feel that 100% is necessary to get the good information. This will always be a political issue unless we get the information. We need this information for stock assessments, for determining mortality of herring and other fisheries. Having the full amount of information is critical. We hear that midwater trawl and pair trawl boats don't want to catch groundfish or occasionally marine mammals, and don't want to dump fish, but that these are the prices of doing business. This mentality has to end. It is no longer the wild west out there.

35% observer coverage doesn't get us there. To me, 100% observer coverage is the compromise. This is because these large boats are so mobile. Without observers, they can fish close to the bottom, they can be more aggressive about pursuing fish they may not be sure are herring, they can fish closer to mammals, and they can dump fish. Having observers will bring transparency to the process that is critical During Amendment 1, we heard a lot of stories of what is capable with bycatch – codends full of seals, pods of dolphins being caught, tons of groundfish and striped bass. Without 100% coverage on these larger boats, there will always be speculation. The Council needs this to be good stewards of the resource.

Regarding funding, if the industry believes they have a clean fishery, they should support 100% observer coverage because that will clear up the question. I am glad to hear that they are in support of 100% coverage. To me, if the bigger boats need to pay for observers, then that is fair. That should be the price of doing business. They are reaping the benefits. If they have a sustainable fishery that is managed well and is healthy, they will get the windfall for that. Having an observer is not too much to ask.

Don Sproul, Bath, ME: Tuna Fisherman, representing NETC and ABTA. I agree with Rich Ruais 100%. I think 100% coverage is needed on boats that are going to take tonnage – not day boats. Herring is a clean fishery, but if you take that trawl and you rig it for the bottom, it's not a clean fishery.

A closed area is a closed area. If you close down 95, you are not going to just let the big trucks through. It's closed, no question.

The thing that worries me is when I was on a mooring, and was being asked to move. The boat went around me, and then I saw miles and miles of cod floating everywhere, dead. After seeing that, I followed the boat and was amazed at the destruction. I have seen it in small boats. Once the fish come up, they will go back dead, whether you look at it or not. The better solution is to put the bag on the boat, land it on the deck, and count it. You better be able to use the technology to read what you got. If you make the trawl, you are responsible for it, and it counts against you regardless of what it is. If you have to terminate your trip, that will teach people to be more accountable. Accountability is the big thing.

Pete Douvarjo, VP Maine Charterboat Captain's Association: I am about the furthest north charter boat captain in the State of ME. I support 100% observer coverage on A and B boats, and I believe they should stay out of the closed areas. Closed is closed, and I too have seen evidence of bycatch. Everyone needs herring, so I think fairness is something that we should think about. This is something that shouldn't be taken by a few big boats.

Mike Brewer, purse seine captain: We hold a Category A permit, but I am a small purse seine boat – the smallest purse seiner in the fleet, 50 foot. I am all for the observers, but on my boat, it's very small and confined and almost dangerous to take the extra person on the boat. I already have four guys on there, and he has so much equipment – I am for the observers, but it is very hard to take him every trip.

Kim Libby, Port Clyde ME: I also agree with 100% observer coverage. I think it is a misnomer to call midwater trawl vessels midwater trawl because there are documented instances where they run into groundfish. Also, a remark was made about bottom sensors not being good because they would keep breaking. If you are towing midwater, how do you break bottom sensors?

I have an observation, or a rhetorical question. Midwater and pair trawlers are banned pretty much everywhere else in the United States. Why is it okay to have them here in the Northeast, where fishermen have struggled and sacrificed, when they are capable of localized depletion and impacting the ecosystem because herring is a forage fish. Everything feeds on herring. It almost makes you wonder sometimes if there is insider stuff going on. We all know how corrupt Washington is, and palms are greased on a daily basis.

Chris Weiner, ABTA and CHOIR: I am speaking for myself. I am a commercial harpooner for bluefin tuna, third generation.

The reason we got involved is because I don't think any fishery other than ours had spent more time around the midwater trawl fleet. Everywhere they went, they were there. We were impacted greatly by this. Most people I have talked to about this amendment just wants the gear banned. Most people I talk to want this. This amendment is a compromise.

Some people are fighting against 100% observer coverage when there are 12-14 or so boats catching almost the whole herring quota. They caught 20,000 metric tons in a month and a half. I would like to know where all that went because there aren't that many lobstermen around right now. It would be smart for that part of the industry to realize that everyone is out to get rid of this gear. We have been looking for a way to make this work – herring and tuna keep me up at night. Herring is half the battle when it comes to tuna. I fully respect Jimmy, but I disagree that there is more herring around than I have ever seen. We had some herring in one area this summer, and then the fleet came in October 1 and caught 20,000 mt right off Cape Elizabeth. The whole fleet was there. The point is that things are not looking good, and we wouldn't be at these meetings if we thought they were looking good. I support 100% coverage. I don't think that is too much to ask for 150 foot boats using pair trawls.

The dumping rules are important too. We aren't making these things up. I have been around the fleet, and we know guys that work on these boats. Dumping has been a problem in the past. Closed Area I rules showed that the gear can be used cleaner. The problem now is that you have prioritized coverage offshore which is why the coverage level has gone up. I would like to know the coverage in the other areas, but 30% coverage and 90% offshore trips covered, what does that leave for the rest of the areas? It's less than 30%. I got involved in this not because of what's happening five miles from the Canadian line. I worry about the inshore. I think that you need to go with 100% to get the whole picture. I don't think it's crazy to ask that, and it's better than what a lot of people are asking for. We hear all the time that it is a clean fishery. If someone were saying this about my fishery, I would want 100% coverage right now.

Sean Mahoney, Conservation Law Foundation (CLF): We support 100% at-sea monitoring and not having midwater trawls in groundfish closed areas, and also the weighing provisions, Section 3.1.5 Option 2. Two things I would like to focus on:

The first is that we think it's very important to have an effective accountability system to discourage dumping. To that end, we support Alternative 4D in Section 3.2.3.4, which would be trip termination after five slippage events for the herring management areas.

The second is the catch limit or cap on the total amount of river herring. We support 3.3.5 but we think that it should be modified to require immediate implementation of a river herring catch cap. This has been a five-year process, and it's important that this be ready to be implemented for 2013.

Peter Speech, tuna fisherman: I am a commercial bluefin tuna fisherman, and I agree with Rich Ruais that we should 100% observer coverage on A and B vessels, and that closed areas should stay closed, especially to pair trawl and midwater trawl boats.

Jim Ruhle, F/V Darren R, Wanchese NC: A couple suggestions as this plan goes forward.

First, regarding the bycatch levels for river herring in the southern New England small mesh fishery – I think that prior to 2008, there was some confusion with species misidentification. But more importantly, the threshold utilized was 1000 pounds, and that is not a directed herring trip. That is a mixed trawl trip where the guy is trying to catch a lot of everything. If the threshold to identify directed trips was moved to at least 10,000, that would be helpful, just get it away from the lower numbers.

There has been a lot of talk about slippage and dumping. I think it would be a very good idea for the observer program to implement protocol changes so that observers ask when they board a vessel if they have any fish on the boat. I have done this several times this winter. I have come in with three trucks of fish, and only two show up. Then, I go back out and catch more and bring three trucks next time. To eliminate concern that some fish are being pumped overboard and not sold, the simple solution is ask the observer to record that information so that concerns about dumping can be eliminated.

There have been some issues regarding an ecosystem approach. It's a great idea, but until the Magnuson-Stevens Act is reauthorized and it is clear that all species don't' have to be at historical levels at the same time, ecosystem management can't work. You would need to fish down stocks at high abundance levels and stay off stocks that are not. Magnuson does not allow the Councils that liberty. My concerns with this approach have to do with predator prey relations. I don't disagree that the herring are not where they have traditionally been, but Area 2 closed, and last year, Area 3 closed for one of the first times. This suggests to me that the fish have moved further offshore east and north. Look at the whole picture. The number of herring that are out there now is going to negatively affect the potential for mackerel to increase. They all eat the same thing. Butterfish, river herring, sea herring, and mackerel are all plankton feeders, and there is not enough out there to sustain everything at high levels.

