The Herring Advisory Panel met on June 14, 2023 via webinar to: receive a report from the Herring Plan Development Team (PDT) covering (1) revisit Amendment 8 Inshore Midwater Trawl Closure—suggest revisions to a draft problem statement and discuss preliminary PDT work on Committee tasking, and (2) river herring and shad—discuss a potential change in 2023 Council priorities to develop river herring and shad time/area closures; make recommendations to the Herring Committee, as appropriate; and other business, as necessary.

MEETING ATTENDANCE: Meghan Lapp (Chair), Zach Klyver (Vice Chair), John-Paul Bilodeau, Willy Goldsmith, Jaclyn Higgins, Jeff Kaelin, David Mussina, Gerry O’Neill, James Ruhle, Dr. Tammy Silva, Mary Beth Tooley (Advisors present); Dr. Jamie Cournane, Emily Bodell (NEFMC staff); Cheri Patterson (Herring Committee Chair); Raymond Kane (Herring Committee member); Michael Pierdino (Council member); Cameron Day (NEFOP), Maria Fenton, Carrie Nordeen (NOAA GARFO staff); and Emilie Franke (ASMFC). In addition, about 17 members of the public attended.

SUPPORTING DOCUMENTS: (1) Meeting overview memo from Herring Committee Chair; (2) Agenda; (3) Presentation, Council Staff; (4) Memo from Herring PDT to Committee re: Problem Statement Midwater Trawl Closure and River Herring & Shad; (5) Meeting Summaries; (5a) Herring Advisory Panel, Apr. 11, 2023; (5b) Herring Committee, Apr. 12, 2023; (5c) Council Motions, April 18-20, 2023; and (6) Correspondence.

The Herring Advisory Panel meeting began at approximately 9:05 a.m.

KEY OUTCOMES:

- Revisit Amendment 8 Inshore Midwater Trawl Closure
  - The Herring Advisors recommended a statement to the Herring Committee in response to the Council’s draft problem statement.
  - The Herring Advisors recommended to the Herring Committee to include in the problem statement the importance of evaluating optimum yield by identifying all
user conflicts between Atlantic herring fisheries and other marine resource stakeholders.

- River Herring and Shad
  - The Herring Advisors recommended to the Herring Committee to discuss river herring and shad time/area closures under priorities for 2024 and possibly include in the specifications action for Atlantic herring in 2024.

**OPENING REMARKS**

*Management Update*—Maria Fenton (GARFO) presented the management update. As of May 14th, 2023, Herring Management Area 3 is closed to directed Atlantic herring fishing for the remainder of the fishing year, and a 2,000-lb Atlantic herring possession limit has been implemented for this area. Area 1A is closed to directed Atlantic herring fishing until July—the Atlantic States Marine Fisheries Commission recently voted to start landing days for Area 1A on July 16th, 2023, at 6 pm. Current data indicates that herring catch is well below the sub-ACLs for Area 1B and Area 2, so closures are not imminent. In terms of river herring and shad catch caps, current data also indicates that the Gulf of Maine Midwater Trawl, Southern New England Bottom Trawl, and Southern New England Midwater Trawl Catch Cap Areas are below the threshold to trigger closures. The Cape Cod Midwater Trawl Catch Cap Area has been closed to herring fishing since April 26th, 2023.

GARFO and NEFMC staff have compiled the Atlantic herring Stock Assessment and Fishery Evaluation (SAFE) Report, which is publicly available on the Council website. The SAFE report is a compilation of documents that summarize the best available information regarding federally-managed stocks. Chair Lapp asked how frequently SAFE reports are released, and Ms. Fenton stated that there is no specific schedule for updating SAFE reports, and they are revisited on an as-needed basis when new information becomes available.

