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ADDITIONAL CORRESPONDENCE

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NEW ENGLAND FISHERY MANAGEMENT COUNCIL

November 29, 2017

Via Electronic Mail
Dr. John F. Quinn, Chair
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

RE: Council Action on Draft Amendment 8 to the Atlantic Herring Fishery Management Plan

Dear Chairman Quinn:

This letter is submitted on behalf of the Sustainable Fisheries Coalition ("SFC") with respect to the New England Fisheries Management Council's scheduled action on draft Amendment 8 to the Atlantic Herring Fishery Management Plan ("FMP") next week in Newport, Rhode Island. SFC's participants are: Capt. Jimmy Ruhle, Lund's Fisheries, Seafreeze, Inc., The Town Dock, NORPEL, Irish Venture, Cape Seafoods, Western Sea Fishing Co., Ocean Spray Partnership, and O'Hara Corporation. It represents all but one of the owners of mid-water trawl vessels ("MWT") currently operating in the Atlantic herring fishery, as well as processors, bottom-trawlers, and the at-sea freezer vessels. All SFC participants and their communities will be impacted by the Council's decisions on Amendment 8.

In brief, we urge the Council to adopt the Atlantic Herring Advisory Panel's recommendation for localized depletion/user conflicts as the preferred alternative. That recommendation was for the Council to select Alternatives 1 (status quo) and 9 (lifting the seasonal restriction on access to Area 1B) as preferred. In terms of acceptable biological catch ("ABC") control rules, SFC supports Strawman A and believes it should be the Council's preferred alternative. Our rationale for these choices is provided below.

Before turning to the specific alternatives, however, SFC would like stress the importance of the decisions the Council will be making in this rulemaking. Amendment 8 is an existential matter for the herring fishing industry. The fishery in general, and the MWT sector in particular, have been in precipitous decline since the first reductions in acceptable biological catch ("ABC") following adoption of Amendment 1.

The reduction in annual catch limits ("ACL"), in conjunction with the many subsequent management actions (including, among others, loss of access to 70 percent of the Area 1A sub-

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ACL; effective loss of access to the groundfish closed areas; the Atlantic States Marine Fisheries Commission's spawning closures; the "move along" and trip termination provisions for "slippage"; restrictive haddock and shad/river herring bycatch caps), have significantly decreased harvest opportunities and available fishing areas, while increasing operating costs. These measures have led to a dramatically down-sized MWT fleet, from _ vessels prior to Amendment 1 to just _ operating today.

The ABC control rule measures have the potential to greatly reduce allowable catch, while those aimed at localized depletion/user conflicts will further limit areas in which the fishery can operate. The former will reduce total revenues, while the latter have the potential to make even smaller sub-ACLs in Areas 1B, 2, and 3 difficult or impossible to achieve. Our trips will be longer (and thus much more expensive) and less successful because we will not have access to herring when it is in the near-shore areas. Adding to these concerns are further increased operating costs associated with the Industry-Funded Monitoring Amendment.

If the alternatives for which SFC advocates are not selected, the already slim margins its participants face will evaporate, causing job and fishing infrastructure loss, as well as significant harm to the lobster fishery and other fisheries utilizing herring for bait, and the communities they support. SFC's participants understand that the concerns of these measures' proponents are strongly felt. Under the status quo, however, everyone has an opportunity to make a living. The economic dislocation from an overly restrictive ABC control rule and additional closed areas, and the impact on the herring and bait-dependent fisheries simply is not outweighed by the marginal and unquantifiable benefits to the ecosystem and other marine users from any of the other options.

With those introductory comments, we now turn to the alternatives.

I. COMMENTS ON THE ABC CONTROL RULE ALTERNATIVES

The Council's management of the Atlantic herring resource is an unqualified success. Spawning stock biomass ("SSB") is about two-and-a-half times the amount which produces maximum sustainable yield ("SSB_{MSY}"), a level that is the gold standard for fisheries management. Fishing mortality accounts for only twenty percent of total mortality.[1] In terms of the percentage of total biomass, estimated in the last stock assessment at 1,920,000 metric tons, the fishery takes a mere 5.5 percent. That compares with 44 percent consumed by predators. (Affected Environ. at 21.) In all, half of the stock's annual production remains in the water to reproduce and absorb additional predation. It is in that context that the Council's Scientific and Statistical Committee has determined that the current herring management approach "likely meets ecosystem goals, including forage considerations, by default not design." (Draft Disc. Doc. at 12.)

