CORRESPONDENCE

CHOIR COALITION

*Coalition for the Atlantic **H**erring Fishery's **O**rderly, **I**nformed and **R**esponsible **L**ong Term **D**evelopment*

June 13th, 2016

Mr. John Bullard, Regional Administrator
National Marine Fisheries Service
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930

Re: Mackerel and Herring Electronic Monitoring Pre-Implementation Plan

Dear John,

I am writing on behalf of CHOIR to provide comments on the Pre-Implementation Plan (PIP or pilot program) for electronic monitoring in the Atlantic mackerel and herring fisheries. CHOIR is an industry coalition made up of over 650 commercial and recreational fishing organizations, fishing and shore side businesses, researchers and eco-tourism companies.

We appreciate that GARFO has sought the money to develop this pilot program and that your staff has taken time to meet with us and provide some of the details we've been seeking for the last few months. However, the PIP, which is scheduled to begin in less than a month, will be unable to inform the future monitoring program unless serious changes are made to its design. We have identified the following problems and practical solutions that should be addressed prior to the start of this pilot program:

Problem No. 1: There is insufficient accountability in this fishery. Solution: We support the "key data analysis and reporting tasks" outlined in NMFS project summary document. In particular, we support efforts to: review 100% of all fishing activity, identify all discards, identify contents of the net at the end of pumping (i.e., operational discards), and identify interactions with protected species. However, the pilot goals are currently administrative in nature and should reflect the collection of this information. We recommend an additional goal to evaluate the efficacy of EM to detect all discarding activity and compliance with slippage requirements.

Problem No. 2: The slippage reporting and consequence measures will not apply to a PIP trip without an observer. Solution: Slippage restrictions and reporting requirements must apply on every "observed" trip (PIP or NEFOP). Testing EM's ability to monitor compliance with

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slippage measures on only a portion of observed trips is not acceptable. The PIP must provide a complete examination of this issue, which is of tremendous concern to CHOIR and many other stakeholders.

Problem No. 3: The importance of operational discards is underestimated. Large amounts of slippage can occur at the end of a trip. Solution: Operational discards should be documented on all trips. This should be an explicit goal for this PIP. Pumping in the water is a problem to the degree that it is an obstacle to monitoring this fishery. Operators need to find a way to bring the net onboard—and we believe this is possible. But if they are unable to make their catch available for viewing, then maybe this gear is not fit for use in these fisheries.

Problem No. 4: The PIP standards are not well understood. Solution: NMFS should provide a list of specific standards that will guide the proposed EM/PS program through the PIP.

Problem No. 5: There is continued reliance on self-reporting in this fishery and there is trust that slippage is accurately documented. Solution: NMFS should ensure redundancy during the PIP and compare video review of the EM/PS PIP trips with the reports filed by the NEFOP observers on those same trips (37% of the time) for discrepancies. This analysis should be made public.

Problem No. 6: The PIP will not document the weight of slipped catch. Solution: NMFS should coordinate with the study fleet to ensure that participating vessels with net sensors document the weight of slipped catch.

Problem No. 7: The PIP should meet the goals of the IFM Amendment. NMFS project summary indicates that "identification of discarded fish is not necessary for the purpose of this project" but obtaining accurate estimates of catch (retained and discarded) is a specific goal for the IFM amendment. Solution: Revise the goals of the PIP.

Problem No. 8: The PIP will not improve the documentation of all catch (species composition) in this fishery. NMFS, NEFMC and MAFMC should view the PIP as an opportunity to collect necessary information to inform the development of a comprehensive EM/PS program, including design and implementation of a maximized retention (which should be a necessary component of this program). Solution: (1) NMFS should signal a move towards maximized retention – require all catch in this PIP to come to port (with limited exceptions) and audited discard logbook similar to the one used on the West Coast; (2) all vessels in the PIP should land in a port capable of portside sampling.