*Council Priorities 2023*—Dr. Cournane provided an update on the Council’s 2023 herring priorities. The Council identified three Atlantic herring priorities for 2023: (1) coordination with MAFMC, ASMFC on various herring issues (RH/S, etc) including actions in response to 2023 assessment; include an analysis of the combination of factors (e.g. sampling intensity, estimation methodology, inherent assumptions) that may have led to low 2020-2022 shad/river herring bycatch in the Atlantic herring fishery; (2) revisit Amendment 8 inshore midwater trawl closure; and (3) staff participation in the Atlantic herring research track assessment. Dr. Cournane reviewed the status of each priority. With regards to staff participation in the research track assessment, Dr. Cournane noted that the research track working group has been formed and will start meeting in July. Five members of the Herring PDT are also members of this working group, which will need to be considered when planning upcoming PDT activities. There were no questions or comments on the Council priorities for 2023.

**AGENDA ITEM #1: REVISIT AMENDMENT 8 INSHORE MIDWATER TRAWL CLOSURE, DR. COURNAINE (NEFMC)**

Dr. Cournane reviewed the Council’s discussion and motions related to the draft problem statement for revisiting the Amendment 8 Inshore Midwater Trawl Closure from its April 18-20, 2023 meeting, along with information from the PDT’s June 7th, 2023 memo. At the April
meeting, the Council passed a motion to commit the draft problem statement back to the Herring Committee for further development and refinement. The PDT reviewed the draft problem statement and provided a list of discussion points and questions for the Committee to consider when developing the problem statement. The PDT also provided clarification suggestions to serve as a template that could be further refined following Committee discussion. In addition, the PDT discussed two tasking motions passed at the April 12th, 2023 Herring Committee meeting, posing questions to clarify the intentions of the motions as well as identifying some data that may be useful when undertaking these analyses.

*Questions and Comments on the Presentation: Problem Statement*

An Advisor asked about why river herring and shad were included in the draft problem statement and commented that river herring and shad should not be included in the problem statement. They also stated that they appreciated that the draft problem statement includes “all users” rather than just midwater trawl vessels. Another Advisor agreed that river herring and shad issues should be kept separate from revisiting Amendment 8. One Advisor felt that the template limited possible alternatives to what was previously included in the Amendment 8 exclusion zone rather than making the language more flexible to conduct analyses to include other areas, such as Stellwagen Bank National Marine Sanctuary. Dr. Cournane reiterated that the PDT has questions about the content included in the template, including what the potential spatial and temporal variations of the A8 exclusion zone could be. Finally, an Advisor asked for clarification on the term “midwater trawl”, and whether this was referring to single or pair trawls. The term “midwater trawl” focuses on the gear being used and does include both single and pair trawls.

*Public Comment:*

- Attorney Shaun Gehan mentioned that the problem statement refers to the inshore portion of the fishery and that there were conflicts because various groups were using the same area, or because fishing efforts impacted predator fisheries. He asked whether there is a scientific basis for determining a difference between inshore and offshore in this case.

*Additional Discussion:*

An Advisor suggested looking at the impact of different forms of fishing on Atlantic herring, which could expand on work already done. Chair Lapp also asked whether the PDT has a list of the data used for analyses supporting Amendment 8 and the limitations of that data, noting that clarifying these limitations might be helpful. Finally, an Advisor noted the importance of clarifying the definitions of various terms used in the problem statement.

*Questions and Comments on the Presentation: Tasking Motions; General Discussion*

Multiple Advisors asked for clarification on the Rhode Island gear restrictions outlined in the PDT memo and presentation. Dr. Cournane and Ms. Bodell discussed how information was collected for the PDT memo and reviewed the RI gear restrictions, and planned to update the PDT memo following this discussion. An Advisor commented that for tasking motion 1, the PDT will have to talk to gear specialists for specifications on midwater trawl nets and other information and talk to fishermen to learn more about how they fish these nets. Also, fish behave
differently at different times of day or year, which will result in some variability in how nets are fished. As a more general comment, an Advisor mentioned adding specific wording to focus the problem statement on midwater trawl gear rather than including other fisheries, noting that the midwater trawl fleet represents the majority of catch, bycatch of river herring and shad, and user conflicts.