As the Herring PDT notes, the current interim "control rule has successfully prevented overfishing and herring abundance has increased under this policy. ABCs have been very stable for the last

[1] Draft Discussion Document Amendment 8 to the Atlantic Herring Fishery Management Plan (hereafter, "Draft Disc. Doc."), at 11 (Feb. 2, 2017).

six years - 111,000 mt in 2016-2018 and 114,000 in 2013-2015."[2] Strawman A continues this successful policy, albeit in a manner that can be utilized over the long run under varying resource conditions. The other alternative ABC control rules would result in significant underfishing of the herring resource with no empirical evidence that any benefits would accrue to the marine ecosystem. Many of these have "cut-offs" which could result in complete shutdowns of the fishery, which would be economically ruinous to both the herring and lobster industries. SFC respectfully suggests that the Council revisit its prior decision and select Strawman A as its preferred alternative.

Although we recognize and share the Council's desire to ensure that the herring stock is fulfilling is ecological role, it is worth noting that the law does not require anything more than preventing overfishing, rebuilding overfished stocks, and ensuring achievement of optimum yield on a continuing basis. As such, there are no legal barriers to maintaining an approach comparable to the Council's very conservative approach over the past two specification setting processes.

It is also important to bear in mind that at current ABC levels, fishing mortality plays a small role in determining overall herring biomass levels. Much more important are natural mortality, along with "climate drivers and ocean regime shifts" that favor or disfavor recruitment and survival. (Draft A.8 at 21.) A recent paper in *Fisheries Research* by Dr. Ray Hilborn and six other respected fisheries scientists underscores the point that under conservative management, it is these factors, along with others such as weak spawner-recruit relationships, preferred prey size versus a fishery's selectivity, and a stock's spatial distribution, that have a much greater influence on predator/prey relationships.[3] This work has yet to be incorporated into the Amendment 8 analysis.

Even the recommendations of the Lenfest Forage Fish Task Force, on which the flatly unlawful Alternative 2 is based,[4] are premised on predators which are highly dependent on a particular forage stock (*i.e.*, for 50 percent or more of nutrition). Most of Atlantic herring's predators are "generalists," depending on this stock for "no more than 20% of [even the most dependent groundfish stock's] diet composition." (Affected Environ. at 20.) Some sea birds to which herring and hake are most important, prey on juveniles not taken by the fishery. *Id.* It has been documented that bluefin tuna, which is one species that is heavily reliant on herring, has exhibited poor body condition (though the population is nonetheless rebuilding) under the current high level of abundance. This problem is apparently related to changes in decreases in herring's mean weight-at-age, which may be related to density-dependent growth or other factors unrelated to the fishery. (*See id.* at 35.) In general, most predators in New England's waters are well adapted to the natural variability of various prey species.

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[2] Draft Amendment 8 to the Atlantic Herring Fishery Management Plan ("Draft A.8") at 33 (Nov. 13, 2017).

[3] Hilborn, R., Amoroso, R., Bogazzi E., Jensen, O., Parma, A., Szuwalski, C., and Walters, C., *When does fishing forage species affect their predators?* Fish. Res. (2017), http://dx.doi.org/10.1016/j.fishres.2017.01.008.

[4] While this is counsel's opinion, it is easy to make a case that a control rule that requires the fishery to shut down when spawning stock biomass is **above** SSBmsy – the target for stocks managed under the Magnuson-Stevens Fishery Conservation and Management Act – is inconsistent with the law's overarching purpose of balancing conservation and maximizing the economic and social benefits of marine resources.

At its heart, however, SFC's recommendation of Strawman A as the new ABC control rule is premised on the severity of the economic impacts the other alternatives would have. The cuts in the overall ACL they would entail will have predictable and, in most cases, severe adverse economic impacts on the directed herring fishery and those who rely on it, most especially lobster fishermen and their communities.

