

# **PRIORITIES CORRESPONDENCE**



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
21 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0021



September 9, 2016

Dear Terry,

I am writing to ask the Scallop Advisory Panel (AP) and Committee to prioritize several management inconsistencies which could adversely impact the health of the Northern Gulf of Maine (NGOM) resource if not addressed in the 2017 Council priorities for the Scallop Fishery Management Plan (FMP). The scallop resource in the Gulf of Maine has been an important part of Maine fishermen's businesses for over a century, as acknowledged by the Council when it established the NGOM as a distinct management unit, noting that "preservation of local access to the scallop resource was important to the continuation of fishing communities in Maine, New Hampshire and Massachusetts" (Amendment 11 FSEIS preamble page viii). Although they historically targeted a wide variety of fisheries, many Maine fishermen are now dependent on a single resource: lobster. High lobster landings mask the potential risk of this dependency: without alternative fishing opportunities, a significant downturn in the lobster resource could devastate many Maine fishing communities. As such, I have committed substantial resources to rebuild our state waters scallop fishery, and as participation and interest in that fishery has grown, many of our fishermen are looking to the rebounding NGOM scallop fishery as another potential opportunity for diversification.

The recommendation for the annual TAC by the Scallop Plan Development Team (PDT) following the previous (2012) DMR/UMaine survey of the area was 58,000 lbs. (Final Framework 24 to the Scallop FMP, February 2013). Resource conditions have presumably changed since the 2012 survey. In 2016, results from the DMR/UMaine survey of the NGOM indicate a significant increase in biomass since 2012, which was reflected by LAGC and the NGOM fleet exceeding the TAC in 73 days. In addition, Limited Access (LA) vessels began fishing in the NGOM for the first time, removing 291,232 lbs. from the area. In total, it is estimated that 378,335 lbs. were landed based on VTR point locations from the NGOM by both fleets combined, resulting in the TAC being exceeded by almost six times in 2016. It is therefore appropriate, given the activity of the LA vessels in this area, to ensure that all vessels fishing in the NGOM are subject to rules that protect the available resource and promote equitable access for all permit categories.

Since the current management inconsistencies could potentially result in an unknown level of removals by the LA again in 2017 while the area is open, I strongly recommend a conservative TAC to sustain the NGOM resource, as well as making NGOM issues a top priority to be addressed in 2017.

Amendment 11 refers to NGOM management as "a placeholder for future management of scallops in the NGOM if and when they return" (Amendment 11 FEIS page ix). They are returning, and the time has come to address these issues. I urge the Council to develop measures designed to ensure the sustainable harvest of the NGOM resource in the next action.

Thank you for your consideration.

Sincerely,

Patrick Keliher  
Commissioner

OFFICES AT 32 BLOSSOM LANE, AUGUSTA, MAINE  
<http://www.Maine.gov/dmr>

PHONE: (207) 624-6550

FAX: (207) 624-6024



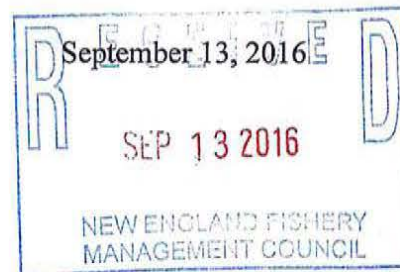




**EARTHJUSTICE**  
BECAUSE THE EARTH NEEDS A GOOD LAWYER

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

Thomas A Nies, Executive Director  
Terry Stockwell III, Chairman  
New England Fishery Management Council  
50 Water Street, Mill #2  
Newburyport, MA 01950



Re: 2017 Atlantic Herring Priorities

Dear Mr. Nies and Mr. Stockwell,

We are writing on behalf of our clients in *Flaherty v. Bryson*<sup>1</sup> regarding the 2017 New England Fishery Management Council priorities. The Council committed to revisit its 2015 decision not to add river herring and shad as stocks in the herring fishery no later than January 2018. The scientific and other information necessary to support the 2015 decision was based in part on a Discussion Document.<sup>2</sup> An updated version of this document should be included as a 2017 Council priority so that: (1) there is an appropriate record and analysis to support the January 2018 decision; (2) the Council (and NOAA Fisheries) can schedule the staff and resources necessary to update and analyze the relevant information; and (3) the Herring Oversight Committee has adequate time to review and make recommendations for revisions prior to the January 2018 NEFMC meeting.

