



New England Fishery Management Council

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DRAFT MEMORANDUM

DATE: October 19, 2016
TO: Herring Committee
FROM: Herring PDT
SUBJECT: **Summary of provision in the Herring FMP that allows NMFS to transfer TAC in-season**

The Herring Committee met in August to discuss potential priorities for 2017. The Herring advisors met the day before and recommended adding an item to the list of potential priorities that would consider shifting unused TAC from one area to another area. When the Committee took up that AP motion it was discussed that there already is a provision in the Herring FMP that allows the Regional Administrator to shift TAC from area to area in-season. However, the Committee was not certain how that process would work, how long it would take, and what would be involved. Therefore, the Committee requested the PDT look into the issue further. This memo summarizes the existing provision, includes some detail of when this issue has come up in the past, and includes some initial discussion of this issue from the last PDT meeting.

FMP Provisions

The original Herring FMP included a provision to allow in-season transfer of TAC, and the language of the provision has changed very little since it was initially implemented. Additionally, changes to the distribution of the ACL and in-season adjustments to ACLs are frameworkable measures.

648.200(e) In-season adjustments. The specifications and sub-ACLs established pursuant to this section may be adjusted by NMFS to achieve conservation and management objectives, after consulting with the Council, during the fishing year in accordance with the Administrative Procedure Act (APA). Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

The FMP explains that the rationale for distributing the total TAC to different management areas and seasons provides a measure of protection to individual spawning components. The original distribution of TAC was based on existing knowledge of stock structure, mixing, and current fishing patterns. The FMP acknowledged that over time the information on stock structure may

change, and the FMP allowed for changed in the distribution pattern to take into account new information.

The first time that the distribution of the total catch limit was adjusted between management areas was for FY2000, but it was at the very end of the year. In December 2000, NMFS adjusted the FY2000 specs by transferring 15,000 mt from Area 1B to Area 1A. The FY2000 specs were set conservatively for Area 1A due to reduced herring catches in 1998, and since most herring spawn in Area 1A the Council reacted by reducing the TAC to 45,000 mt. However, landings in 1999 returned above 60,000 mt, causing the Council to reconsider the value they had approved for FY2000 before the 1999 fishing year was complete. The Council concluded that the reduction in landings in 1998 was not a result of low herring abundance and there was no biological risk in increasing the TAC to 60,000 mt in Area 1A and reducing the Area 1B TAC. It was noted that ASMFC had recently made a decision to implement spawning closures and that would address any conservation concerns about spawning protections in Area 1A.

Amendment 1

During the development of Amendment 1, the Council considered authorizing in-season adjustments to the Area 1A TAC to provide greater flexibility in the fishery and ensure that the available yield from the herring resource is fully utilized. The adjustments would better enable fishermen to harvest all of the yield that the Herring PDT assumed would be harvested when determining the specifications and the area specific TACs during the prior year.

In-season adjustments to the Area 1A TAC were considered for two different scenarios only:

1. Catch Underage in the New Brunswick (NB) Weir Fishery – Currently, 20,000 mt of the inshore component of the resource is assumed to be caught in the NB weir fishery and is deducted from the available yield from the inshore component before allocations are made to the various management areas. In any given year, it is possible that catches in the NB weir fishery will be lower (or higher) than what is assumed. In cases where the actual NB weir fishery catch is lower than the assumed amount, an in-season adjustment would allow the difference to be re-allocated to the U.S. fleet fishing on the inshore component of the resource in Area 1A.
2. Catch Underage in the Area 2 Winter Fishery – Currently, when determining area-specific TACs for the upcoming fishing year, 20% of the Area 2 TAC is assumed to be composed of fish from the inshore spawning component, and the TAC is assumed to be fully utilized for the purposes of analysis. Based on the current TACs, this equates to 10,000 mt of fish from the inshore component that are assumed to be caught in Area 2. The Area 2 fishery is predominantly a winter fishery, occurring from December through March, and the TAC for Area 2 has never been fully utilized. If the Area 2 TAC is not fully utilized during the winter fishery, it may be possible to re-allocate the remaining catch assumed to come from the inshore component back to Area 1A for the duration of the fishing year.

When evaluating this measure, the Herring PDT expressed concern and recommended that in-season adjustments be eliminated from further consideration for several reasons, primarily due to the uncertainty of stock component mixing ratios and the potential to overfish the inshore component of the resource if TACs are adjusted during the fishing year.

- Moving quota from one management area to another during the fishing year is complicated and based on somewhat uncertain assumptions about mixing ratios. The

timing of catches in various management areas is important, and it may not be appropriate to shift allowable catches of fish from one management area to another during the fishing year, especially when those catches consist of fish from two different stock components.

- The approach in the original Herring FMP for apportioning catches by management area was designed to produce catches from Area 1A that are consistent with historical catches; it does not seem practical to apply this approach in the reverse manner during the fishing year. In fact, this measure may increase the catch of the inshore component of the resource, which concerns the PDT.
- Estimating catches in the New Brunswick (NB) weir fishery and the Area 2 winter fishery in October does not prevent catches in these fisheries from increasing in November and December beyond what is estimated, even if a “buffer” is incorporated to account for fishing in November and December. This measure could, therefore, result in overfishing of the inshore component of the resource, especially if fishing patterns change and/or fishing effort increases above historical levels in the later part of the year.
- Obtaining real-time data about the catch of herring in the NB weir fishery is not guaranteed. NMFS did not approve this specific in-season adjustment because there was no way for NMFS to ensure that real-time data from the Canadians would be provided in future years; today, there is still no such assurance.
- If in-season adjustments are going to be considered for catch underages in either the NB weir fishery or the Area 2 winter fishery, then they should also be considered for catch overages. For example, if catch in the NB weir fishery increases to 30,000 mt, 10,000 mt above the estimated catch, then adjustments would have to be made to account for this increase (either close the Area 1A fishery earlier or reduce the 1A TAC in the following year, or both). This approach should account for both underages and overages, not just underages.

More Recent Discussions

At their October 4, 2016 meeting, the PDT discussed that one of the original goals of the FMP was to limit overexploitation on smaller subcomponents. The area quotas are in line with that, and because stock components mix at different times of year, the TACs help reduce impacts on one spawning stock over another. In the fall the inshore and offshore stocks segregate to spawn, and in late spring/summer they mix. The PDT discussed that moving quota will have differential impacts on the subcomponents. The PDT discussed that while the regulations do allow it, it would not be easy, and may not be accomplished within the timeframe of a single season.

If NMFS was to make in-season adjustments to the herring specifications, it would likely involve a proposed and final rulemaking and some analysis to determine if the adjustments were within or beyond the scope of the impacts analyzed in the specifications. An Environmental Assessment (EA) would likely be required with updated analyses since it has been some time since the FMP originally considered this provision. It would likely take several months for the PDT to complete a draft EA for the Council to consider, followed by proposed and final rule.

Finally, the PDT discussed that it would never be a static number that could be assessed upfront, so may not be possible to set it up in advance. The contribution of each stock changes every year, and it has changed over time. The next benchmark assessment may look at adding a spatial component, but it may not be functioning well enough to be considered for setting specifications.