In the balance, this certain economic and social harm must be weighed against only the possibility that predator stocks, sea birds, and marine mammals may be marginally better off than with current harvest levels. The analysis shows only marginally better outcomes for these predators as compared with Strawman A, and some of that may be a result of the model assuming some benefit from additional herring in the water. Given recent adverse changes in tuna body condition, which none of the alternatives influence, this assumption may be open to debate. In any event, given the small amount of total biomass currently accounted for by the fishery, the best that can be said is there may be some unquantifiable benefit to lower harvest levels, but the consequences for the industry are certain and serious.

As a final note, based on the projections of ABCs associated with the various control rules prepared by the PDT, it appears that Strawman A, which caps fishing mortality rates at 90% of Fmsy, is more conservative than the current interim control rule. Under that rule, fishing mortality rates in some years to are lawfully set equal Fmsy. In any event, the current approach has worked well for the herring stock, its predators, and the industry. SFC urges the Council to give this alternative serious consideration and support.

II. COMMENTS ON LOCALIZED DEPLETION/USER CONFLICTS ALTERNATIVES

As an initial matter, SFC would like to state for the record its objection to expansion of the purpose of the localized depletion issue – which was the sole matter taken out for additional scoping – to include "user conflicts."[5] In reliance on the Scoping Notice and the Council's message, SFC explicitly declined to address the issue of user conflicts in its scoping comments. It is a matter of sound policy and reasoned decisionmaking that the public be informed of the scope of a council's action and have a fair opportunity to comment. As a practical matter, moreover, the post-scoping conflation of alleged user conflicts with the issue of localized depletion makes this a particularly difficult issue to address because it is unclear what the alternatives' objectives truly are.

At this point, however, it is apparent that none of the Amendment 8 alternatives can be justified as addressing localized depletion as a scientific matter. The Draft Affected Environment, as updated

[5] The supplemental scoping notice stated: "The Council recently decided to expand the scope of Amendment 8 to include consideration of localized depletion in inshore waters. During this comment period, the Council is only seeking comments on the expanded scope of Amendment." 88 Fed. Reg. 50825, 50825 (Aug. 21, 2015) (emphasis added). This was consistent with statements made by Council members that user conflicts would not be addressed when it decided to add this issue to the amendment.

in November 2017, makes clear that even after a valiant analytical effort, the Herring Plan Development Team ("PDT") "did not find any evidence of localized depletion." (*Id.* at 163.) Certainly, there is a perception by some that this phenomenon exists, but as a matter of science and policy, Amendment 8's proposed alternatives are aimed solely at addressing perceptions of conflicts between the herring fishery (specifically, MWT activity) and other marine user groups by creating exclusion zones applicable solely to this one gear type (except for Alternative 2, which affects all herring fishing).

As noted above, SFC strongly urges the Council to adopt Alternatives 1 and 9 as preferred. Alternative 1 maintains the status quo in terms of restricted access areas (*i.e.*, the seasonal exclusion for MWTs from Area 1A, which itself dealt a hard blow to this sector). Alternative 9 would lift the January to June closure of Area 1B. The latter change has significant potential to shifting herring fishing effort in the one of the areas of most concern (that is, "backside of Cape Cod") to a time of year when the likelihood of conflicts is much reduced and the potential to also catch Atlantic mackerel are increased. Beyond that, the SFC cannot support any further loss of fishing grounds. The myriad of current restrictions already in place make it virtually impossible to achieve optimum yield from the herring resource today.

This is an important difference from the purse seine/fixed gear only seasonal restriction in Area 1A. In that case, the National Marine Fisheries Service ("NMFS") specifically found that that measure only "indirectly support[ed] the objectives of preventing overfishing and achieving [optimum yield]."[6] The agency did so because it was clear that even with the seasonal ban on MWT from Area 1A, its sub-ACL would continue to be fully utilized. Thus, as a legal matter, the gear restriction would not impact achievement of OY on an ongoing basis. (*See id.*)

The same cannot be said for the alternatives in Amendment 8, with the potential exceptions of Alternatives 2 and 3. Even under the current regulations, it is very difficult to harvest the full sub-ACLs for Areas 2 and 3. But as the Herring PDT notes in its analysis, even the 12 mile closure option "could make it difficult" to catch the Area 1B sub-ACL, because the bulk of the harvest from that area are within that zone. (Affected Environ. at 172.) It made a similar finding with respect to achieving the allocations for Areas 2 and 3. (*Id.* at 173.)