As you are aware, in early 2015 the Council voted not to add four species of river herring and shad as stocks in the Atlantic herring fishery, however, it committed to revisiting this decision by a firm deadline. Specifically, the Council passed the following motion (Bullard/Kendall):

... that the council maintain its current approach in providing conservation measures for river herring/shad and not add river herring/shad as stocks in the Atlantic herring fishery or initiate a separate FMP for river herring/shad. These items should be removed from the list of management priorities for Atlantic herring at this time. ***The Council will revisit this decision no later than three years.***

See NEFMC January 28-29 Motions at 2-3 (emphasis added).<sup>3</sup> To support its decision at that time, Council staff prepared a Discussion Document.

The 2015 Discussion Document provided information on the legal requirements of the Magnuson-Stevens Act and its National Standards, the background of the decision (a remedial

<sup>1</sup> *Flaherty v. Bryson*, 850 F. Supp. 2d 38 (D.D.C. 2012) ("Flaherty I"); *Flaherty v. Pritzker*, 2016 WL 3360480 (D.D.C. 2016) ("Flaherty II"); *Flaherty v. Pritzker*, Civil No. 1:11-cv-660 (D.D.C. filed Mar. 31, 2014) ("Flaherty III"). The Plaintiffs are Michael S. Flaherty, Captain Alan Hastbacka, and Ocean River Institute.

<sup>2</sup> See NEFMC Discussion Document Adding River Herring and Shad as Stocks in the Atlantic Herring Fishery: Updated Information And Discussion of Management and Legal Considerations (Final Draft January 2015) ("Discussion Document"), available at: <http://s3.amazonaws.com/nefmc.org/10-RHS-SOF-Discussion-Paper-Final-January-2015.pdf>.

<sup>3</sup> Available at: [http://s3.amazonaws.com/nefmc.org/150128-29\\_final\\_motions-3.pdf](http://s3.amazonaws.com/nefmc.org/150128-29_final_motions-3.pdf).

order in *Flaherty I*), current management of these species by the Atlantic States Marine Fisheries Commission, the proposed catch caps to limit catch in the herring and mackerel fisheries, and possible approaches for federal management. A lot has changed already. For example, our scientific understanding of which stocks of river herring and shad are caught in the herring and mackerel fisheries has improved, their vulnerability to climate change has been assessed, and we are gathering data from the implementation of the catch caps that allows us to evaluate their ability to reduce catch (or not) in the herring and mackerel fisheries. Certain management measures— such as those to improve catch monitoring and reduce slippage – did not achieve the expected results and coordination of the river herring and shad catch caps between the New England and Mid-Atlantic Councils never happened. This and other relevant information will need to be updated prior to the January 2018 decision.

Updating the Discussion Document for the 2018 decision should not be a heavy lift because much of the analysis is currently underway. The Mid-Atlantic Fishery Management Council (“MAFMC”) is revisiting its decision not to add river herring and shad as stocks in the mackerel fishery in October (2016). MAFMC Staff (in coordination with NOAA Fisheries and the Northeast Fisheries Science Center) is in the process of updating and revising its Staff White Paper and Draft Decision Document now, and due to the overlap between the herring and mackerel fisheries, much of this information and analysis is transferrable. Further, the Mid-Atlantic Council’s 2016 Decision Document, entitled *River Herring and Shad – Potential Management by the Mid-Atlantic Fishery Management Council*, will analyze potential ecological, social, and economic benefits of rebuilt populations as well as costs associated with inaction – information which could also guide decisionmaking in New England where applicable.

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We urge you to include an updated river herring and shad Discussion Document for the January 2018 stock in the fishery decision as a 2017 Council priority. Thank you for your consideration of this matter. If you have any questions please feel free to contact us.

Sincerely,

/s/ Roger Fleming  
Roger Fleming  
Erica Fuller  
Attorneys  
Earthjustice

Cc: Mr. John Bullard, Regional Administrator  
Mr. Mitch McDonald, NOAA General Counsel  
Ms. Deirdre Boelke, NEFMC Fisheries Policy Analyst for Atlantic Herring