Everyone says you need 100% observer coverage. I do believe that if it was analyzed, the fleet that fished Area 3 would have about 70-80% range of coverage. Look at the performance of the fleet since the implementation of Amendment 4. 100% may be required for some fleets, but the data should indicate that it may not be necessary across the board. Lastly, the seiners need to recognize that this applies to them too. It's not a gear type. If the seine fleet doesn't have bycatch issues, why should they be subject to 100% coverage. This should be determined by the performance of the fleet over the last few years.

New England Fishery Management Council
Tannery Building-50 Water Street-Mill 2-Newburyport, MA 01950

ATTENDANCE SHEET
Travel Authorization # 12-34

ATTENDANCE AT: Herring Amendment 5 Public Hearing

DATE: Friday, March 2, 2012 LOCATION: Samoset Hotel (ME Fishermen's Forum) Rockport, ME

CERTIFIED BY:

IMPORTANT... Any information provided on this form is subject to Freedom of Information Act (FOIA) disclosure and may be made available to anyone requesting such.

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NEW ENGLAND FISHERY MANAGEMENT COUNCIL

DRAFT Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Sheraton Harborside Hotel
Portsmouth, New Hampshire
March 15, 2012, 7 p.m.

Hearing Officer: Doug Grout
Council Staff: Lori Steele; Talia Bigelow
Attendance: see attached (approximately 60 people)

Mr. Grout introduced Council staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the NEFMC Amendment 5 public hearing document. After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5.

Public Comments

Michael Blanchard, groundfish fisherman, bluefin harpooner, Gloucester MA: I will submit comments in writing. I am speaking tonight as a member of CHOIR and ABTA and a number of other organizations. It's been a long five years. There has been a lot of rocky road, and five years later, it's not any smoother now than when we started. If anything, it's gotten worse. The four points most important points to us are:

1. Require 100% observer coverage – Just having 100% observer coverage in and of itself will alleviate a lot of questions for obvious reasons. If you have someone on the boat all the time, everything will be observed and we'll know what's going on. It is a very valuable fishery monetarily to the industry, as well as the other people and the whole ocean that relies on herring.
2. Second is to prohibit midwater trawlers fishing in groundfish closed areas. It doesn't make sense to have a midwater trawl boat fishing in a groundfish closed area. We now know that they are quite capable of catching groundfish. We have had massive interaction with haddock so much that the Council had to up the TAC that was allowed for the take of juvenile haddock. We would like to see the elimination of midwater trawlers in the groundfish closed areas.
3. Third is accurately weighing the catch. It's hard to believe we can put a man on the moon, but we're going to assume or take someone's word for how much weight of fish they think they caught. We have scales, and in other areas, we have accurately measures and weighed total catches for fishes much like herring. If you look at the Pacific Northwest, the fish are accurately weighed, and that is an important thing to us.
4. The last issue is slippage – it's the termination after 10 events in a given management area. I personally like five events and disincentive of 100,000 deducted from the catch. I think 10 events is too much. But it will at least dis-incentivize the boats and give them a reason to

stay away from a potential dirty set. Or if they are having trouble with the pump, get in and get the pump fixed. We do know for a fact that with midwater trawling, there is no opening the net up and letting the fish swim away like there is with a purse seine, for the most part. If the fish are feedy, if they are small, if they are not herring, they open the net up and the fish swim away.

It has been a long five years. We would like to move forward, and these are the most important points for CHOIR.

Don Swanson, Coastal Conservation Association of NH: Mr. Swanson read a written statement into the record (see attached).

Dave Goethel, Hampton NH: I am a Council member, but I am speaking as an individual who has fished for herring for 28 years. I have a Category C herring permit. This is my only chance to speak on behalf of my own business.

First, I think the entire document should be split between A/B boats, which is the directed fishery, and C/D boats, which are basically incidental catch in other fisheries. Some of my comments may be confounded because I have to assume that the document may stay as written, which a lot of times includes C and D vessels. But I will try to make delineations.

Regarding observers, I don't think you need 100% coverage. I think that you will find the same results with less than 100%. There is a penny exercise we do in the Marine Resource Education Program, which shows that you don't need a census. You can get the same result with less coverage. I think you should consider that because of cost. If you do have 100% coverage, you should have a sunset clause – 100% for a couple of years. Get a baseline, and if you find that you don't have issues that a lot of people think you have, then it goes away. This is incredibly costly no matter who pays. If the goal of having 100% coverage is to get rid of the herring fishery, then let's just have an option to get rid of the fishery. Because requiring 100% coverage on C and D boats will get rid of the herring fishery.

On the trip notification requirements, I think it should be changed to something less than 72 hours. For groundfish, it's 48 hours, and I think that's too long. I don't understand why observers can't be deployed in 24 hours or less. 72 hours is three days. For someone like me who goes every day, that means I am on the phone constantly. That's just unnecessary.

I don't think that there should be any change to the transfer at sea rules – status quo, no change. Option 3 transfers only herring permitted vessels is unenforceable. The Enforcement Committee already said that. Option 2 A and B vessels only is discriminatory. Are they better at reporting than C and D vessels? Or is this an attempt to zero out the people that do most of the transferring?

It is easy to say you should weigh the fish. I think you should come up with volumetric measurements and convert them to weight. For example, a standard tote weighs 100 pounds or 110, just pick a number and that's what we will report. The same can go with grey tubs – 1,000 pounds, whatever it is. It's a perishable product, and we can't be sitting around all day weighing it in the hot sun. It rots. I don't see what the issue is here. Another issue is how you are going to weigh when you pump them into trucks. When the fish get pumped, there is a lot of water in them. You need to consider this from a logical point of view and get to a number everyone can agree on.

River Herring – this is the one that I have a real problem with. Overall, I think you should split it between A/B and C/D. If you don't split it, most of these options will basically close the fishery to people who cannot leave an area. When you close an area to the A/B boats, they will move because they can go anywhere. The C and D boats are mostly day boats and are limited geographically. A lot of them are limited by the rules in other fisheries. For example, I operate in the whiting fishery. We have area 1, a small area in Ipswich bay. If any of these measures to reduce herring bycatch are triggered, the event could occur off central Maine, but the area that would close would be off Ipswich Bay. It doesn't make sense. The people who pay the price are the people who have the least impact on the resource. If you close Ipswich Bay September, October and November, we can't fish. That's the only place we are allowed to go. I don't think that we are responsible for creating the river herring problems since we have been fishing there for over 100 years, and this problem seemed to just pop up over the last ten years. Whiting boats are limited to time and area. We catch herring in the whiting fishery.

I also hope that the Council will consider exempting the shrimp and groundfish fishery. It is the height of irony to me that we would close fisheries with mesh bigger than 5.5 inches. And the shrimp fishery uses a grate and doesn't have much impact on river herring. The river herring has largely left that area by the time the shrimp fishery is open.

On the groundfish closed areas, I understand the sentiments, but I remind people the law of unintended consequences could apply. If you move them out of a groundfish closed area, you could put them into areas with higher concentrations of groundfish. The groundfish areas will change with time. A lot of the closures we have now are combination groundfish /habitat closures. The habitat closures are likely to change, and the groundfish closures may too. If the Council does vote to keep them out of the groundfish closed areas, make sure that it is constructed in a way that you can move the areas in the way that you can move the areas based on how the groundfish actions move those areas around so that there isn't a mismatch.