SFC believes this is undoubtedly true, even if the overall ACL is reduced by the decisions the Council makes on the control rule. The fishery occurs in these areas because at certain times of the year, that is where the stock can be found. Simply in terms of the cost/benefit decisions every owner must make before outfitting a vessel for a multi-day search for fish, it simply is not profitable to scratch for fish far offshore when the bulk of the stock is inshore. If the industry lacks access to the resource – which has been a significant issue this year when the herring spent a good portion of the summer in the groundfish closed areas, and thus was inaccessible unless one was lucky enough to get an observer – the fish cannot be caught.

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[6] 72 Fed. Reg. 11252, 11259 (March 12, 2007). By contrast, the Council had found these measures addressed overfishing "directly," as well as indirectly.

At some point—one that we are essentially at already—additional restrictions on access can run afoul of the National Standard One requirement that NMFS and the Council "achiev[e], on a continuing basis, the optimum yield from each fishery for the United States fishing industry."[7] As the court in *Western Sea Fishing Co. v. Locke*, 722 F. Supp. 2d 126 (D. Mass. 2010), noted, "Once optimal yield is set, the Secretary is charged with 'achieving' the optimum yield." (*Id.* at 140.) In that case, it found the Amendment 1 provision disallowing a vessel from receiving an Area 2/3 limited access permit if its history was used to qualify another vessel for a permit. The court found that measure could not be justified under National Standard One because the current participants were not harvesting the full herring ACL in these areas, noting that the rule "seems likely to exacerbate the gap between landings and optimum yield." (*Id.*)

In the case of the proposed localized depletion/user conflict measures, the PDT has uncovered no scientific evidence of a biological concern. And while it is clear that other marine user groups advocating for a broad closure to MWT gear do not like sharing these waters with herring vessels, there is no evidence that its prosecution in these near-shore waters is adversely impacting other fisheries' ability to achieve optimum yield. As the analysis notes, the impacts of the fishery on the bluefin tuna fishery "is difficult to quantify given [its] relatively high catch rates ... even during periods of overlap with herring MWT fisheries." (Affected Environ. at 217.) We are all economic actors trying to make a living from public resources.

Against the amorphous benefits that would accrue to these other groups, there are very real and substantial costs to the herring fishery. Even the most modest of the options, Alternative 2, would economically harm the industry and SFC cannot therefore support it. As the draft analysis shows, the cost of a fishing trip beyond twelve miles is more than double those nearer to shore ($4,626 compared to $9,488 for a trip between 12 and 25 miles from shore). (*Id.* at 211 (Table 94).) The ability to make near-shore trips with higher profit margins helps SFC's businesses maintain profitability. This is all the more important with the looming prospect of industry-funded monitoring negatively impacting the bottom line for our vessels.

Nor do additional closures, even with the ability to switch gears, make sense from an environmental perspective. Depending on the particular measure, the potential shifts in effort they would cause could increase bycatch and/or interactions with protected species. To the extent MWT vessels are forced to concentrate effort in areas with higher levels of haddock or river herring/shad bycatch, the problem is not so much biological. The caps on incidental catch of these species ensures that total removals will not increase. It will just mean that area closures will be more frequent and less herring will be harvested.

The herring fishery, both the MWT and purse seine sectors, has the lowest bycatch rate of any major fishery in New England, and very low levels of interactions with marine mammals and endangered species. Upwards of 98 percent of MWT's catch is herring and mackerel. But these remarkable numbers are achieved because the fishery targets large aggregations of herring. The

[7] 16 U.S.C. § 1851(a)(1).

Amendment 8 measures that restrict access to those large schools at times and in areas where they can be optimally caught will likely have more adverse impacts on the ecosystem and other fisheries than the status quo.

This would certainly be the case if MWT vessels were to convert to bottom trawl gear and fish nearshore at times and in places where small-mesh bottom trawl fishing is allowed.[8] For one, as the Herring PDT repeatedly notes, any impacts in terms of localized depletion and user conflicts come from the amount of removals, not the gear. Thus, the alternatives that allow gear-switching are not rationally related to the problem these measures are ostensibly addressing. Moreover, this gear has higher bycatch rates and a greater footprint in terms of essential fish habitat.

