



## New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116

John F. Quinn J.D., Ph. D., *Chairman* | Thomas A. Nies, *Executive Director*

# MEETING SUMMARY

## Herring Committee

Double Tree, South Portland, ME

October 20, 2016

The Herring Committee met on October 20, 2016 in South Portland, ME to review preliminary analysis and complete the range of alternatives for Framework 5; review draft goals and agenda for a public workshop to develop ABC control rule alternatives for Amendment 8; review PDT analyses regarding alternatives developed to date to address potential localized depletion and user conflicts in the herring fishery; review potential herring work priorities for 2017, and in a closed session the Committee made recommendations for Herring Advisory Panel members for 2017-2019.

**MEETING ATTENDANCE:** Mr. Peter Kendall (Chairman), Mr. Vincent Balzano, Mr. Peter Christopher (NMFS/GARFO), Mr. Doug Grout, Mr. Peter Hughes, Dr. Cate O’Keefe, Mr. John Pappalardo, Mr. Eric Reid, Mr. Terry Stockwell, and Ms. Mary Beth Tooley. The Committee was supported by Council staff members Deirdre Boelke and Dr. Rachel Feeney; Ms. Carrie Nordeen (NMFS/GARFO); and Mr. Mitch MacDonald (NOAA General Counsel). In addition, about 20 members of the public attended.

### **KEY OUTCOMES:**

- The Committee identified a final range of alternatives for Framework 5.
- The Committee approved the draft goals and agenda for the second workshop to develop ABC control rules using Management Strategy Evaluation.
- The Committee reviewed preliminary analyses prepared for the alternatives developed to date in Amendment 8 to address potential localized depletion and user conflicts.
- The Committee reviewed the potential herring work priorities for 2017, and made several additional recommendations for the Council to consider.
- In a closed session, the Committee identified recommendations for Herring AP members for the next three-year term, 2017-2019.

### ***FRAMEWORK 5 – GB HADDOCK ACCOUNTABILITY MEASURES (AMS)***

Staff presented the current range of alternatives, updated PDT analysis, and PDT recommendations. The Committee was asked to provide additional clarification on four specific issues and identified the final range of alternatives for this action. The Committee and public asked several questions and provided some initial input following the presentation. Ms. Tooley pointed out that in some years an 80/20 split may not work well when the overall GB haddock allocation is low, but in other years it could be useful; therefore, the Council will want to have flexibility on whether to implement the split and what the value should be, thus making it clear that future specifications can adjust the value or not use the split at all is important.

Mr. McDonald asked whether the PDT has or could assess whether the split would prevent the fishery from achieving its herring catch limits. Staff explained that more analysis is forthcoming, but there are data limitations since there has only been one year that the AM was triggered. Mr. Stockewell asked for more detail about the spatial and temporal overlap between the bottom otter trawl and herring midwater trawl fisheries. There are some tables by month that speak to this and to date only an overall annual map. Mr. Grout asked for more explanation of the PDT recommendation to remove the proactive closure alternatives with statistical area boundaries. Staff explained that at first the PDT thought options using statistical area boundaries would be much easier to monitor in season, but ultimately that was not the case. While they may be somewhat easier to monitor, they are much larger and do not offer substantially greater protection for haddock.

The Committee had several questions about the alternative that would require consideration of state portside sampling in the in-season bycatch estimate. Mr. Reid asked when the Council can expect a response to the letter NEFMC sent to GARFO over 6 months ago about the feasibility of using these data. Mr. Christopher responded that the analysis division now has the data they need, but their staff is occupied with the Discard Methodology Review scheduled in early November. Mr. Reid reiterated that the Council should not do any more analysis on this subject until that response is in hand. M. Pappalardo asked if the PDT would be able to predict the probability that the cap would be reached in light of several new factors; an increase in the 2017 cap in terms of total metric tons, an increase in observer coverage rates based on higher SBRM targets. Staff responded that an analysis could potentially be done but a spatial fleet dynamics model does not currently exist for the herring fishery and there are uncertainties about what future bycatch rates may be compared to previous years. Mr. Stockewell added that bycatch of haddock may be lower on GB if MWT vessels are converting to purse seine gear to fish in Area 1A.