I would support, as a logical way of dealing with this issue, 100% observer coverage in the closed areas. That would be a more logical way to approach this. I think you would find out if the problem is real or perceived. Since these boats fish inside and outside of the areas on a given trip, if you require 100% coverage, they will either not go into the areas, or they will have an observer for the whole trip.

I think there are a lot of modifications that need to be made to what's finally done here. I think most of these measures would be considered the most restrictive alternatives, but the Council can, and I hope would modify some of these to make them less costly and get the results you would desire, which is accurate monitoring.

Keper Connell, Rye NH: I am a participant in lobstering, tuna fishing, and charters. Herring is fundamental. Regarding observer coverage, I believe it that for the A and B boats.

Also, regarding Closed Area Access, I would disapprove of that and I question how they got access to the closed areas.

Regarding the slippage – how are the slippage numbers set?

The ecology of the Gulf of Maine is fundamental with herring. If we don't have herring, we don't have anything else.

Chris Weiner, ABTA, CHOIR, bluefin fisherman: From the get-go, this was never about C and D boats. Somehow they got figured into this, but it was always just about the A boats in my opinion, and only about half of the A boats. Through a number of ways, certain lobbyists were able to figure the C and D boats into the process. And now, we have this situation that we worried about, where small draggers and small boats that were never intended for this are being brought into the process. This is about the 20 big pair trawlers. That's what this is about. I really hope the Council will focus on those. You need to split them off. There is no reason for a boat like Dave Goethel' s to be included with a 160-foot pair trawler.

With the big A and B boats, you have to have 100%, and that's not too much to ask. Show me another fishery in this country like those boats that doesn't have 100% coverage on boats. It would be great to have 200%. That's the only way you will really get it. We are not asking for that, but when you are on a four-day trip, when is the observer supposed to sleep. In other areas, that's what they have. I don't see how it's too much to ask to put observers on big boats like this. Yesterday, we heard that there is some support for 100% coverage from the industry, and that has us wondering what that is all about. My concern is that there is some support for that, but there will be a big fight on the dumping issue, which is critical. Everyone knows that dumping is going on. If you get a big bag – on the northern end of Jeffreys once, one of the boats we know dumped a mile log of herring with cod and seals mixed in, and the observer report afterwards said "mechanical failure" – that's pretty convenient. You need to fix that problem. You need 100% coverage, and don't even think about putting it on C and D boats. What will end up happening is that you will get nothing out of it. There is a room full of people here that show you that something needs to be done. So focus on the boats that people are worried about.

Tyler McLaughlin, tuna fisherman, Rye NH: I agree with Chris said. When you talk about a clean fishery, midwater trawling is not a clean fishery, midwater trawlers just clean out the ocean. I support 100% observer coverage. 200% would be better because what are you going to do when a guy is sleeping.

We need better oversight. There are interactions with mammals and tuna fish on a common basis. That's not right for any boat. The small boats and the C and D boats don't have those interactions with mammals.

We need to weigh the catch. In the tuna fishery, we get hit hard with dead discards from the offshore swordfish boats. Why does that not apply to the herring fishery.

We need to ban them from closed areas. If other boats can't access those areas, why is it that they can?

It's not too much to ask for boats those size to have 100% observer coverage It's the right way to do it and it's only fair. If they are having interactions with fish they shouldn't be, why isn't it recorded?

Michael Blanchard: I want to clarify my previous comments. I wasn't specific about 100% observer coverage. That would be for Category A and B, not C and D boats. Also for the Category A and B boats was the 10 slippage event provision.

Patrick Paquette, RFA New England: (asked a question about 100% observer coverage – defined as one person per trip or every haul observed?)

My understanding is that pacific pollock refers to 100% observers, and that means everything needs to be watched. That makes 100% mean that everything taken out of the water is watched, that's what we are supporting.

(asked a question about monitoring quotas and in-season quota adjustments)
The overage this year in 1B was a significant amount of bait, and it cost us a lot this year. It's a lot of natural resource to be missing.

Mark Pourier, Stratham NH: I have been involved in fisheries management for over 40 years now. What I find interesting is the addition of the C and D boats into the A and B boats. We know that the problems do not lie with the small day boat fishery.

The euphemism "slippage" troubles me. I used the word "fraud" earlier. Without 200% observer coverage or perhaps even 300% on a four-day trip, we are not seeing everything that is happening 24 hours a day seven days a week. There are cameras on the nets. They know. As a spotter pilot for bluefin tuna industry, I have seen massive shoals of herring disappear when these boats come into an area. Yet they are allowed to do a 50% overage. There seems to be no discipline. In every other fishery, you go over, and you get dinged. These guys don't seem to get dinged. It doesn't make sense. You touched on a measure that is going to happen. We hear "going to," and "might," it happens a lot in fisheries management. Those of us, these guys here, everyone is tired of it might, it may, we hope. It gets old, and that's where the frustration lies.

From a 10,000 foot view, I see these fish are the foundation of every fish that's out there – codfish, haddock, tuna, striped bass, whatever. We are undercutting the foundation. You can't build a house without a good foundation. We aren't watching what happens. Apex predators are moving elsewhere. Fish have tails. There is a reason we are fishing tuna on Georges Bank July-November. These boats shouldn't be there. We have destroyed the inshore fisheries for every apex predator because we are killing the bait. Until we look at how are supposed to build well-run ecosystem-based fisheries management, we are wasting time. This is something people ignore. It needs to be put into the record that we aren't going anywhere until we address this issue. I hope that you will do something about that.

Jim Dufresne, commercial tuna fisherman, Hampton NH: If you take A/B boats and C/D boats, you are comparing apples to oranges. I am not concerned about C and D boats at all. I have fished amongst them. They do their own thing. Having been anchored up and seen A boats come through to drag the ocean, it's clearly a different game they are fishing. A lot of the provisions that have been supported by people in this room are not too much to ask for operations at such a level. Look at the smaller day boats, they have tight budgets, they are gentlemen putting food on the tables for their families. We are talking about large corporations that have astronomical fuel bills to run boats of that size. To ask for some extra oversight is not too much. It's a different game they are in. It's not too much to as for something as helpless as the herring.

Steve Weiner, ABTA, CHOIR, harpoon tuna fisherman, Ogunquit ME: It's important to understand that there is a room full of people here. We have come to meetings for years saying we represent hundreds of fishermen. The fact that they are in the room here – they are filling the rooms. Not all will speak because it's tough to do.

I grew up harpooning the Gulf of Maine. We had purse seine vessels around forever and never had a problem with bait. When the foreign boats were offshore, they drove our herring fishery into the bucket. And it came back. And this is the first time we have had that same kind of effort. They caught more then, but it's the same type of gear, the same type of efficiency, and it's the same type of risk. There isn't a person in the room that wants a fisherman out of business. This is different. These boats have a capability that none of the other boats have. The only boats that have this type of capability are boats on the west coast and in Alaska in this country. And they all 100% or 200% observers, and most pay for their observer coverage. But that's a tricky thing because there are on-the-water costs, off-the-water costs, overhead costs.

One of the things we have to do is find a way to make the observer costs less. We spent some time looking into those west coast operations, and we have gone out and gotten some pricing, and the reality is that I think you can do it for less. One of the reasons we need 100% observer coverage to address the potential for a big event. If you stand up high and look at what's going on, you have a major forage fish in the Gulf of Maine. Everyone is chasing the herring, and to think that these boats are going to tow around through the forage and not get other fish doesn't make sense, whether the observer coverage shows it or not. That's what makes me the most suspicious – when I hear that the observer coverage says that there is no proof that these guys catch codfish. It's crazy. These nets can tow right on the bottom, right to the bottom, and right almost to the surface. To think that these guys are going to tow a net to chase herring around and not catch codfish, haddock, striped bass, not catch bluefin tuna. I would think that bluefin tuna would be one of the hardest things to catch in pair trawl, but they do it, consistently. They did it in Rhode Island numerous times this winter, in January.