In sum, the Council should prefer the status quo over these alternatives. That said, by also choosing Alternative 9, it can take a proactive step in alleviating a source of friction between the fishery and other user groups by allowing for the possibility of shifting effort in Area 1B to the winter months when other boats, not capable of operating year-round, are tied at the dock..

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Thank you very much for your time and attention to these comments and suggestions. If you have any questions, please do not hesitate to contact me at (202) 412-2508.

Sincerely,

/s/ Shaun M. Gehan
Counsel to the Sustainable Fisheries Coalition

cc: Members of the New England Fishery Management Council
Mr. John Bullard, Regional Director, Greater Atlantic Fisheries Regional Office, NMFS

ATTACHMENT

[8] Attached hereto is Lund's Fisheries' responses to the questions posed by the Herring PDT to members of the Herring Advisory Panel. It explains the costs and practicalities of converting MWTs. In brief, it is not feasible to purse seine in Areas 1B, 2, and 3, and that conversion is not particularly feasible from an economic or practical perspective.

Response to PDT from Lund's Fisheries

1. If MWT vessels are prohibited in an area, how will their fishing behavior most likely change? Is it more likely that vessels will shift seasonally and fish in the same area, or is it more likely that vessels will shift effort to a new area? How will this change in fishing behavior vary for the different seasonal and spatial alternatives?

If the midwater fleet is restricted from areas where we now fish, we will have no choice but to fish other areas although the likelihood is that catch will be dramatically reduced. The PDTs analysis demonstrates this fact. These boats fish where the herring are and most catches are within the six and twelve mile buffers being proposed in Area 1A, 1B and Area 3 particularly from May through October. Any further expansion of closed areas would come close to eliminating the fishery. Current restrictions, including the MWT ban and extensive fall spawning closures in 1A, the requirement for 100% observer coverage in the groundfish closed areas – with observers unavailable – and the Georges Bank haddock catch limits – which are not biologically justified given the extent of the GB haddock resource – already places the MWT fleet in truncated areas of the Atlantic, reducing the potential to realize OY and the chance to be profitable.

Buffer zones being proposed, further reducing the fleet's flexibility, will leave bottom trawling as the only option for the MWT fleet to attempt to stay in business. Seines cannot be used offshore, in any of these areas, due to the combined effects of tide, wind, weather and the location of fish not on the surface but lower in the water column ~~or on or near the bottom~~.

This has been proven in the past by the failure, for example, of the 135 foot Calvin L. Stinson, owned by Stinson Canning, that was rigged for offshore seining, midwater fishing and bottom trawling during the late 1970's and early 1980's. This boat never became profitable and was sold to the west coast after being depreciated by the company. The crew never became effective at midwater fishing, seining proved to be impossible offshore and, other than bottom trawling for haddock and pollock, the boat never made any money. I know this because I was a crewman on the boat.

Forcing the MWT fleet to go bottom trawling will result in more bycatch and discards, turning a fleet with the lowest discard rates in the region into a fleet with bycatch equal to today's other bottom trawl fleets. Why would the Council want to create this outcome?

Unfortunately, the PDT has not provided the Committee or Council with information about the sustainability of MWT pelagic fleets in other areas of the world, including the North Sea, as has been certified by the Marine Stewardship Council. See, for example: https://www.msc.org/healthy-oceans/sustainable-fishing/fishing-methods-and-gear-types/pelagic-midwater-trawls

2. How many MWT vessels currently switch gear types during the year, less than five? Is it only MWT to purse seine and vice versa? How many more vessels could reasonably covert? What is the initial cost of rigging a MWT vessel with a purse seine? After the initial cost, what is the cost to switch gears back and forth? Any input on potential costs between switching from

MWT and bottom trawl?

We believe there are two. These boats convert to seining seasonally, to stay in the 1A fishery when midwater fishing is restricted today. The majority of midwater boats are not rigged for seining and the change-over would be cost-prohibitive. Booms and other modifications would have to be added to get the power block and gear overhead, which could also have the effect of raising the righting moment and causing an individual vessel to become unsafe. Winches would have to be modified or replaced, with seines purchased and deck configurations changed. We estimate the cost at over $1 million, per vessel, for an existing pair trawling operation to be converted to seining. Another factor is the need to find crew with seining experience. It could take a complete season to find crew and become efficient fishing this gear. There is not enough money in the fishery for this outcome to be practicable. In addition to these conversion costs, $300-500,000 in MWT gear would have to be discarded with each pair trawl configuration outlawed.