The public asked several questions and provided input as well. Mr. O'Neill explained that the proactive options are nice because they are closed for a set amount of time, but September and October are very important for the bait market. He requested that higher caps (maybe 1.5% and 2% under consideration in FW56) be included in analyses of previous years to see when and if 80% of those higher caps would have been reached. He again expressed concerns about the speed with which bycatch caps are reached, the estimate can jump very quickly and that makes it very hard for the industry to know where they are and respond. Mr. Kaelin at first expressed support of the alternatives developed because they provided some areas of access, but later in the meeting when he realized they were linked to the same large reactive AM he was not supportive.

He also noted that the bycatch rates are very low for this fishery, and argued that they are much lower than other fisheries that do not have sub-ACLs; why is this fishery is subject to different standards. Finally, he explained that some MWT vessels will never convert to purse seine gear; it is too cost prohibitive to do so. After a short break the Committee started making motions to clarify the final range of alternatives.

#### **1. Tooley/Reid**

**Recommend that Sections 2.1.2.3 (close statistical areas 521, 561, 562, and 525) and 2.1.2.4 (close statistical areas 561, 562, and 525) be moved to the considered and rejected section of Framework 5, which is consistent with PDT recommendations.**

**Vote: 9:0:0, motion carries**

Ms. Tooley argued that these two proactive AMs are not feasible; therefore should be removed from further consideration. Several speakers from the audience spoke in favor of the motion suggesting that proactive closures that are 4-5 months in length would be problematic. It was argued that conditions are different every year and these would reduce flexibility and could make it very difficult for the fishery to catch allocated amounts. For example, if herring vessels are prohibited from accessing Closed Area II from May-October that may be ok in some years, but very problematic in other years when herring are concentrated in that area. Ms. Tooley suggested the document include the historical catch in pounds, not just proportion, so the potential impacts of the proactive AMs could be better understood. Mr. Raber, a member of the audience explained that some years it is like winning the lottery if you get an observer and are able to fish in a closed area; that tells you that fishing the closed areas can be very important to the herring fishery depending on the year and fishing conditions. Mr. O'Neill added support for the motion explaining that with herring you never know where the fish are going to show up in a particular year; he would support the season staying open longer, but taking areas off the table proactively is hard in this fishery because important areas change year to year. He added that when these proactive measures are added to the large reactive AM it is just too much area closed to the fishery. A better option for the industry is the 80/20 split and trying to increase the allocation.

The Committee next discussed the other two proactive AM alternatives as well as possible seasonal sub-options.

#### **2. Grout/Stockwell**

**Recommend that Section 2.1.2.1 (close GF closed areas I and II) and 2.1.2.2 (close GF closed Areas I and II extended) be included in Framework 5 with several sub-options: a) year-round proactive closure; b) June-Sept proactive closure; and c) May-October proactive closure.**

Dr. O'Keefe commented that the decision on the GB haddock sub-ACL in FW56 could impact whether proactive AMs are needed; therefore, it may be useful to leave the proactive AMs in the document until that decision is known. For example, if the allocation increases, the need for proactive AMs may be less. Mr. Grout asked if the observer requirement for GF closed areas

would change if the areas are removed by the EFH action under consideration. Ms. Nordeen explained that staff could discuss more in-house to confirm, but the observer requirements were included in Amendment 5 to the Herring FMP, thus removing the requirement may need reconsideration, but either way changing observer requirements is a frameworkable item. Ms. Tooley added that the IFM action is considering a measure to remove that requirement as well. Mr. Balzano was not opposed to leaving proactive AMs in the document but he expressed serious reservation about selecting a proactive AM with other measures under consideration in the near future (Amendment 8 consideration of closed areas for localized depletion and alternative control rules). Mr. Stockwell expressed some reservation of removing the proactive AMs because that only leaves No Action and the 80/20 split alternative.

Mr. McDonald asked why these areas could not be considered as reactive AMs, rather than proactive. Staff explained that the PDT did not think closing these areas alone would reduce the risk of the herring fishery far exceeding their haddock sub-ACL if they could continue to fish in most of the GB stock area after the sub-ACL was harvested. Input received to date was against developing alternatives that would have a potential risk of a large overage that would need to be removed in a subsequent year, potentially having large economic impacts on the fishery in a future year. Mr. Hughes asked how many years the fishery has exceeded the sub-ACL, and staff explained that the AM has only been triggered once, and the fishery narrowly exceeded the sub-ACL in two additional years. But it was noted that the total haddock ACL is not being caught. Dr. O'Keefe asked if the PDT looked at the areas individually and just closing them in the winter, and staff responded that they were assessed as a package to date and only closing them in the winter would likely not gain much and is at the end of the GF fishing year, so the utility is lower than a proactive closure earlier in the season and when herring landings are higher and bycatch rates are typically higher.