I am also worried they fish differently when there are no observers on the boats. I think that the coverage is about 30%, which means that 70% of the time, there is nobody on the boats. I think they will fish differently when there is nobody on the boats. When there are people on the boats, like Closed Area 1, the industry says look, we have proven with 100% or 80% coverage offshore, we are not catching any other fish. I think it proves what we are trying to say, which is when you put people on the boats, these guys know how to fish cleaner. They are fishing cleaner today than when they first came in here, but I believe they do it when there are observers on the boat. A and B boats is all we care about. All I care about is the midwater trawlers – pair trawlers and single trawlers. The A and B boats catch about 97% or 98% of the quota. We need to control the boats that catch about 97% of the quota, which I think may be 20 or 25 boats, no more than 20 or 30 boats catching that 97%. Personally, I am disappointed that we have to put it on the purse seiners, because I don't think that these hearings would be happening and the people would be in this room if it was a purse seine fishery.

I want to reiterate that I support 100% observer coverage, and I do believe they should not be able to fish in the groundfish closed areas. If those groundfish closed areas change, then it should change. They should not be allowed in those areas. The groundfish fishermen have been suffering for a long time, and now they are suffering more. If you can't catch groundfish in an area, shouldn't tow these nets through it.

There needs to be some way to dis-incentivize dumping. The dumping is what drove most of us in this room. A lot was localized depletion, but we are very concerned about dumping. CHOIR came up with a lot of ideas that were shot down, maybe rightfully so. The first one was maximized retention – whatever you catch, you bring in. I think that it may be the best thing in theory, but difficult and I guess impractical. I'm still not convinced that's not the right thing, but it's gone now. The reality is that there needs to be something that keeps these guys from dumping. I am sure there is true mechanical failures, and true safety issues, and times you catch dogfish, but a lot of times, that's just a loophole. We started with one dump means trip termination, and the Council shot that down. So we tried to adapt and got to the five and ten trips so there is some penalty and disincentive.

As far as the weighing goes, I agree that you don't have to weigh every pound of fish but if there are 20 totes on a flatbed truck, and they are all the same tote and weigh 2,000 pounds apiece, then you have 40,000 pounds on that truck. There needs to be a simple way to get to a weight. The idea is to monitor the fishery, don't let the fishermen report to us. There needs to be a method of monitoring the fishery.

I am impressed with all of the people who are here today, but if you really want to make a point about why you are here, then stand up and make a comment.

Tim Virgin, tuna fisherman, Ogunquit ME: I support 100% observer coverage on A and B boats. I agree that the A and B boats are the biggest issues here. The small boats supply local bait needs, and it's a good fishery.

I think we'll be surprised if we really look into how many river herring they catch. I think it's a lot more than has been reported.

I think you have to address slippage I support five incidents of slippage for trip termination.

Jeremy Loomis, Portsmouth NH: I agree with 100% observer coverage of the larger boats. I think there are other ways to get to 200%. I don't think it will be effective if we don't have overnight coverage. There is technology out there – cameras, time lapses, all kinds of different ways we can try to capture that other side when someone is sleeping.

The A and B boats need to be separated from C and D boats in this legislation.

The big boat waste is very alarming and needs to be accounted for. I understand it's a sticky situation, but it's a waste, and it's sad to see it happen.

Chris Adamaitis, lobsterman and part-time tuna fisherman, Portsmouth NH: I agree with 100% observer coverage. I know smaller C and D boats that go groundfishing. I see an observer on the boat every few days. Those guys are out just trying to make a living. The A and B boats are out there cleaning up the whole bottom. I have seen first-hand what goes over the side, and I totally agree with 100% coverage on the A and B boats.

Bill Neelon, whale watch industry: I agree about the damage being done by the big boats. I run charter boats and commercial fished for 30 or 35 years. As a whole, the herring are the lifeline of all the fish – tuna fish, big fish, and the whales. We see it first-hand when those boats come in. We are not here to put any fishery out of business, but we did live with purse seiners. There was never an issue. We never had shortages of anything, and whales were all over Mass Bay and Ipswich Bay.

For the past 10 or 15 years, we have fought this hard. We can tell the whales apart. When they go, we know where they are going, and they are going over to the Bay of Fundy. They are going to Nova Scotia. We get reports back on a daily basis. It's not that far. It's 200 something miles, and they will be there in 24 hours. If there is no food for them here, that's where they end up. Once the boats come in and fish it hard, it's a month before we see whales again. Any whales we see are just transit whales.

I think we need 100% coverage. We have seen what happens. When you walk the docks when the midwater boats are tied up in Gloucester, you see shiny chains. I don't know midwater fishery that comes up with shiny chains. I don't know what's abrasive in the water.

There should be 100% coverage. It will hopefully keep everyone honest. I think it has to be with the big boats. It's not the little day boats, so there has to be a definition in there somewhere.

Erik Anderson, Portsmouth NH: I would like to expand on the consistent comments that have been made here. I believe that this document should split Category A/B versus C/D vessels. I agree with a lot of Dave Goethel' s comments. I also support higher percentage of monitoring on A and B vessels.

For some historical perspective, when I spent nine years on the Council, we dealt with allowing these vessels into this area. They explained themselves, and the Council wasn't clear on what the fishery was at that time, but they sold it to the Council. They said they wouldn't have a problem with groundfish. Now a few years later, they have an allocation of groundfish. These are the things that have developed since the fishery has arrived, and they are well-established. The size of the vessels do not mix well with the historical fisheries that were here prior to when they arrived. They describe themselves as midwater boats, and the midwater nets are in the water column. The fishery can take place in the whole water column, right down very close to the bottom.

They haven't blended well with the other traditional fisheries in the area. When these vessels show up, there is always a problem, whether it's gear conflict, or a variety of other things. I can remember when the fishery arrived, they said they would take observers. It never transpired, and now we are finally getting to that issue to see what's really going on in the fishery. The comments have been relatively consistent here tonight.

Don Swanson, recreational fisherman: I have been a recreational fisherman for almost 50 years. Most of my fishing knowledge is south of Boston. We are concerned down there about the river herring. There has been a moratorium on river herring in Massachusetts for over six years now. There are lots of hotspots recorded in the document. We know where the river herring are during certain times of the year. I would like to see these areas closed down or if they fish for herring, to have 100% coverage on the boats in those areas. It's very tough, especially for the guys I fish with – the problem is that it is illegal for anyone to possess river

herring in Massachusetts, yet they are caught and sold as lobster bait constantly. You should really do something to address river herring in Amendment 5.

Dave Linney, Cape Neddick ME, tuna fisherman: There isn't a fisherman that doesn't understand that herring is the most important thing in the food chain. Everyone understands ecosystems and what the herring do to that system. We are here to try to prevent the useless killing of herring. We understand lobstermen need bait. Some of these herring have to be taken, but there is no sense in wasting them. We need to accurately observe what comes aboard or doesn't come aboard.

We need to accurately get weights. I agree with Dave Goethel that weighing each fish will spoil a lot of herring, but there should be a tote weight, and there should be better methods than having a captain call a weight when he has a vested interest in it. That's like the fox guarding the henhouse.

As far as observer coverage goes, yes only the big boats. If 97% of the herring come from about 20 boats in the A and B category, that's where you put your money. If you can control 97% of it, you've got it licked.