Problem No. 10: There's a mismatch between PIP and final decisions on the IFM Amendment – the PIP concludes in fall 2017, final action in fall 2016, effective date is March 2017. Solution: Perhaps a Letter of Authorization to fish?

Problem No. 11: The funding limitation of $400,000 will not allow all of these solutions. Solution: Run a pilot program with fewer vessels (2 or 3) in order to gather all of the information necessary to inform a future EM/PS program. Find incentives to reward these few participating boats. Maybe give them the cameras at the end of the PIP.

We have fought for many years to bring about better monitoring in this fishery. While we believe an EM pilot program has a lot of worth, it must be done right of else there will be a lot of wasted time and money. And we believe that unless the steps above are taken, this project will not have the ability to inform an effective monitoring program down the road.

Thanks for your time,

Stephen B Weiner

Steve Weiner, Chair

HERRING ALLIANCE

June 14, 2016

Mr. John Bullard
Regional Administrator NOAA Fisheries
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930

Mr. Terry Stockwell
Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, Massachusetts 01950

Mr. Rick Robins
Chairman
Mid-Atlantic Fishery Management Council
800 N. State St., Suite 201
Dover, DE 19901

RE: Support for 100 Percent Observer Coverage for Midwater Trawl Vessels in the Industry Funded Monitoring Amendment and Recommendations for an Effective Electronic Monitoring and Portside Sampling Program

Dear Mr. Bullard, Mr. Stockwell, and Mr. Robins:

I am writing on behalf of the Herring Alliance[1] to offer our continued support for 100-percent observer coverage (Herring and Mackerel Alternative 2.1), with no waivers, on all midwater trawl vessels operating in the Atlantic herring and mackerel fisheries. This requirement should remain in place until a fully effective electronic monitoring and portside sampling (EM/PS) program is developed and implemented. The Industry-Funded Monitoring Omnibus (IFM) Amendment was initiated in September 2013 in order to address NOAA Fisheries disapproval of New England and Mid-Atlantic council amendments[2] that would have required 100-percent observer coverage on the largest vessels in the Atlantic herring and

[1] The Herring Alliance includes 110 organizations representing nearly 2.5 million individuals concerned about the Atlantic coast's forage fish, including the stocks managed in the MSB FMP, and the impacts of forage fish fisheries on the ecosystem through food web depletion and bycatch.

[2] *See* MAFMC (Apr. 2013). Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan, Final Environmental Impact Statement (FEIS); NEFMC (Mar. 2013); Amendment 5 to the Fisheries Management Plan (FMP) for Atlantic Herring, FEIS.

mackerel fisheries.[3] Despite assurances by NOAA Fisheries that it would take the lead on the IFM Amendment (to develop a legal mechanism for cost sharing) and present an initial range of alternatives for council consideration at the January and February 2014 New England and Mid Atlantic Council meetings,[4] with final action scheduled for June of 2014,[5] nearly three years later the amendment remains incomplete. Further, the amendment includes many alternatives for monitoring these fisheries that, if selected, will leave the midwater trawl fleet woefully under-monitored, and far short of both councils' intent. Approval of the Herring Alliance's recommended alternatives (Herring and Mackerel Alternatives 2.1 with no waivers) is the only available path forward that will provide the monitoring needed for the midwater trawl fleet within a reasonable timeframe and the incentive to produce additional funding, and any other necessary resources and requirements, to implement an effective monitoring program.