## **2a. Motion to Amend**

**O'Keefe/Tooley**

**Recommend that Section 2.1.2.1 (close GF closed areas I and II) and 2.1.2.2 (close GF closed Areas I and II extended) be included in Framework 5 with several sub-options: a) year-round proactive closure; b) June-August proactive closure; and c) May-October proactive closure.**

**Vote: 8:1:0, carries**

**Vote on main motion: 6:1:2, carries**

It was argued that shorter proactive closures are favorable, and in most years the herring fishery has not exceeded the sub-ACL (once mid-year in 2015 and two other years later in the fishing year). Mr. Grout commented that he understands why the industry would not be in favor of these proactive AMs because they still include the larger reactive AM closures, but proactive AMs could be an important tool to help prevent the larger AM closure from triggering at all.

The Committee continued to work through the PDT recommendations, the next being whether to have AM season alternatives. Staff explained that the PDT argued that set reactive AMs were not expected to work with this fishery. Herring fishing and haddock bycatch rates both increase at the beginning of the season (summer and fall), so having a reactive AM season would likely not be feasible since most bycatch events would likely have passed already. The Committee agreed

this section should be removed, and seasonal aspects were instead folded in the proactive AM alternatives. There was limited discussion on this motion.

**3. Grout/Balzano**

**Recommend that Section 2.1.3, establish an AM season, be moved to the considered and rejected section of Framework 5.**

**Vote: 9:0:0, carries**

Next, the Committee discussed the alternative that would split the sub-ACL into two seasons. The motion clarified several aspects of the alternative, specifically what would be in place in FY2017 and FY2018. In case the language of the motion is not clear, the Committee intent is that any unused sub-ACL from the first period (currently May-Oct) would rollover to the second period (Nov-April).

**4. Grout/Hughes**

**Clarify Section 2.2.2 so that it includes two sub-options. First, the ability to split a sub-ACL is a measure that can be specified in the specifications process, e.g. whether a seasonal split will be used, what the percentage split should be, and the date of the seasonal split. Second, the seasonal split for the GB haddock sub-ACL for FY2017 and FY2018 shall be set at 80% for May 1, and the remaining 20% would be available on November 1, including any underage from the first season (May-October).**

**Vote: 9:0:0, carries**

Several speakers from the audience spoke in favor of the motion because it would preserve the important winter fishery. Mr. Christopher asked if the alternative would keep the same policy as the current AM in terms of when it triggers, i.e. when the fishery is estimated to catch 100% of the sub-ACL, or some lower proportion like the herring catch ACLs (i.e. 92%, or 95%). It was clarified that the intent is that it stay the same as the current AM because of all the uncertainty involved. Mr. Reid again commented that state portside data would likely improve the precision of the bycatch estimates and should be included as soon as possible.

When the Committee returned from lunch another motion was made related to Framework 5 alternatives. Mr. Christopher commented that he rarely makes motions at this Committee but was interested in seeing an alternative that would change the pound for pound payback provision, so that it would only apply if the total GB haddock ACL was exceeded. One speaker from this industry spoke in favor of the motion. Staff explained that this idea was considered by the Committee earlier in this process, as well as an option that would only trigger AMs if the GF fishery utilized a specific proportion of their sub-ACL, but the Council did not include these alternatives in the range of alternatives approved in June 2016 primarily due to concerns about streamlining the document due to other work the GF and Herring PDTs were working on.

Staff further explained that adding this measure would likely require some involvement of the GF PDT and they are busy with FW56. The Committee discussed that adding this alternative, as well as some of the earlier motions may make it difficult for the Herring PDT to bring a

complete package to the next Committee meeting, scheduled three weeks from today. Therefore, final action may need to move to January if the document cannot be complete for November. Staff explained that final action in January would make May implementation very difficult. Ms Tooley commented that May 1 implementation would be ideal, but the sub-ACL is the critical measure that needs to be in place for May 1, which is in GF FW56. The AMs could trickle in several months later if necessary; for example, if measures are in place later in the summer there would not be any negative impacts on the herring fishery or the haddock resource. Several members of the audience spoke in favor of the motion.