I have seen the herring come and go, mostly go recently. We did live with purse seiners. They seemed to have a clean fishery. You do need 100% coverage – it may take two or three people but it's 100% coverage. You need to monitor every tow on the big boats and control 97% of what comes aboard to make sure there is no waste. I have heard from the boats, the owners and captains, that they fish clean so they have no problem having 100% observation on board because they have nothing to lose. It would make life a lot easier for them because we won't have these hearings if we are all satisfied that things are clean out there and that the quota is set properly. If that gets all that off their back, they should be willing to pay for a share of it, and I think they should. I don't pretend they are getting rich, but certainly the small boats aren't. They could help out with paying for it.

Jenn Kennedy, Blue Ocean Society for Marine Conservation: We are based in Portsmouth. I would like to provide a second voice for whale watch industry. We have seen the difference from when the big midwater boats come into the whale watching in the Gulf of Maine. All the whales disappear. When they weren't allowed to come in during the summer, the whale watching just expanded. Not only is it great for the whales, it is great for tourism and gets more people to come to the area, which is great for everybody.

We also echo CHOIR comments on 100% observer coverage and reducing dumping, and everything they recommend.

Coastal Conservation Association Of New Hampshire
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March 15, 2012

Comments on Draft Amendment 5
Paul J. Howard, Executive Dir.
NEFMC
50 Water St. Mill 2
Newburyport, MA. 01950

Dear Sir

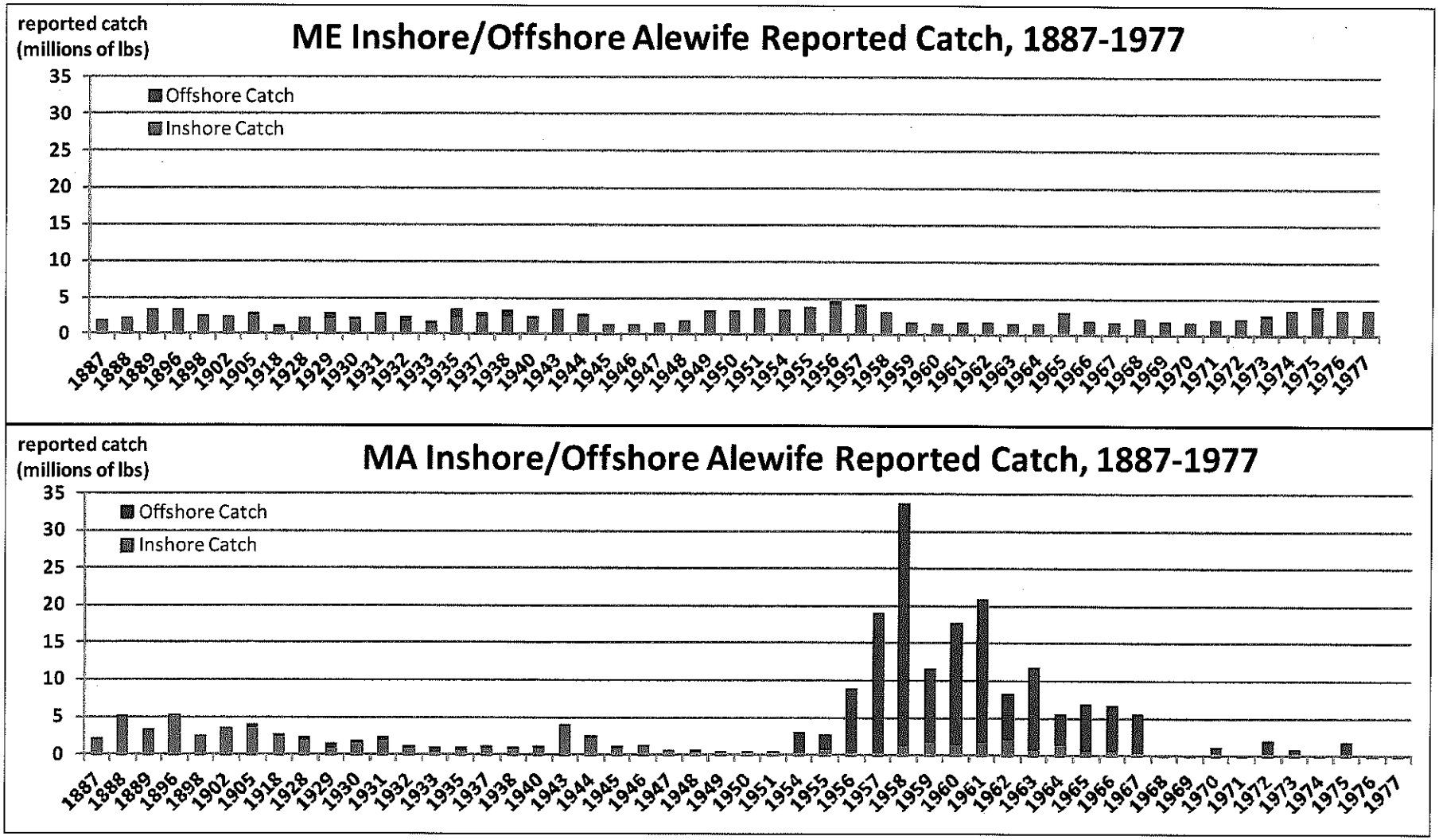
The Coastal Conservation Association of New Hampshire (CCANH) is very concerned regarding upcoming measures being considered regarding the herring fishery. Measures bringing greater accountability are desperately needed. CCANH supports the following alternatives to Amendment 5 as applied to category A and B vessels. We do not feel that the measures sighted below need be applied to the smaller category C and D vessels.

We feel that honest reporting of by catch would be supported by Section 3.2.1.2, alternative 2, calling for 100% at-sea monitoring on all midwater trawl fishing trips. We also support Section 3.2.3.4 alternative 4D, allowing only five fleet wide slippage events per herring management area. Section 3.4.4 alternative 5, eliminating mid water trawling from areas established to promote rebuilding of ground fish stocks, should also be approved. We also would support Section 3.3.5 if it were modified to require immediate implementation of a river herring catch limit on the total amount of river herring caught in the Atlantic herring fishery. Finally, CCANH supports Section 3.1.5 option 2, which would require accurate weighing and reporting of all catch.

We understand that some of these measures could be difficult to institute and enforce, however, due to the critical role that herring play in the ecosystem and economy, instituting these measures is critical if a sustainable herring fishery is to be maintained. Thank you for your consideration of our comments.

Sincerely,

Donald L. Swanson
President, CCANH



Alewife reported catch by home port of Maine (top) or Massachusetts (bottom) from 1887-1977. Catch was aggregated by offshore fishing gears (otter trawls, mid-water trawls, gill nets and purse seines) and inshore fishing gears (pound nets, weirs, trap nets, bag and dip nets, cunner traps, haul or inshore purse seines, and anchor or stake gill nets). Data sources: US Fish Commission Reports, Reports of the Commissioners of Fisheries (under the Department of Commerce), and The Fishery Statistics of the United States (under the Bureau of Commercial Fisheries) USGPO, Washington, D.C. All years listed had explicit data; missing years yielded no data.

Historical data suggests that offshore fishing significantly impacted alewife populations.

- During the period 1887-1977, there were no uniform restrictions on offshore or inshore alewife catch. All alewife that were caught could be sold.
- Red columns are reported catch weight of alewives landed by vessels fishing offshore, primarily seiners targeting mackerel and herring, with some otter trawl catch.
- Blue columns are reported catch weight of alewives landed inshore, primarily by static estuarine and riparian gears targeting alewives.
- The increase in offshore catch precipitated a sharp decline in inshore catch in Massachusetts.
- The relatively low offshore catch in Maine had little impact on Maine's inshore catch, and the difference in the demonstrated impact suggests separate spawning groups of Massachusetts and Maine alewives.