On the other hand, a permanent conversion to bottom trawling; purchasing a high-rise bottom trawl net similar to those used for squid fishing, purchasing pelagic doors, reconfiguring winches and wire capacity would likely cost a quarter of this amount, perhaps $250,000 per vessel. Existing midwater crews could reasonably switch to bottom trawling with a limited loss of fishing efficiency although crew size would have to be increased, likely negatively affecting existing crews' level of compensation.

3. Is there a threshold that would change the current incentives to switch gear types? Is it more likely that MWT vessels would convert to purse seine or bottom trawl if faced with LD measures with large potential impacts? Rather than switch gear type, is there a threshold that a MWT vessel would likely stop fishing, or potentially consider re-location?

If the Council moves ahead with buffers zones to eliminate MWT fishing for herring and mackerel, owners will have no other choice than to attempting to absorb the costs of changing over to bottom trawling to attempt to stay in business. Each company's level of income to remain profitable is unique. We know that several vessels have already left the fishery in recent years, with the vessels going to the West Coast groundfish or pollock fisheries. There does seem to be a market there for the larger class of vessels so it is likely the fleet with shrink further and the potential to realize herring and mackerel OY will be similarly limited, contrary to NS1 and other aspects of the MSA, including the Section 303 (a)(1)(A) requirement "to protect, restore and promote the long-term health and stability of the fishery. Converting to seining is not a viable option, from either a financial or operational perspective.

4. How likely is it for a MWT vessel to become a carrier vessel under the various alternatives under consideration? When a MWT vessel acts as a carrier for the PS fishery, how is the carrier vessel paid, by the PS vessel or the dealer, is it a flat fee per day/trip or a fraction of total revenues from the trip?

In recent years, some MWT vessels have been used to carry fish in the 1A summer fishery, to defray the cost of being shut out of the directed fishery there. The value of the herring caught by the seiner is shared with the carrier, at a ratio of 50/50 or 60/40 (seiner/carrier). Using these

larger vessels as carriers is not economical. Further, the ASMFC herring section has acted to limit the amount that U.S. carriers can handle in the 1A fishery, although Canadian carriers have not been similarly restricted from taking 1A fish from fishermen harvesting herring in Federal water. This situation further limits any carrying opportunity by illegally restricting the rights of carriers to carry an unlimited amount of fish under the authorizations provided by their existing Federal A & B permits. To date, neither the Council nor the Agency have acted to restore these fishing rights to this portion of MWT fleet.

5. How has the purse seine fishery changed since Amendment 1 was implemented? How has capacity changed for those vessels (have vessels been upgraded, has use of carriers changed)? Why is the PS fleet primarily located in Area 1A and active primarily in the summer and early fall only? Are there operational barriers to fishing purse seines in the winter or other areas (e.g. weather, sea conditions, water depth), or is it primarily driven by regulations and demand for bait?

The 4 or 5 seiners harvesting the majority of the catch in the 1A fishery have expanded their catching and carrying capacity in recent years, which further limits the potential for MWT-vessel carrying to be economical. These seiners' permits are realizing much high CPUE since the MWT fleet was eliminated from the summer fishery, which transferred value from other federal permits on MWTs, to a limited number of individuals operating seiners. The PDTs analysis demonstrates this clearly (Page 23, Figures 8 & 9 Appendix X). As stated above, there are absolutely operational barriers to fishing seines offshore and year-round. The only realistic option the MWT fleet will have, if the Council imposes any of the proposed buffer zones, will be to convert to bottom trawling. This is the case even with regional restrictions on bottom trawling that exist today in the region, we believe, although MWT owners are unable, at this time, to fully analyze this trade off as we are not aware the PDT has provided a clear comparison of catch potential v. areas opened to these 2 gear types

Relative to allegations of localized depletion effects of midwater trawling or seining for herring, we note the PDTs statement in their March 25, 2016 memo, that "The method of removal, ~~hoever~~however, should not be relevant to the evaluation of localized ~~dpeletion~~depletion. If predators are responding only to herring abundance in an area, then given the same amount of catch, the same ~~lovel~~level of depletion occurs regardless of gear type and would subsequently have the same effect on predators…Both gear types can be used to harvest ~~simelar~~similar amounts of herring…Issues of gear conflict should be kept distinct from issues of localized depletion." Nothing has changed since that time, relative to this particular issue.

