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VIA ELECTRONIC MAIL

April 10, 2008

Mr. Paul Howard, Executive Director
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

Re: Herring Amendment 4 Scoping

Dear Mr. Howard and NEFMC members:

There have been numerous comments, including from scores of people who signed on to an on-line petition to essentially ban mid-water trawl gear, requesting expansion of the terms of the scoping document to include so-called "buffer zones" and other anti-mid-water gear initiatives. As companies who use this efficient, clean, and effective gear, we think it is only appropriate that, to the extent any expansion of the Amendment 4 scoping document is made to address gear issues, that the document also request input on elimination of the Area 1A purse seine/fixed gear (PS/FG) only limitation adopted in Amendment 1.

This seasonal ban was adopted "because there is significant and growing concern about the status of the inshore component of the herring resource and the *potential* impacts of midwater trawl fishing effort, which can be highly concentrated at times, in the inshore Gulf of Maine." Amendment 1, p. 94 (emphasis added). The document did not explain what the biological effect was of harvesting a fixed amount of fish using different gear types, nor why "concentrated" harvests of herring by purse seine or fixed gear is less concerning than harvests by mid-water gear. To our knowledge, there is not a shred of scientific evidence to suggest that any such biological difference exists. Rather, this is purely a matter of allocation.

Defining so-called "localized depletion" was identified by the Council in Amendment 1 as a top research priority. Specifically, Amendment 1 calls for research as to the effects of this

seasonal ban, which was adopted on a “precautionary” basis due to the lack of such scientific information. In response, the Gulf of Maine Research Institute and the University of New Hampshire developed an RSA proposal (since funded) to study the issue of “localized depletion” and, more specifically, the impact of mid-water trawling on aggregations of herring. Now that research is underway, in its first year on a “pilot scale” basis, Amendment 4 provides an opportunity to place a *sunset on this restriction if it is found that the speculative concerns on which it was purportedly justified have no demonstrable, empirical basis.*

The Scientific and Statistical Committee found the inshore Gulf of Maine stock to be stable. Any concerns expressed related to the amount of catch occurring in Area 1A generally, not to the method by which fish are harvested. Other potential biological concerns, such as potential differences in bycatch rates and interactions with protected species, are being addressed in Amendment 4. At the end of this process, the Council will have information on which to decide if the concerns that prompted it to adopt the seasonal ban have any merit. If not, then the amendment should also contain a mechanism for lifting the ban.

Finally, to the extent that the anecdotal observations of other “herring stakeholder groups” (such as whale watching companies, bluefin tuna groups, and environmental industry groups) -- that herring is less abundant in the inshore Gulf of Maine -- have any empirical basis (despite the findings of the SSC), then other potential causes should be examined. For example, there is developing science to suggest that dead fish give off chemical signals to others of that species, leading them to avoid areas of potential danger. The inshore Gulf of Maine has seen an exponential increase in the number of lobster traps fished in the past ten to twenty years. There are now millions of traps containing tens of thousands of tons of dead herring in these waters during the key summer months. The question of whether herring may be avoiding this area due to this factor should at least be explored.

Therefore, we respectfully suggest that the Amendment 4 scoping document include the following questions, or at least solicit information on the following questions:

- Should the Council consider ending the Area 1A purse seine/fixed gear only area from June through September? Should the Council set benchmarks to test the propositions on which the prohibition was based, and provide a mechanism to reopen the area to mid-water gear if the data does not support the rationale for the ban?
- How should the Council apportion the burden of proof as to the effectiveness, or lack thereof, of the mid-water trawl ban? For example, should users of this gear be required to prove that its use has no negative impact relative to other gear, should proponents of the ban be required to prove some negative impacts, or should research be required to investigate both aspects? What would be the impacts on other fisheries of requiring fishermen to disprove speculative theories of harm?
- Should the Council investigate other potential reasons for the anecdotal decrease of herring in Area 1A, such as avoidance behavior?

Asking such questions would provide appropriate balance to the scoping document, should the Council choose to expand the scope of issues under consideration in Amendment 4. Science on all sides of the issues should be investigated, lest the management process devolve into simple majority rule (or worse, we fear, mob rule). The Magnuson-Stevens Act does not bestow preferential rights of access to some over others, except in accordance with such standards as use, dependence, fairness and equity, and economics.

Providing a review of the Area 1A mid-water trawl ban also meets the important National Standard 2 goal of basing management decisions on the best scientific information available. While we may have disagreed with NMFS's decision that this ban met the MSA's standards in the first place, there is no reason that the Council cannot revisit this decision once armed with the facts. We hope that Amendment 4 will provide a clear path for gathering these facts and providing a means for arriving at an informed, science-based decision as to whether the ban should continue.

Sincerely,

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