As this Amendment has been delayed, the interest in Electronic Monitoring and Portside Sampling (EM/PS) has increased as a potential alternative to at-sea observer coverage. The Herring Alliance will support the transition to an EM/PS monitoring program provided it is well designed and fully implemented prior to moving to anything less the 100-percent observer coverage. NOAA Fisheries received funding for a pilot EM project for midwater trawl vessels and provided a summary of the key aspects of its intended project at the June 2, 2016 Herring Committee meeting. The Herring Alliance does not support the pilot project for several reasons, including our view that it would be a better use of available funding to undertake the first steps necessary to develop and implement an effective and permanent EM/PS program. In order to facilitate development of an effective EM/PS monitoring program – one that could provide an alternative or a complement to observers[6]– the Herring Alliance recommends that NOAA Fisheries and the New England and Mid-Atlantic Councils include the following core elements in any future EM/PS program:

- **100% video-based monitoring** – The EM system should include a configuration of cameras and gear sensors to verify retention of catch for portside sampling and to verify retention of catch for portside sampling and monitor compliance with discarding/slippage requirements. Cameras should be on from the start of the vessel's first haul back until the vessel returns to port, and should provide views of all areas where catch is retrieved, sorted and discarded (i.e., haul back, pumping and areas of the deck where catch sorting and discarding occurs). Gear sensors (i.e., drum rotation and hydraulic pressure) must be on for duration of trip to detect fishing activity and activate camera recording. GPS data must be collected to provide high resolution location information for all gear sensor and video data. All information must be captured and stored on a secure, tamper-evident

[3] The disapproved monitoring provisions in Herring Amendment 5 and Mackerel Amendment 14 would have required 100 percent observer coverage on all Category A and B limited access herring vessels and all mackerel limited access midwater trawl and Tier 1 small-mesh bottom trawl vessels.
[4] NOAA (Sept. 20, 2013). Letter from John K. Bullard, Regional Administrator, and William A. Karp, Ph.D., Science and Research Director, to Chris Moore, Executive Director, MAFMC, and Thomas Nies, Executive Director, NEFMC.
[5] NOAA/NMFS (Jan. 2014). Draft Discussion Document: Industry Funded Monitoring Omnibus Amendment, p. 3.
[6] EM would not replace the NEFOP sampling program that NOAA Fisheries deems necessary for its scientific needs. NEFOP observers would still be randomly deployed on vessels to collect biological samples and other scientific information.

control unit/hard drive. A vessel monitoring plan should be required to outline protocols for the installation, operation and maintenance of the EM system.

- **Maximized retention** – EM/PS will only be effective in the long term if integrated within a maximized retention program requiring vessels to land all fish, including target and non-target species (excluding protected and/or prohibited species). Exempted Fishing Permits could be issued on a temporary basis to allow vessels to retain and land non-permitted catch so all catch is made available for sampling. This would allow NOAA Fisheries to gather the information needed to develop options for retention requirements that may be considered for future adoption. Under maximized retention, minor discarding of non-target species may be allowed. Allowable discarding should occur at a designated location or discard chute equipped with a dedicated high-resolution camera(s) so that all catch can be sampled/estimated through either video recordings or discard logbooks with video imagery reviewed to validate discard amounts. The logbook audit approach is being pursued in the Pacific whiting midwater trawl fishery because it was found to produce reliable estimates at reduced cost.[7]

- **Slippage measures** – Slippage prohibitions, reporting requirements and consequence measures must apply to trips monitored with EM. These requirements can be monitored through a combination of EM sensors and video cameras, which can be later reviewed to verify whether the vessel operator complied with reporting the event and any consequences that applied. This will require regulatory changes as slippage measures currently only apply to trips monitored by NEFOP observers.[8] If it is determined that EM cannot identify the cause of a slippage event, NOAA Fisheries and the Councils should apply the same consequence to all slippage events to aid enforcement while still providing a strong incentive for herring vessels to minimize slippage. Without this accountability (i.e. consequences) there will be continued uncertainty around the effectiveness of the river herring and shad catch caps and the accuracy, completeness, and reliability of catch estimates in these fisheries.

- **Video data review** – Four types of video review should be required: 1) review of footage recorded during haul back and pumping operations to verify retention of catch during fishing operations, 2) review of wide-angle camera view(s) of the deck to monitor discarding outside fishing events, 3) review of allowable discarding of non-target species at designated discard locations or chutes, and 4) review for compliance with slippage prohibitions, reporting requirements and consequence measures. We support 100-percent review of video footage until analysis shows that random subsampling of video can provide a high level of confidence that discarding activity and slippage will be detected.