**5. Christopher/Tooley**

**That the Committee recommend including an alternative in Framework 5 that would modify the pound for pound GB haddock sub-ACL payback so that it would only apply to the herring fishery if the overall haddock ACL is exceeded.**

**Vote: 7:0:1, carries**

***AMENDMENT 8 - MSE – ABC CONTROL RULE***

Dr. Rachel Feeney gave a presentation about the status of Amendment 8 in terms of development of ABC control rule and plans for the upcoming workshop, including draft goals and agenda. Dr. Okeefe asked when SSC review was planned and staff explained it is planned for Spring 2017. Ms. Tooley recommended that the agenda include some time on Day 1 for background for participants that did not attend the first workshop. Ms. Fuller from the audience asked is a separate independent review was planned in addition to the SSC review. Staff responded that the process was not clarified yet in terms of exactly who would be involved in a peer review and when it would take place. Mr. Kaelin recommended that an agenda topic be added to have the workshop attendees identify research priorities. Mr. O'Neill again requested that results be in simple terms as much as possible, including herring catch values compared to other metrics that are sometimes more difficult to follow (i.e. probability F will exceed Fmsy). After a relatively brief discussion the Committee agreed with the draft goals and agenda and understood that some adjustments would be made as the steering committee continued to work on the details in the coming weeks. The full Council will review the draft goals and agenda at the November Council meeting.

*By consensus, the Committee supports the draft goals and agenda developed for Workshop #2.*

***AMENDMENT 8 – LOCALIZED DEPLETION (LD) AND USER CONFLICTS***

Staff reviewed the analyses prepared to date for the initial range of alternatives developed. Some seasonal information was presented on herring and tuna landings. Mr. Weiner suggested that the tuna landings information needs more refinement; he recommended a separate meeting or workshop be considered similar to the NROC process to get tuna fishermen together to discuss specific areas and times where user conflicts are most prevalent since the data collected is not to the resolution needed. Mr. O'Neill argued that based on the monthly tuna landings info presented there is no user conflict; tuna landings are in June-October, and MWT fleet is predominantly offshore during those months. Mr. Kaelin added that he did not think the tuna data showed a reduction in tuna landings, and if the Council wants to learn more about user conflicts it should

request to NMFS HMS that reporting requirements for that fishery improve. Mr. Raber agreed that the initial analysis does not show a large overlap of the two fisheries. Mr. Wells recommended that the Committee consider user conflicts in regards to areas where RH/S hotspots overlap with herring spawning areas.

After a break Mr. McDonald commented that the PDT has raised a handful of questions related to defining the problem of this action that the Committee needs to address. These questions about the spatial and temporal extent of fishery conflicts are important, and he explained that without clear rationale it could be argued that the measures are arbitrary. He suggested that the National Standards should help guide the Committee. Mr. Kendall commented that it may be necessary to have a separate meeting on this topic to help clarify the problem so the final range of alternatives can be tailored to address the primary issues. Ultimately, the Committee did not identify specific fisheries, areas, or season, but developed a motion tasking the PDT to evaluate seasonal closure options driven by areas/season with “high” user conflicts.

## **6. Tooley/Hughes**

**Task the PDT to evaluate seasonal closures that consider potential high user conflicts that would minimize impacts to the herring fishery.**

**Vote: 6:2:0, carries**

Mr. Pappalardo was not clear how the PDT would define “high”, and expressed concern about narrowing the range of alternatives. Ms. Tooley responded that the range could stay the same, but seasonal options should be developed to further refine the options. Mr. Stockwell argued that the focus should be on more recent years because fisheries evolve. He also commented that gear conflicts with lobster gear are becoming a larger issue and something he is planning to follow. Mr. Pappalardo argued that for groundfish, the temporal scope may need to go back farther to 1996 to a time when groundfish were more plentiful nearshore and dependent on herring.