William B. Leavenworth, Ph.D.
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New England Fishery Management Council
Tannery Building-50 Water Street-Mill 2-Newburyport, MA 01950

ATTENDANCE SHEET
Travel Authorization # 12-46

ATTENDANCE AT: Herring Amendment 5 Public Hearing

DATE: Thursday, March 15, 2012 LOCATION: Sheraton Harborside, Portsmouth, NH

CERTIFIED BY: Lori Steele

IMPORTANT… Any information provided on this form is subject to Freedom of Information Act (FOIA) disclosure and may be made available to anyone requesting such.

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NEW ENGLAND FISHERY MANAGEMENT COUNCIL

DRAFT Public Hearing Summary

Amendment 5 to the Atlantic Herring Fishery Management Plan

Massachusetts Division of Marine Fisheries Annisquam River Station
Gloucester, Massachusetts
March 14, 2012, 7 p.m.

Hearing Officer: Doug Grout
Other Council Members in Attendance: David Pierce
Council Staff: Lori Steele
Attendance: see attached (approximately 60 people)

Mr. Grout introduced Council members and staff in attendance and provided some opening comments about the Amendment 5 process. Lori Steele briefed the audience on the NEFMC Amendment 5 public hearing document. After an opportunity to ask questions for clarification, public comments were taken on the measures proposed in Amendment 5.

Public Comments

Richard Prammis, commercial tuna and recreational groundfish fisherman: I would be in favor of 100% coverage in Area 1A and 1B, and to stop the fishing in the groundfish closed areas.

Austin Doher: I am practically retired from fishing. I am here for the observer program. It is a very simple problem if you want to observe. I am talking about the big boats. They go as far as New Jersey and back up. You have million capacity boats working up and down the beach. I think that is great. But if you are talking about management, there is a way to manage, and that is to put people on the boats if you want observers. They don't have to be fishing related, no conflict of interest if you want to do it. I have been fishing 55 years. It's very simple.

I don't understand half of what is in this document. But I know that if you are talking about herring, I wouldn't know the difference between river herring and sea herring, but on my machine, I have seen bunches of herring totally cover my machine. Now in the last years, a little spike here and there. Then I watch them come and put them on shore in Gloucester – 5 inches, 6 inches, 3 inches.

You have an answer for every question but not mine. If you want to manage, it's a compromise between the fishing people and the government people. First, get rid of half the government people. I will never understand this. But I do know the answer for what I have seen. It will probably be another 83 years before I understand where this comes from and why. Management is a compromise between fishermen and managers. It is a livelihood, but that takes two groups to do it. The government, enforcement, and observers. It requires two observers on each big boat, not one. We don't have the money, but we do have the money to put out thousands of pages in these documents.

Steve Weiner, Atlantic Bluefin Tuna Association, Chair of CHOIR: CHOIR is a collation that started in the late 1990s when the midwater trawl and pair trawl vessels showed up in the Gulf of Maine. I harpoon tuna fish. We have to hunt the fish down and look for signs of life. We are looking for where the feed is. It's primarily herring in the Gulf of Maine. These boats went everywhere we went. It felt like they were following us, and to this day, I'm not sure they weren't. Two big boats towing a big net catching a lot of herring. They catch a lot of other fish too. Groundfish, tuna fish, mammals – everything is looking for that herring when we are hunting fish. We started to see tuna disappearing from our waters. At the same time, there was a discussion about the health of the tuna stock. The tuna stock was always very healthy in the western Atlantic. When they swim into an area like the Gulf of Maine, and if there isn't anything to eat, they leave. Right up the road, Canada has had the best year of fishing in the last ten years. I can't say if it's because they banned midwater trawling of herring, but you wonder.

I have been fighting this thing since the late 1990s. I know how the industry thinks, and they know how we think. The reality is that there is a total distrust from the public – our coalition with lobster fishermen, tuna fishermen, groundfish fishermen, whale watchers – there is a total distrust with this gear. When they make a mistake with this gear, it's a big mistake. They say they don't dump much, we don't believe it. I don't believe it. There is not enough observer coverage. 30% trips observed means that 70% trips that are not observed. My experience is that monitoring fishermen is different than allowing them to self-regulate. Observers create change in behavior on boats. The reality is there is about 20-30 boats catching 90% or more of the fish. These are the A and B boats. CHOIR recommends that A and B boats be the focus of the monitoring. CHOIR is asking for 100% observer coverage on A and B vessels.

We are also concerned about dumping. This gear type pretty much pumps the fish aboard. If they have a mechanical failure, safety issue, or dogfish in the net – they are allowed to dump the net. A small or big dragger in New England brings the net aboard as I understand it. You see what's in the bag, you count the fish, and the observer gets to see what's in the catch. There is a concern with the public that as long as the net doesn't come aboard, it's hard to tell what's in the net. Who determines mechanical failure? It might be a legitimate issue, it might not. Same with safety. We have to take this off the table. 100% observer coverage. And we are asking for the provision that after ten dumping events, they have to go home. The problem is that if you don't have an observer on the boats, you don't know if they dumped. So you need 100% observers on the boats.

To me, the most unbelievable thing in the fishery is that these boats have been allowed to tow their nets in the permanent groundfish closed areas. Now we have a real groundfish crisis. Whether that problem is related to this gear, I don't know but the boats shouldn't be towing in those areas. That's the third thing that CHOIR is asking for.

The fourth thing we want is that they weigh the fish. That doesn't mean every fish goes on a scale, but there has to be a formula to allow you to reasonably know the weight that came on the boat is what goes off the boat.

To me, the real concern is the health of this stock. There is a stock assessment is going on now. If anyone has faith in science anymore, we will find out what that assessment says. I can tell you from the fishermen's perspective, and the harpoon fleet – 20-30 guys fishing all summer long, we are all skilled fishermen and we have technology now to look at our machines. And we know there is nowhere near the herring around that there used to be. People that say there is a lot of

herring around must be new to this area. The herring that are around are on the bottom, which is weird. These are older, smaller fish. Why are the fish smaller? They are spawning at a smaller size. Is that fishing pressure?

Underlying this with me and most of the members of CHOIR, we are small fishermen, we want coastal communities survive. This is the worst decision to allow this gear type in the Gulf of Maine and Georges Bank.

Roger Bryson, commercial handgear fisherman, recreational fisherman: I have been fishing for over 30 years. For a lot of years, we would watch the herring come in during October and November, inside Boston and Salem. You used to be able to just look around for bait and jig it up. It was a regular routine. We rebuilt the cod fishery before. It took a long time, and it worked. The fish came back. Then, we had a big meeting to allow the beginning of the midwater trawling. So I asked if now, we are going to let the foreign boats come in and get all the bait. Now, we are in the crisis again because of that. Too many herring are being caught. I don't see the fish anymore in October and November like I used to see. You get a handful of guys that are going to make decent money, and it is going to wipe out the whole fishery. It has a big effect, and it's hard to control. It was a problem from the beginning, and now we are trying to regulate it.

When you are trying to recover a fishery, bait plays a big part. The cod, haddock, pollock – you can't separate it. If you remove a lot of bait, you disturb the whole thing that is going on. I don't want to stop people from fishing, but especially in closed areas, it was problematic from the beginning.

Regarding the tuna – we used to go on Jeffreys year after year. The bait would show up, and then the tuna would show up. Depending on how much bait was in the area would determine how much tuna would reside in the area for the summer. We get a few fish, and now when the midwater trawls come in, they would take a bunch of fish out. Then, there is not enough bait, and the fish leave. We hardly have a fishery at all. It changed the whole fishery. Do whatever you can do to make it better for everyone, not a handful of guys making money, but all of the fisheries from Maine to the Cape.