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[7] *See* PFMC, Electronic Monitoring Draft Environmental Analysis, April 2016, p. 44, available at: http://www.pcouncil.org/wp-content/uploads/2016/04/F4_Att2_EM_Analysis_Full_ElectricOnly_APR2016BB.pdf.

[8] The slippage consequence measures implemented in Framework 4 to the Atlantic Herring FMP and Framework 9 to the Mackerel, Squid, and Butterfish FMP require all Category A and B herring vessels and Tier 1, 2, and 3 mackerel vessels on observed trips to move 15 nautical miles following an allowable slippage event (i.e., slippage due to safety, mechanical failure, or excess catch of spiny dogfish) and to terminate a fishing trip and return to port following a non-allowable slippage event (i.e., slippage for any other reason).

- **Vessel monitoring plans** – VMPs should provide explicit details how vessels will meet the catch monitoring standards set by NMFS and the councils. NMFS should present a list of specific standards/requirements for council/public consideration and input prior to approval of the EM/PS program. The EM program being developed for the Pacific whiting fishery has an excellent set of performance standards in draft regulatory form that can be used as a starting point for analysis.[9] Standards should include, but not be limited to, the following:
    - Protocols for installation, operation and maintenance of the EM system (such as camera and sensor configurations, functionality testing, periodic cleaning of cameras and ensuring the EM system is turned on for the entire fishing trip);
    - Procedures for data storage and transfer;
    - Procedures to follow when an EM system fails;
    - Notification requirements in advance of a landing;
    - Provision of safe and convenient access points and sampling locations for observers and portside samplers; and
    - Procedures to ensure that no unobserved pre-sorting occurs (such as identification of locations on deck where fish retrieval, sorting and discarding should occur so all activity remains in view of the cameras and procedures for demonstrating the cod-end is empty after each haul and that no catch is slipped).

- **100% portside sampling** – 100% of vessel landings should be sampled by portside monitors to obtain accurate weights by species of the retained catch. Currently, some offload locations cannot be sampled due to safety or logistical reasons. This should be addressed so sampling can occur at all offload sites. Midwater trawl vessels should be prohibited from landing catch in ports where portside sampling is not available to ensure complete sampling of all catch delivered to shore.

- **Compliance measures** - Rules must be defined that stipulate consequences for non-compliance with VMPs. This can include fines for non-compliance and/or requiring higher levels of data review at the vessel's expense. For example, failure to document discarding events could require increased rates of video review on subsequent fishing trips or for the remainder of the fishing year.

- **Third party verification of landed catch** - Independent verification of landings should be considered a core element of a robust portside sampling program. NOAA Fisheries should explore ways to facilitate third party landings verification through proposed portside sampling program.

Until a fully operational and effective EM/PS solution is implemented, the Herring Alliance continues to support a requirement for an observer on every midwater trawl vessel. While we appreciate NOAA Fisheries efforts to develop and assess EM/PS as a potential tool to address the monitoring and management needs of the herring and mackerel fisheries, this work should be applied to the immediate implementation of the first stages of a permanent EM/PS

[9] *See* PFMC, Deeming of Electronic Monitoring Regulations for Whiting and Fixed Gear Fisheries, April 2016, available at: http://www.pcouncil.org/wp-content/uploads/2016/03/F4a_NMFS_Rpt_EM_reg_deeming_APR2016BB-.

program. NOAA Fisheries and the Councils must ensure that any future EM/PS program contains the measures necessary to effectively monitor this high volume fishery, including a maximized retention policy that brings the vast majority of catch to shore for sampling.

Thank you for considering our recommendations for the IFM Amendment.

Sincerely,

Roger Fleming
Attorney Earthjustice

On behalf of the Herring Alliance