1. **MOTION: Tooley/Kaelin**

As a statement from the Herring Advisory Panel to the Herring Committee:

The Council appears to have identified an outcome it wants to achieve—banning MWT gear in the A8 exclusion zone—and is trying to devise a problem statement that would justify that course of action.

The draft Problem Statement indicates the Council intent to “explore possible detrimental biological and socioeconomic impacts of user group conflicts related to availability of Atlantic herring.” While the Court in vacating this action found, “the Secretary could not identify any scientific evidence of localized depletion, let alone establish a link between MWT vessels and localized depletion” and; “the Secretary has failed to identify a rational connection between the facts found and the choice to implement the exclusion zone.”

In their meeting of May 16, a number of PDT members expressed concerns about revisiting this action in a similar manner. Some general comments include: there is a lack of data for the purpose of updating; that they would be unable to demonstrate a conflict; and assessing the biological impact of a user group conflict is impossible with the data they have.

Clearly, there is a need to define what the user conflict is in this action. If the issue is not depletion (localized or not), what is the problem? We do not understand the conflict and do not have an answer to offer here.

In addition, any action which only bars mid-water trawl gear from any part of the herring fishery is an allocation of fishing privileges to others and must comply with National Standard 4. The Council must find that the action promotes conservation, is fair and equitable to all, and that any benefits to others user groups can be meaningfully determined to outweigh the quantifiable loss to the mid-water trawl sector.

**Discussion on the Motion:**

An Advisor expressed their disagreement with the motion, noting that the main point of revisiting the inshore midwater trawl closure was because the intention has shifted away from addressing localized depletion towards addressing user group conflicts. The maker of the motion stated that past comments have focused on the detrimental effects of herring removals to various users, and reiterated their interest in getting clarification on the difference between localized depletion and herring removals. The maker also clarified that the intention of the motion was to provide a statement for the Herring Committee and recommend that they clearly define what the user conflict is in this case.
Public Comment:

- Attorney Shaun Gehan commented that dropping localized depletion won’t eliminate the legal issues with this action—if the end result is an area where certain vessels are excluded, that would be considered an allocation under the Magnuson-Stevens Act. The Court’s decision wasn’t exclusively based on whether localized depletion had a basis, it also found that there was not a conservation basis to make an allocation.
- Carrie Nordeen (GARFO) followed up by stating that the court vacated the inshore midwater trawl exclusion zone in part because it was determined to be violation of National Standard 4, which requires that allocative measures must be reasonably calculated to have a conservation benefit.

Role-call vote: Motion 1

Yes: John-Paul Bilodeau, Jeff Kaelin, Gerry O’Neill, James Ruhle, Mary Beth Tooley
No: Zack Klyver, Willy Goldsmith, David Mussina, Dr. Tammy Silva
Abstain: Jaclyn Higgins

MOTION 1 CARRIED, 5/4/1.

Additional Comments:
An Advisor expressed their support for including the option to explore different spatial and temporal variations of the Amendment 8 inshore midwater trawl closure in the draft problem statement.

2. MOTION: Klyver/ Mussina

The Herring Advisory Panel recommends that the Herring Committee include in the problem statement the importance of evaluating optimum yield by identifying all user conflicts between Atlantic herring fisheries and other marine resource stakeholders.

Rationale: The maker of the motion argued that hundreds of millions of dollars of economic value that come from ecotourism, whale watching, recreational fishing, all of the money that is put into the conservation of seabirds and river herring; and that these things are important for evaluating in terms of how we best use this herring resource to achieve optimal yield.