JJ Johnson, engineer on midwater trawl vessel: I have been a fisherman in Alaska and Russia as well. I was up at the Gulf of Maine Aquarium, and we were watching a size-at-age study saying the herring are getting smaller not from fish pressure, but they are going hungry.

Most evidence with herring that I have seen speaks to a lack of plankton. That's the new science that is coming out. People are wondering why fish are getting smaller. Perhaps some science would help rather than guessing. I have been listening to the same accusations for years without proving any of them. There is a mountain of observer data, and it all says the same thing. Herring fishing with midwater is a clean fishery. We have proven we can fish cleanly in the closed areas. We can stay away from most groundfish except haddock. I have worked with the observers. They all say the same thing. They don't know where these accusations are coming from. This document is the result of a lot of unproven accusations. There is a mountain of evidence refuting those accusations. I would appreciate it if some of that evidence would be published.

Looking at the observer data, you can see that the elimination of midwater trawl fishery leaves the bottom trawl fishery. The environmental impact would be more marine mammals killed, more protected groundfish being killed. The alternative to midwater trawling is not seining. If we would be fishing with bottom trawls, we would be killing more groundfish and marine mammals. That is documented.

As far as the document is concerned, I favor the status quo for most of it. I sat in on the Herring Advisory Panel. And I have seen that this is the result of an agenda and ten-year campaign to ban or severely restrict trawling. My number one concern is those Council members who have taken money from campaigns to ban or restrict trawling and promoting bottom trawling and leasing quota to bottom trawlers. I would like to see them recuse themselves. If you have taken money to ban or restrict a fishery, then your input to that fishery can only be seen as designed to fail management.

Steve Pearlman, Coordinator Watershed Action Alliance of SE Mass: We represent 11 watershed associations from Dorchester Bay to Narragansett Bay. These rivers have historically been herring runs and there is very little left of those runs. A number of our organizations are trying to remove dams and other barriers to fish passage, but we are still not seeing a large return of herring.

We would like (1) the strongest monitoring possible, which includes 100% monitoring of A and B vessels and a system that discourages dumping so that everything is counted. (2) We would also like to see immediate caps on herring catches and eliminating fishing in the groundfish areas.

Mark Godfried, Gloucester MA: I am going to raise something that NMFS should have addressed in this document. There would be more herring available to all user groups if NMFS would stop thinking about the National Standard that requires them to consider competitive predators with our fish stocks. We have an uncontrollable population of pinnipeds. Seals are removing about 40 million pounds of herring per day out of the biomass in the Gulf of Maine. Somewhere in these plans, there has to be a way to reduce this population. We went from 0 seals at Monomoy to over 3300. We have a case of worm infestations. Every cod we catch is loaded with worms. Someone needs to address the fact that we have about 7 million of these things now, and they are like rats with fur.

Tommy Scanlon, charter boat operator Boston MA: I charter for stripers, bluefish, and groundfish. The sight of mile upon mile of striped bass floating dead behind the pair trawlers a couple years ago got my Irish up. The striped bass fishing community is very concerned about the lack of stripers, although they had a good breeding season this year. As a striped bass fisherman, I am concerned that these clean pair trawl vessels are indiscriminate in some areas where they have no business fishing. I don't know why you cannot distinguish between a school of striped bass and a school of herring.

This year, you say haddock is overfished and you want to reduce my charter parties' haddock catch. You know that the pair trawlers are always picking up haddock as a bycatch. They either dump them, or the small ones get mixed in with bait. I am also familiar with a community on the Saugus River, which used to have over 100 boats lobster fishing. Now, there are maybe 18 boats in that fleet. A lot of factors have caused it, but primarily it has been lack of bait. Bait in

the lobster fishery has been herring and pogies. Pogies disappeared so they went with herring. The herring prices get higher, fuel prices get higher, and the fleet goes away. I am also a member of the Stellwagen Bank Charter Boat Association. We want 100% observers on board any and all of the pair trawlers. I don't believe that this is a clean fishing industry. If you are purse seining, you can bring up the purse, you can see the fish, drop it, and 99% will swim away. I don't see that in the pair trawl industry. They have not made any friends in the other fisheries since they started here.

Carmen Lee, Gloucester: I am a concerned citizen from Gloucester. I have been following the issue of industrial trawling and the impact on herring populations. The more I learn, the more alarmed I get. What's happening now with inadequate monitoring, unmanaged river herring catch, dumping catch at sea – these don't make sense to me. I am in favor of greater accountability, greater transparency, and greater oversight. I don't think it is too much to ask for 100% at-sea monitoring, for an immediate catch cap for river herring, and for a requirement to accurately weigh all catch. I feel that this is one of those silent issues that don't make the headlines but will impact all of us in Massachusetts.

Shane Yellin, recreational fisherman: I think we need 100% observer coverage. There is way too much change when people know they are being watched. We also need a cap on the bycatch. It is unacceptable for big midwater trawl and bottom trawl boats to be catching all this river herring when they are in need of recovery. Net slippage is uncontrolled. Captains can dump whenever they want, and it is easy loophole for them. They should only dump when it's an emergency, and they should have to report them.

I have seen videos with what looks like 3 miles of dead stripers floating on the surface behind the midwater trawl vessels. It is terrible. If you are going to fish a giant net that covers most of the water column, and you are fishing for the bait, the predator fish follow the bait. It is way too large of a fishery, too efficient, and it doesn't give the fish a chance.

Also in the last few years, there has been a decline in the health of the striper fishery. Most of it is due to malnutrition, and I know most relates to menhaden. But river herring used to be a major forage food for them. The herring runs near where I fish have dramatically been depleted and we need to do whatever we can to help them rebound.

I would like to see midwater trawlers banned from closed areas. If we are trying to protect a fishery, we shouldn't make exceptions for one type of fishing versus another.

Brian Kelder, Ipswich River Watershed Association: We are a non-profit to restore the natural resources on the Ipswich River. One of our focuses is restoring diadromous fish runs, especially river herring, to sustainable levels. I work on a river that once supported millions of river herring, and now we have a couple hundred to a couple thousand fish coming back each year. We are working to restore the river's capacity by reconnecting habitat and improving water quality and quantity. We are working to remove dams and open up habitat in the freshwater portion of their life cycle.

As we continue to address this, we ask the Council to support our efforts by approving stronger protection for river herring when they are at sea. We support 100% monitoring on all midwater trawl trips and measures to discourage wasteful dumping, slippage. We would support an immediate cap on river herring catch.

Jay Shields, Beverly charter boat captain: I think that anything we can do to enhance the health of the ecosystem is a good thing. When we are dealing with a bait fish like herring, I understand that your job is to ensure viability and yield simultaneously. The best way to do this is by retaining robust populations of a nutrient-dense prey like herring.

From my experience on the water, these vessels are the most indiscriminate that I have ever observed. You can visualize it. There is always predator-prey interactions going on out there. There is very rarely unmolested schools of herring. To think that these boats could operate without tremendous levels of bycatch is absurd. I view these proposals as beneficial for gathering better data. Ultimately, this will create a better ecosystem.

I am in favor of 100% observer coverage and close the restricted area for these vessels. They say they are a clean fishery. The only thing they do is clean out the ocean. Anything we can do to make it more difficult for them to destroy the basis of our ecosystem will benefit everyone.

Fred Jennings, MA State Co-Chair Stripers Forever: We have 5,000 members in MA who are recreational anglers and about 17,000 along the coast. I feel that I speak for what was five or ten years ago 500,000 recreational anglers in Massachusetts alone. In five years, the striped bass recreational catch is down 84%. We are very concerned about the health of the fishery. The economy is threatened. I strongly urge you to place restrictions to protect river herring, which is important forage for striped bass, and 100% monitoring of bycatch, which is also a problem for striped bass.