Mr. Grout explained that he did not think addressing gear conflicts was in the scope of this action. When he reviews the data that has been presented so far about herring and tuna landings he sees September and October as the time of year with potential user conflicts. Striped bass fishery conflicts may be different. Mr. McDonald agreed that addressing potential gear conflicts with the lobster fishery is a different animal, different measures would maybe need to be developed to address gear conflicts; therefore, rescoping may need to be taken. However, addressing user conflicts was a refinement from earlier conversations about localized depletion, and the impacts of one fishery removing herring and that having negative impacts on other fisheries and businesses. Mr. Pappalardo argued that the Council should review the record from Amendment 1 because there were not strong data correlations when Area 1A was closed to MWT gear, it was done to be precautionary.

### ***POTENTIAL HERRING WORK PRIORITIES FOR 2017***

Mr. Daniel Field of the F/V Western Wave explained that herring fishermen recently got together to discuss what the fishery may look like next year and he is concerned that there are a handful of historic purse seine vessels that only fish in Area 1A. This past summer a few new entrants came in the area (MWT vessels that converted to purse seine gear) and next summer they are expecting more vessels to convert and maybe more effort from vessels that are currently inactive. More vessels will reduce access to Area 1A TAC; which happened this year as well but the increase in price made it possible. He requested the Council request a control date for new activity in Area 1A. Mr. O'Neill agreed that a control date should be considered, but he argued that it should be fishery wide explaining that there are 43 Category A permits, but only 16 of them are active. So latent effort in this fishery is a problem, especially with increased prices. Mr. Kaelin added that he would be in favor of exploring consideration of IFQs in this fishery. Mr. Weiner spoke in strong opposition to consideration of IFQs, but said he could possibly support a cap in purse seine effort.

The Committee decided to first review the list of potential herring priorities for 2017, and would then address the new idea raised under other business about a potential control date. Dr. O'Keefe asked if the MAFMC motion that recently passed would have an impact on the RH/S white paper priority. Mr. Stockwell asked if there are any legal requirements for the Council to reconsider RH/S as stocks in the fishery and Mr. McDonald explained that there is no requirement. Mr. Stockwell recommended that this issue be removed from 2017 priorities. Ms. Tooley agreed and commented that the MAFMC document is very thorough and if the NEFMC does pursue something it should be used as a starting place. The Committee discussed that the Council is doing work on RH/S through the specs process, TWEG, EFH consultations, etc. Mr. Pappalardo asked for the rationale for the MAFMC vote and it was summarized that it was argued adding it as a stock in a federal FMP is not going to make a real difference in the population, ASMFC is working on this, a stockwide assessment if coming in the near future, several measures are in place already to support these efforts. Ms. Fuller from the audience argued that RH/S do need conservation and the Council should not rely on state management alone. These species are at risk and staff resources should not be a concern since a lot of the work has been done already.

#### **7. Stockwell/Reid**

**Move to recommend that an update of the RH/S white paper in preparation for reconsideration of RH/S as stocks in the fishery in 2018, not be a priority for the Council in 2017.**

**Vote: 6:3:0, carries**

The Committee then revisited the control date conversation. The initial idea was confined to Area 1A, but was expanded to the full fishery for all areas. There were some questions about how a control date would work in a fishery that is limited access already. Mr. Weiner commented that the list of items for 2017 work priorities is full already. The Committee is thinking this would be a notice only, and staff would not start work on an action in 2017.



**8. Stockwell/Tooley**

**Add a priority for 2017 that would consider setting a control date to address excessive capacity and latent effort in the herring fishery. The action that the Council may develop later is not time specific, may not be in 2017.**

**Vote: 6:0:2, carries**

The Committee did not identify any additional items for 2017 priorities, but wanted to add one item to the list of considered topics that was discussed but not recommended so that it remains on the radar.

*By consensus, the Herring Committee recommends adding consideration of moving ACL from one herring management area to another in-season as an item on the list of potential priorities, but below the line in 2017.*

***OTHER BUSINESS***

- NMFS provided an update on the status of the 2016-2018 fishery specifications. The proposed rule is expected very soon. Several Committee members expressed serious concern with the length of time needed for review of this action. NMFS explained that there were multiple factors but they are looking into steps to be sure future herring actions are reviewed more quickly.
- NMFS provided an update on the EM pilot project.
- The committee had a closed session to identify recommendations for Herring AP members.