Also, the PDT has apparently uncovered no evidence that MWT fishing for herring and mackerel in the region is having any negative effect on other ~~fishermens~~fishermen's' ability to catch groundfish, striped bass, or Bluefin tuna. In fact, according to a November 6, 2017 article in the Bangor Daily News, "Fishermen up and down the New England coast say it has been decades since they've been able to catch so many Atlantic Bluefin tuna, so fast." (http://bangordailynews.com/2017/11/06/business/atlantic-bluefin-tuna-stocks-are-rebounding-but-raising-quote-proves-controversial/) Also, the November 14 New York ~~times~~Times reported that ICCAT is considering increasing the Atlantic Bluefin quota, from 24,000 to 36,000 tons a year by 2020. (http://www.ourmidland.com/news/world/article/Increase-in-Atlantic-

Bluefin-tuna-catches-top-12355459.php#photo-14543963) We would ask in these contexts, "What is (are) the problem (s) the Council is attempting to solve?"

6. If MWT vessels are prohibited from an area (seasonally or year round), how will other herring vessels that use purse seines or bottom trawl gear respond? Is it likely for other gears to enter from other areas, or will the same number of vessels remain in the area as in previous years? Would effort increase, decrease, or stay the same?

Bottom trawling effort would be expected to increase in all areas with bycatch and discards increasing and supply likely decreasing given the loss in efficiency of MWT fishing for herring and mackerel and the restriction on the ability of this environmentally-benign catching method to locate pelagic fish in the water column rather than fishing on the bottom with bottom-tending gear. Bait prices can be expected to increase in the region as demand would continue to outstrip supply, as has been the case since the imposition of the A1 gear and quota restrictions a decade ago. During this time herring prices at the dock have increased from $.05 cents a pound to $.40 cents a pound (Page 20, Figure 3, Appendix X)

7. Alternative 9 is considering a removal of the current January-April seasonal closure of Area 1B. How is effort likely to shift if that area is open during those months? Would opening the area earlier impact the market? If so, how?

This may be the only supportable option in the document, other than the status quo control rule, and would allow winter fishing for mackerel and herring at a time when other ocean users are tied up at the dock. The PDT has done a good job in recognizing the need for the amendment, in this context, to allow an increase in the incidental catch of herring (from 2,000 pounds to some other amount – the incidental catch of mackerel is 20,000 pounds, for example) to allow for catches of mackerel to occur during the winter months and considering the persistent mixing of the two stocks on the fishing grounds. Opening this area in January would keep the fleet from jumping into the area in May when the recreational angling public is gearing up for the summer season.

8. What drives bait preference in the lobster fishery and why?
For example, is it primarily a lobster's preference for certain species, whichever bait type is cheapest, fresh vs. frozen, salted vs unsalted, geography/port region, fishing location (inshore vs offshore, mud vs hard bottom)? Does the market prefer fresh herring year-round?

Atlantic herring has been the preferred bait in the Maine and Massachusetts lobster fishery for decades, perhaps as long as 100 years, since the days when sardine cuttings were widely available and inexpensive to use to catch lobsters as they became in greater demand to tourists and "rusticators" traveling to Maine by train to get away from it all in New York, Philadelphia, etc. The same holds true today.

Herring hold up well in bait pockets when salted and the fishes' oil allows lobsters to feed and grow while the animal is in the trap. Some suggest that the lobster fishery, utilizing 70-80,000 MT of herring each year, is the ~~worlds~~world's largest aquaculture industry for this reason.

In addition to the regular availability of herring to the northeast lobster fishery, the periodic availability of Atlantic menhaden also is increasing demand for this fish, as bait for lobsters, particularly since the restrictions on catching herring by MWT brought about by A1 and subsequent quota cuts there. In fact, combining herring and menhaden in the bait bag seems to be becoming the bait of choice since menhaden is "harder" than herring and at least as oily. Menhaden prices at the dock have also increased in recent years as herring catches in the GOM have decreased with the reduction in Area 1A quota, "from ~ 60,000 MT in 2005 to ~27,000 MT by 2010." (Page 10, Appendix X).