Discussion on the Motion:

An Advisor asked whether optimum yield was calculated each time the Atlantic herring specifications are set and questioned whether this motion is different from the existing specification process. Chair Lapp commented that many of the issues mentioned in the motion were considered during the MSE process for the ABC control rule component of Amendment 8. An additional advisor also noted that evaluating optimum yield is a requirement under National Standard 1. The maker of the motion stated that the problem statement is being crafted so it is broad and inclusive, and they wanted to ensure that this piece of the task is captured within that problem statement. The taking of herring away from other resources that provide a huge economic benefit is important for the Committee and the Council to consider.
There was also some discussion regarding how optimum yield was calculated for the selected alternative in Amendment 8, and whether the ABC control rule and inshore midwater trawl closure were considered jointly for that calculation. Chair Lapp clarified that the ABC control rule was separate from the inshore midwater trawl closure and was developed through its own process. An Advisor commented that the industry did not object to the control rule. Dr. Cournane provided additional context from the Amendment 8 final EIS submission document, noting that the Council’s rationale for the midwater trawl exclusion zone was that the alternative was selected to address localized depletion, but it also met the first goal of Amendment 8 which was to account for the role of herring in the ecosystem. One Advisor commented that including optimum yield (OY) in discussions regarding the problem statement is relevant. Dr. Cournane referred to the goals and objectives of the FMP regarding OY.

Public Comment:
- Attorney Shaun Gehan commented that herring are geographically managed on a stock basis through herring management areas, and asked again whether there is science to say that there are different biological impacts when herring are harvested inshore versus offshore and if there is a way to characterize that. He noted that if only impacts within the final exclusion zone are examined and not impacts outside of that zone, it could be considered arbitrary and capricious.

Roll-call vote: Motion 2

Yes: Zack Klyver, Willy Goldsmith, Jaclyn Higgins, David Mussina, Dr. Tammy Silva
No: John-Paul Bilodeau, Gerry O’Neill, James Ruhle, Mary Beth Tooley
Abstain: Jeff Kaelin

MOTION 2 CARRIED 5/4/1.

AGENDA ITEM #2: RIVER HERRING AND SHAD, DR. COURNANE (NEFMC)

Dr. Cournane also provided a recap of the Council’s April 20, 2023 motion and discussion related to river herring and shad, along with information from the June 7th, 2023 PDT memo. The PDT presented four possible approaches for addressing river herring and shad: (1) change priorities for 2023 and develop a discussion document for potential use in a future action; (2) change priorities for 2023 and initiate a framework action on river herring and shad; (3) discuss under priorities for 2024 and possibly include in the specifications action for Atlantic herring in 2024; and (4) add for consideration under revisiting the A8 inshore MWT area action. The PDT estimated that completing work on this action would require 6-8 months of PDT time, 6-8 Council staff months to prepare the document for final action, and 1-2 Council staff months to prepare the submission document to GARFO.

Questions and Comments on the Presentation

One Advisor asked about the timeline for the Amendment 5 process, and whether it was similar to the timeline estimated for this action by the PDT.
3. **MOTION: Higgins/ Tooley**

The Herring Advisory Panel recommends that the Herring Committee discuss river herring and shad time/area closures under priorities for 2024 and possibly include in the specifications action for Atlantic herring in 2024.

*Rationale:* This is approach #3 outlined by the PDT. This would allow for use of 2023 river herring stock assessment.

**Discussion on the Motion:** An Advisor expressed their support for the motion under the condition that there is a strong emphasis on the completion of the ASMFC stock assessment. Another advisor expressed that he would not object to its approval by consensus.

**MOTION 3 CARRIED BY CONSENSUS AND WITHOUT OBJECTION.**

**AGENDA ITEM #3: OTHER BUSINESS (LAPP)**

Mr. Ruhle shared some observations from his participation in the 17th full NEAMAP trawl survey, which completed 100% of its required tows. He observed the lowest sea temperatures (both at the surface and at depth) that he has seen during the survey, as well as the most whales he has seen south of Martha’s Vineyard on the trip, which he found indicative of ocean health. He commented that the science used to support this type of work needs to improve.

The Herring Advisory Panel meeting adjourned at approximately 11:45 a.m.