



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
55 Great Republic Drive  
Gloucester, MA 01930-2276

SEP 20 2013

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

Dear Terry:

I am following up on my July 19, 2013, letter announcing NOAA Fisheries Service's (NMFS's) partial approval of Amendment 5 to the Atlantic Herring Fishery Management Plan (Herring FMP).

Amendment 5 contains many measures that will improve the catch monitoring program for the herring fishery and address bycatch issues through responsible management. However, we disapproved three measures in Amendment 5, a 100-percent observer requirement with partial industry funding, slippage caps, and dealer reporting requirements, because we had utility and legal concerns about the implementation of those measures. Should the New England Fishery Management (Council) wish to revise those measures to address our approvability concerns, I offer you the following recommendations on how to do so.

#### **Industry-Funded Observer Coverage**

New measures developed for an FMP that have the potential for substantial costs, like increased observer coverage, need a funding source. The total costs for observer coverage include two types of costs: (1) Observer monitoring costs (e.g., observer salary and travel); and (2) NMFS support and infrastructure costs (e.g., observer training, data processing, and infrastructure). The observer monitoring costs for the herring fishery are higher than \$325 per day, but sharing these costs between NMFS and the industry is prohibited by the Antideficiency Act.

Amendment 5 allowed for status quo observer coverage levels and funding for up to 1 year following the implementation of Amendment 5. Earlier this year, an FMAT/PDT was formed to identify a workable, legal mechanism to allow for industry-funded observer coverage in the herring fishery, including staff from the New England and Mid-Atlantic Councils and NMFS. To further explore the legal issues surrounding industry-funded observer coverage, NMFS formed a working group of Northeast Regional Office, Northeast Fisheries Science Center, General Counsel, and Headquarters staff.

The NMFS working group identified an administrative mechanism to allow for industry funding of observer monitoring costs in Northeast Region fisheries, as well as a potential way to help offset funding costs that would be borne by the industry, subject to available funding. This administrative mechanism would be an option to fund observer coverage targets that are higher than Standardized Bycatch Reporting Methodology (SBRM) coverage levels. The mechanism to



allow for industry-funded observer coverage is a potential tool for all Northeast Region FMPs. But it would need to be added to each FMP to make it an available tool, should the Council want to use it. To help expedite this process, NMFS could be the technical lead on an omnibus amendment to establish the administrative mechanism to allow for industry-funded observer coverage in New England and Mid-Atlantic FMPs. Additionally, this omnibus amendment could establish the observer coverage targets for Category A and B herring vessels.

### **Measure to Minimize Slippage**

Amendment 5 contained a prohibition on slippage and a requirement to complete a released catch affidavit if catch is slipped. We approved these measures and expect they will help reduce slippage events in the herring fishery. If the Council wants to revise the slippage cap, the revisions would need to address issues concerning safety, the biological/administrative justification for the cap's trigger, and equity.

The slippage cap could be revised to be more similar to the sampling requirements in Groundfish Closed Area I, such that all vessels that slip catch have a consequence. This revision would alleviate the concern we had with the equitable application of the slippage cap among those who contribute to reaching the cap, as well as the concern we had with the basis for triggering the cap.

The consequence of slipped catch could be a requirement to leave the area where the slippage event occurred; the area could be a herring management area or a statistical area. But the consequence should not be so severe as to create a safety issue. To alleviate safety concerns, slippage for safety, mechanical, or excess spiny dogfish catch reasons could be exempt from any consequence, except that the vessel would still be required to complete a released catch affidavit.

### **Dealer Reporting Requirements**

Revisions to the dealer reporting requirement would need to address our concerns with the accuracy and utility of the information reported and could be addressed in several ways.

The Council could select Alternative 3.1.5.2 Sub-Option 2C in Amendment 5 (requiring vessel owners to review and validate data for their vessels in Fish-on-Line). This measure would be a change from status quo, and it has some utility as it helps identify, and possibly reduce, discrepancies between dealer and vessel reports. This option has an accompanying recommendation for daily vessel trip and dealer reports. Changing reporting frequency would increase the timeliness of reports and would provide data to NMFS for validation sooner than they are currently available.

Another way for the Council to revise the dealer reporting requirement would be to clarify and standardize the methods used to "accurately weigh all fish." Does the measure require fish to be weighed using a scale? Does the measure require a volumetric estimate based on a certified fish hold or standardized totes? If the methods to "accurately weigh all fish" were specified, it would likely change dealer behavior from status quo, and may, depending on the methods, improve the accuracy of dealer reports.

Alternatively, the Council could take this opportunity to revisit the original concern that sparked the development of the dealer reporting requirement, that landings data were not verified by a third-party, and revise the measure to better address that concern.

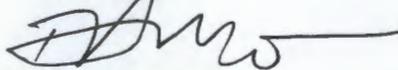
The sub-option requiring dealers to document how they estimate the composition of catch was intended to gather information on methods used by dealers to estimate species composition. Another way to obtain that type of information would be to gather it as part of a data collection program that would update community profiles for Northeast fisheries.

If the Council chooses to revise any of the measures disapproved in Amendment 5, my staff will work with the Council to design effective measures that help improve management of the herring fishery. Revised measures could be addressed in upcoming actions. Whether that action would be an amendment or framework would depend on the scope of the revised measure.

I realize the Council may want to address the disapproved measures as soon as possible. The Council will need to weigh the benefits of revising the disapproved measure against the need for putting time and resources towards completing the other herring priorities for 2013 and 2014. To this point, I recommend that the omnibus amendment led by NMFS address industry-funded observer coverage for the herring fishery, and that the slippage cap be revised as part of an upcoming action. This would allow these measures to be addressed relatively quickly. Revisions to dealer reporting requirements may take longer to develop, especially if the Council chooses to consider a program that would provide third-party verification of landings, and could be included in a future action.

I appreciate the hard work that you and your staff put into developing the Herring FMP. Please contact me if you have any questions.

Sincerely,



John K. Bullard  
fa Regional Administrator