

**NEFMC Program Review  
Sample Management Action  
Amendment 5 to the Atlantic Herring FMP**

Staff Leads: Lori Steele/Chris Kellogg

**I. Rationale for selecting this action for the Review Panel**

This amendment was initiated to improve monitoring of the herring fishery. After extensive Council efforts the Greater Atlantic Regional Fisheries Office (GARFO) disapproved key elements of the amendment. This action illustrates the need for close cooperation between GARFO and the Council.

**II. Summary of Amendment 5 to the Atlantic Herring Fishery Management Plan**

Amendment 5 was developed to: improve the collection of real-time, accurate catch information; enhance the monitoring and sampling of catch at-sea; and address bycatch issues through responsible management.

**III. Purpose and Need, and Preferred Alternatives**

The purposes and needs for this amendment are expected to advance the goals and objectives of the herring management program, as modified in Section 2.1.2 of the [Final Environmental Impact Statement](#) (FEIS). The proposed management action is intended to achieve both the goals and objectives of the management program, the specific goals and objectives of the catch monitoring program (identified in Section 2.1.3), in addition to the primary purposes of this action. The management alternatives considered by the Council in Amendment 5 generally included:

- Adjustments to the Atlantic herring fishery management program (permitting provisions, dealer and vessel reporting requirements, measures to address carrier vessels and transfers of Atlantic herring at sea, and requirements for vessel monitoring systems (VMS) and trip notifications);
- Measures to address/prioritize the allocation of NMFS-approved observers for at-sea sampling on limited access herring vessels;
- Provisions to enhance NMFS-approved observers' ability to maximize sampling at-sea;
- Measures to address/minimize net slippage by limited access herring vessels;
- Monitoring, avoidance, and protection alternatives to address river herring bycatch; and
- Criteria for midwater trawl vessel access to the year-round groundfish closed areas.

Preferred Alternatives are described in Section 6 of the FEIS.

#### **IV. Brief summary of pertinent information on process, including timing, scoping/public comment, Committee/PDT/AP meetings, and Council meetings.**

Due to the lengthy development of Amendment 5 that began during development of Amendment 4, the Committee, PDT, and AP meetings and decisions are too numerous to list in this summary document. However, the dates and type of meetings are listed in Table 200 in Section 10 of the FEIS. Section 6.2.1.2 of the FEIS describes the development of analysis for these actions, and Volume II of the FEIS provides details on these analyses and meetings.

Opportunities for public comment are required under both the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the National Environmental Policy Act (NEPA). Table 200 of the FEIS also lists all public meetings related to the development of Amendment 5. A full transcription of the public hearings is provided in *Appendix X*, Volume II of the FEIS.

For more information:

- Final EIS:  
[http://s3.amazonaws.com/nefmc.org/Volume\\_I\\_forfinalsubmission.pdf](http://s3.amazonaws.com/nefmc.org/Volume_I_forfinalsubmission.pdf)  
Final Rule: <http://s3.amazonaws.com/nefmc.org/140213-Amendment5-Final-Rule.pdf>

#### **V. Key analysis/data used to inform decisions**

- Northeast Fisheries Science Center (NEFSC), Northeast Fishery Observer Program (NEFOP) data
- Vessel Trip Report (VTR) landings data
- Dealer Data
- Federal herring permit data and federal limited/open access mackerel permit data
- NMFS Pre-trip Notification System (PTNS) data
- NMFS Vessel Monitoring System (VMS) data
- NEFSC trawl survey data
- Portside Sampling Program data – Massachusetts Division of Marine Fisheries and University of Massachusetts, Dartmouth, School for Marine Science and Technology (SMAST)
- Atlantic States Marine Fishery Commission (ASMFC) – river herring permit/landings data as well as data from individual states
- Economic data on revenues and operating costs from NMFS landings data, VTR data, and Observer data.

#### **VI. Final Timeline and Key Regulatory Documents**

This section provides a summary table of the regulatory timeline and describes the process and key documents below.

1.NOI to prepare a DEIS/scoping	2.Council approval of final measures	3.Preliminary Submission of DEIS	4. Formal FEIS Submission	5. Proposed Rule	6. NMFS partially approves A5	7.Final Rule	Days from #2-7
12/28/09	6/20/12	9/10/12	3/25/13	6/3/13	7/18/13	2/13/14	603

- Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) published in the Federal Register (FR) and starts a 30-day scoping period. This NOI announced a split between Amendments 4 and 5.
- Public Hearings: MSA public hearings were conducted March 2012, and NEPA public hearings were held in June 2012 and following the public comment period of the DEIS that ended June 4, 2012.
- Council approval: Council members voted to approve final measures in the DEIS.
- Preliminary DEIS submission: The Council submitted the DEIS to NMFS for review on September 10, 2012.
- Formal FEIS submission: After a series of revisions, the Council submitted a preliminary FEIS to NMFS on March 25, 2013. A Notice of Availability (NOA) of the FEIS published in the FR on April 22, 2013, starting a 60-day comment period ending June 21, 2013.
- Proposed Rule publishes in the FR and started the 45-day comment period (June 3- July 18, 2013).
- NMFS approval: NMFS partially approved Amendment 5, and sent a letter to the Council on July 19, 2013 informing them of their rationale (see Section VII below).
- Final Rule publishes in the FR with an effective date of March 17, 2014.
- Days: The amount of time from the final Council approval to the effective date was 603 days.

**VII. What worked well/ what could be improved? Please include information on any significant setbacks and how/if they were resolved**

*Information in this section will be elaborated on during a presentation at the Program Review Meeting.*

The measures proposed in this amendment were originally developed as part of Amendment 4 to the Atlantic Herring FMP, but Amendment 4 was split in June 2009 so that the Council could develop ACLs and AMs for implementation for the 2011 fishing year (as mandated by the MSA). The ACL/AM component was designated to be part of Amendment 4, and other measures under consideration (catch monitoring program, river herring bycatch measures, criteria for midwater trawl access to groundfish closed areas, measures to

address interactions with the Atlantic mackerel fishery) required additional work/discussion and was developed for this amendment.

Refer to Section 8.1.3 of FEIS – Areas of Controversy and Issues to be Resolved, for more information around setbacks for this action.

NEFMC/Council coordination on analysis and rulemaking: The Council spent several years developing this amendment, and it contains many measures that would improve herring management and that can be administered by NMFS. NMFS supported improvements to fishery dependent data collections, either through increasing reporting requirements or expanding the at-sea monitoring of the herring fishery. NMFS also shared the Council's concern for reducing bycatch and unnecessary discarding. However, NMFS believed that three measures in Amendment 5 lacked adequate rationale or development by the Council, and NMFS had utility and legal concerns with the implementation of these measures.

These measures include: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers (known as slippage) to return to port; and a requirement for 100-percent observer coverage on Category A (All Areas Limited Access Herring Permit) and B (Areas 2/3 Limited Access Herring Permit) vessels, coupled with an industry contribution of a target maximum of \$325 per day toward observer costs. NMFS expressed potential concerns with these measures throughout the development of this amendment, but these measures had strong support from some stakeholders.

The proposed rule for Amendment 5 described potential concerns about these measures' consistency with the MSA and other applicable law. After review of public comment, NMFS determined these three measures must be disapproved because they were inconsistent with the MSA and other applicable law. On September 20, 2013, NMFS sent a letter to the Council with recommendations on how these measures could be revised to address NMFS' concerns. The Council and NMFS then worked together to design effective measures to help improve management of the herring fishery, which were addressed through other Council actions. (79 CFR 8786, February 13, 2014).