Nat Moody, First Light Anglers: I run a charter business and tackle shop out of Rowley, MA and Gloucester. I think that the line between operational discards and slippage needs to be very clearly defined. If there are restrictions put on slippage, it will often slide in to operational discards. I don't know how you can deal with this but this is important issue that needs to be addressed.

I am concerned that fish from 1A migrate to Area 2 in the winter time. We have seen the huge recent landings out of Area 2 late in the season. I am afraid that Area 1A fish are being double taken.

I would also like to support 100% observer coverage A and B vessels. I would also like to support closed areas remaining closed to all of these vessels.

Joe Jancewicz, Kensington NH, BOD American Bluefin Tuna Association: Today, I will address the pink section – catch monitoring at sea. I don't believe that there should be any net slippage. If there is net slippage, those dead fish get counted against no one's quota, none whatsoever. If you catch it, you land it.

As far as weighing these fish, it is a hard TAC fishery. How do you manage a hard TAC for fish that are not weighed? It's all estimates. Maybe we should start estimating the groundfish fishery.

Midwater trawl access to groundfish closed areas – the purple section. I have been a scalloper, a dragger, a groundfish fisherman. It bothers me, when you see the boats haul back, that the ground gear is shiny. There are no abrasives in the midwater column. That ground gear gets shiny by dragging on the bottom of the ocean, whether it's sand or gravel. I don't know if they

have rockhopper gear, but I am sure they probably do. I have seen these guys haul back, and I have seen the shiny gear. They should stay completely out of the closed areas. Other people can't go there, so these boats shouldn't. They are called midwater boats, but I beg to differ.

As far as observer coverage – 200% coverage – one man awake at all times.

Mark Vona, charter fisherman, Beverly MA: If there is 30% observer coverage, that means there is no one on the boats 7 out of 10 times the boat leaves the dock. Maybe people behave better if there is someone on there. But if there is nothing to hide, let's get more observer coverage.

Regarding the weight of the fish, if we are three fish over the limit, we face a fine. And these boats come in and estimate the tonnage. Just put everything out in the open. They can make the argument and say there isn't enough coverage, there isn't enough data, give us more and delay things. We need to get more observer coverage, and we need to actually count what comes off the boat.

Tyler McGlaughlin, commercial fisherman, Rye NH: I think it's completely absurd that we don't have 100% observer coverage on these vessels. The destruction and their size, due to the fish that they are chasing, are not compatible. We are talking about boats that tow nets between the two of them and fish between 8 and 14 inches. How is that fair to the species? I have seen it myself since I was 16 years old, and now I am 24 years old. I have seen the ocean go from red out with tons of herring to me having to go miles and miles to find bait.

They should not be able to fish in the closed areas. Other boats can't do it, so why should they?

Peter Mullen, Gloucester MA: I own two midwater trawl vessels and a purse seiner.

It makes me sad to hear the amount of lies spoken here this evening. We had 75% coverage in the groundfish closed areas. How much more do we have to have before people start to believe us? I hate when people get up and lie that there was three miles of stripers that a midwater boat dumped. Show us the proof.

A few years ago, 90,000-100,000 tons taken out of Area 1A in the Gulf of Maine. Now it's down to 26,000 tons. Of that, somewhere between 15 and 20% is taken by midwater boats at the end of the summer. There is plenty of herring in 1A. We went 20 miles out the other day and there was tons of herring.

Down in the MudHole, in the upper reached of Hudson Canyon, right now, there is 40 miles of herring 20 fathom deep. If you made a set with a purse seine right now, you are talking about probably 2-3 millions of tons of fish.

As you know, there is a groundfish problem now. A lot of it was bad management. Boats went out catching codfish and dumped it over the side because of trip limits. Then, something happened with the sectors, but I can tell you that there were millions of pounds of cod dumped over the side. Nobody said a word about it. All the codfish, haddock, and flatfish are going to spawn soon. That's the same time that you will have 2 million metric tons or more herring come through. When they come through, and they are starving, if you think that they are not going to eat all the cod, haddock, shrimp and other spawn that is in the water column, you are making a mistake. You will never rebuild the cod or other stocks if you don't balance the ecosystem.

Everyone is firing at midwater trawlers. Midwater trawl vessels take about 15-20% of the available herring out of the GOM in about six weeks at the end of the summer. We have spread the wealth around, taking fish from Georges Bank, south of the Cape, all the way down to New Jersey. It isn't all concentrated coming from Area 1A.

We have no problem at all taking 100% observer coverage once we figure out a way to pay for it. We can't pay east coast prices. We can probably afford west coast prices, and that's about $320 a day. And I think the government should help us out with it. We will do it to clear our names.

Chris Weiner, bluefin fisherman, ABTA, CHOIR: I disagree about the amount of herring. I am at these meetings because I don't think that there are enough herring out there.

This year, you could drive to the shore and watch the whole fleet catching way more than 15-20% of the 1A quota in the one area we had herring all summer long. Every tuna caught off Maine, almost, this year, was caught within 20 miles of Portland. The second that fishery opened up on October 1 – the same thing happens every year. This year, we had one area of herring, maybe two. The boats came into the area that we fished all summer long and took about 20,000 metric tons in about three weeks. That's not healthy. I agree that the government should put more money into this because this is really important. I support what I said at the last meeting.

Dave Ellenton, Cape Seafoods, Western Sea Fishing Company, Gloucester MA: Western Sea Fishing Co. operating three midwater trawl vessels in Gloucester. I am going to send in written comments.

But I do want to confirm that we have a consensus with a large percentage of vessel owners in Categories A/B/C. We will totally support 100% observer coverage, and we will support paying for those observers at a reasonable rate in comparison to the reasonable rates on the west coast. $325 a day is the rate that we are talking about at the moment with Category A/B/C vessels.

(Audience member asked a question about federal funding for observer coverage.)

JJ Johnson: Publish the observer data in an understandable format for the general public, and then we wouldn't have to listen to the ignorance. If you are going to have 100% coverage, stall the tax payer out and publish the data, help the tax payers out. They are paying for it.

Vito Calomo, Gloucester MA: I heard some interesting comments from the public tonight, something about foreign fishing on herring. I want to clarify that there haven't been foreign vessels for twenty years. I was instrumental in getting rid of foreign vessels in this fishery.

What other fishery on the eastern seaboard or just in the Gulf of Maine has as much coverage as these vessels have?

When we have observers and we are observing the herring industry, why aren't there observers on purse seine vessels? They are catching herring and have bycatch. It should be fair and equal throughout the range, whatever the percentage is.

Peter Mullen: Most countries in Europe measure the tanks. Then, the observer comes down and dips the tank, put a weight down and the weight sits on top of the fish, and then write the measurements down. That goes to a database and they know exactly what comes off the boat. It's about 98% accurate. A lot of boats already have their tanks measured. It's a simple way to do it. The observer on the trip could drop the weight when the boats hit the dock, write the numbers down, and someone else could analyze it. The observer doesn't have to say how much is on the boat.

I'm not sure if NMFS can ever figure it out. We call in every morning and tell them how much fish we have, and yet we still went 1,500 mt over in Area 1B this year east of the Cape. I don't understand how that happens.

New England Fishery Management Council
Tannery Building-50 Water Street-Mill 2-Newburyport, MA 01950

ATTENDANCE SHEET
Travel Authorization # 12-45

ATTENDANCE AT: Herring Amendment 5 Public Hearing

DATE: Wednesday, March 14, 2012 LOCATION: MA DMF, Annisquam, Gloucester, MA

CERTIFIED BY: Lori Steele

IMPORTANT… Any information provided on this form is subject to Freedom of Information Act (FOIA) disclosure and may be made available to anyone requesting such.

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