Fresh bait is cheaper and frozen bait ensures a year-round supply. Frozen bait logically costs more but its convenience can balance that added cost to the lobsterman. Atlantic herring is also used for longline bait on the West coast and in blue crab, stone crab and crawfish traps ~~thoughout~~throughout the south Atlantic and Gulf of Mexico. Some zoofood and aquarium food markets are also ~~serverd~~served by frozen Atlantic herring although the lobster demand drives availability and price.

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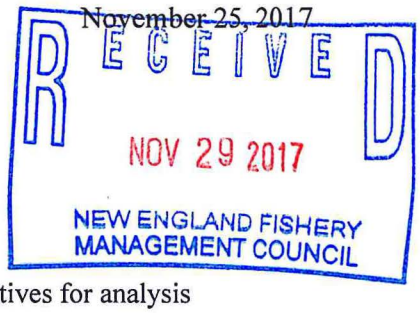
November 25, 2017



To: Tom Nies, Executive Director
New England Fisheries Management Council (Council)
50 water street, Mill #2
Newburyport, MA 01950

Cc: Daniel Hoort –Town Administrator. Wellfleet Board of Selectmen (BOS), Massachusetts NEFMC representatives

From: The Wellfleet Natural Resources Advisory Board (NRAB)

Re: Amendment 8 to the Atlantic Herring FMP / Atlantic Herring Fishery alternatives for analysis

Dear Mr. Nies:

The Wellfleet Natural Resources Advisory Board appreciates the opportunity to comment on the proposed Mid-Water Trawl area closures being considered by the Council. Our thoughts on the suite of alternatives being analyzed to address incidental bycatch and user conflict issues are as follows.

The nearshore waters around Wellfleet provide the recreational and commercial backbone of our local economy, and is the reason many choose to live and visit here. The variety of fish, seabirds, and mammals that use and depend on a healthy marine ecosystem need an abundance of food in the system to draw them here year after year. Mid-water trawlers are disrupting our local food web by annually removing millions of pounds of herring and in turn harming everything from cod fishermen to whale boat operators. Unfortunately, River Herring are often caught accidently as bycatch along with the sea herring being targeted by those mid-water trawlers. Our board has long been paying attention to those forage species critical to sustaining our local fisheries. River Herring is one of them. Despite many years of a statewide ban on River Herring possession, brought about by the alarming crash in their population, which ultimately lead to the current moratorium - there's been no sustained increase in fish returning to Wellfleet. In fact, our annual herring count sponsored by The Association to Preserve Cape Cod, and Friends of Herring River, gave us the bad news that 2017 provided the lowest statistical estimate of fish returning (8,044) since the count began 9 years ago. Many other Cape towns reported similar low returns this year. The fleet of trawlers targeting Sea Herring off the backside of Cape Cod, has the potential to inadvertently wipe out, as unintended bycatch, many of those River Herring we've been struggling to bring back, We believe all efforts should be made to avoid any possibility of accidental bycatch by closing the mid-water trawl fishery year-round in the waters surrounding Cape Cod.

Having reviewed the nine alternatives under consideration in the Council document dated April 24, 2017, we support alternative 7, with neither the seasonal sub-option, or spatial sub-options being included for management purposes. This assures that none of those non-targeted species, often present before June and after September can be accidentally caught as bycatch in our waters. We believe that this alternative will provide reasonable protection for not only River Herring, but the Sea Herring that feed so many creatures that live in the ocean waters off Wellfleet and the Outer Cape.

As Ecosystem Based Fisheries Management becomes the future of managing the resource, the council should consider protecting the health of the marine food web from bottom up as a high priority when weighing their decisions.

Thank you for considering our comments, and for your continued efforts to protect over exploitation of those resources that are critical to the health and vitality of our inshore waters.

Sincerely,

John Duane on behalf of:

The Wellfleet Natural Resources Advisory Board
John Riehl (Chair), John Duane, Thomas Flynn
Laura Hewitt, Thomas Slack, Sylvia Smith

db 11/30/17