



CAPE COD COMMERCIAL HOOK FISHERMEN'S ASSOCIATION, Inc.
210-E Orleans Road
North Chatham, MA 02650
508-945-2432 • 508-945-0981 (fax)
www.ccchfa.org • contact@ccchfa.org

September 3, 2009

The Honorable Gary Locke
Secretary
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Re: Petition for Emergency Action to Implement New Monitoring Requirements for Herring Midwater Trawlers in Groundfish Closed Area I as Requested by New England Fishery Management Council

Dear Secretary Locke:

We the undersigned commercial fishermen and commercial fishing industry representatives are writing to request that you exercise your authority under the Administrative Procedures Act, 5 U.S.C. § 553(e), and Section 305(c) of the Magnuson Act to issue an Emergency Rule implementing additional fishery monitoring requirements for midwater trawlers targeting Atlantic herring in Northeast Multispecies Georges Bank Closed Area I.

In April, 2009 the New England Fishery Management Council (NEFMC) requested that the National Marine Fisheries Service (NMFS) change the requirements for midwater herring trawlers fishing in Closed Area I (CAI). Under the current timetable, these changes will not be implemented in time to serve the intended purpose. Midwater trawlers fish CAI throughout the late summer and fall and it was the intent of the Council to have 100% of this effort monitored and to prohibit the dumping of unsampled catch *this year*. NMFS' plan to conduct notice and comment rulemaking as the implementation vehicle for these regulations will not get the enhanced monitoring in place for the 2009 fishing year, which will continue to put our depleted groundfish stocks at risk. Outlined below is the background and rationale for making this request in the hope that you will find impetus to act in a timely manner.

Background:

Herring vessel access to groundfish closed areas is permitted through Letters of Authorization (LOA) issued by NMFS under regulations found at 50 CFR 648.81 (a) (2) (iii). In response to haddock bycatch in CAI in October 2008, the NEFMC voted to request that the Regional Administrator look into the incident to determine if the 1% bycatch limit for closed areas had been exceeded. At a subsequent Council meeting four months later, the Regional Administrator presented a report summarizing the Agency's findings that indicated that the limits had been exceeded and requested additional Council input to determine subsequent action.

Protecting a Resource, a Tradition, and a Way of Life

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In response to this request, in April, 2009, the NEFMC voted to request that the Regional Administrator condition the LOA's to require 100% at-sea observer coverage for midwater trawlers fishing in CAI, and also to prohibit vessels in CAI from dumping unsampled fish. The Agency indicated that this action would require notice and comment rulemaking, as opposed to a simple revision of the LOA's, and that such rulemaking would take several months. As of August 31, no Proposed Rule has been published.

Emergency Action is Justified on Ecological, Economic, and Social Grounds:

Closed Area I was established to protect spawning groundfish while also reducing fishing mortality. Hook fishermen gained access to this area after rigorous Experimental Fisheries proved they could fish for targeted species with low levels of bycatch. Subsequently a Special Access Program was created with high levels of observer coverage, 100% catch sampling on those observed trips and fleet-wide extrapolation of bycatch—none of which is done in the herring fleet. Thus groundfish removals by groundfish fishermen in the closed area are carefully measured. Herring fishing vessels were allowed access to this area without having to go through an Experimental Fishery—as it was assumed at the time that they did not catch groundfish in their midwater nets. After the bycatch events of last fall showed that groundfish are in fact caught by midwater trawl vessels, the Council was prompted to recommend increased monitoring provisions as a way to accurately measure groundfish bycatch in CAI.

The 2008 bycatch event, referenced above, consisted of haddock removals by herring vessels. This has become more common in recent years as haddock stocks have recovered and some of the largest year classes in recent history have matured. As other groundfish stocks (including the severely depleted cod fish stocks) begin to recover due to highly restrictive rebuilding programs, one large bycatch event could dramatically retard any rebuilding efforts and would need to be accounted for. The catch of such stocks in vital spawning grounds, such as those protected by closed areas, must be monitored and taken into consideration in future management actions.

Herring vessels fishing in CAI operate in the same area as the CAI Hook Gear Haddock Special Access Program, so any bycatch will have a significant economic impact on New England groundfish vessels which have invested heavily in establishing this program. Each bycatch event on rebuilding stocks, especially cod, represents a lost economic opportunity (both near and long term) for groundfish fishermen and groundfish-dependent communities. It should be noted that the proposed Emergency Action will have little to no economic impact on herring vessels. NMFS has indicated that in 2009 the Northeast Observer Program has sufficient resources to provide 100% observer coverage on herring vessels fishing in CAI. The proposed measure to allow those observers to sample or sub-sample all catch will not create net bottom-line economic impact as those vessels will not be required to forego any catch or fishing opportunity.

Finally, a failure to collect the necessary data by implementing the new monitoring requirements in time for the fall 2009 season will likely result in significant conflict between groundfishermen and herring fishermen, as evidenced by the debate that began last fall. Absence of solid information generates mistrust and conflict. The express purpose of the new measures is to address this monitoring failure and fill this information vacuum. In addition, unmeasured removals and other impacts of herring vessels on haddock in the area of the CAI SAP may cause significant detrimental impacts on several fishing communities, such as Chatham, Harwichport, Gloucester, Portland, and New Bedford, which benefit from the participation of local groundfish vessels in that SAP. At a time when it is imperative to ensure as many fishermen as possible stay solvent during this period of immense

regulatory change, rapid implementation of these logical measures will make a positive economic impact and send an important message to fishermen that NOAA is cognizant of the struggles fishermen face and is willing to act to assist.

Timing Issues:

Herring fishing in CAI can occur anytime from August through December but normally takes place September to November. As such it is critical to have the updated monitoring requirements in place by late summer of this year to ensure that the annual pulse of effort receives the extra monitoring that was requested by the Council. Council intent, as far as timing, was clearly expressed by the fact that it addressed this issue outside the scope of the current Fisheries Management Plan amendment dealing with monitoring reform, which would not deliver new requirements for this closed area soon enough. Failure to implement the Council's request within the next several weeks will constitute a serious failure of the management process. The Council and the public fully expected NMFS to effect the requested changes by the time herring vessels were likely to fish in CAI in 2009, which is at this point not possible. This expectation was based on NMFS stated intention to implement the request via rulemaking and an earlier statement that such rulemaking could be completed in "several months."

While NMFS appeared to indicate that implementation of the Council's request through revisions to the LOA's may not be possible, we disagree. Regulations are clear that the Regional Administrator has broad authority to revise the LOA's even up to and including revoking access. In our view, the Regional Administrator has not justified her conclusion that the notice and comment rulemaking are required to make these changes. At the time of this decision however, there was plenty of time to take either approach—with the assumption that rulemaking would be completed in a timely fashion. It is now clear that the time required for such rulemaking (publishing a Proposed Rule, public comment, public comment review, and cooling off period) will preclude timely implementation of the new monitoring requirements.

This Request Meets the Criteria for Emergency Action:

Emergency Action is a significant step, and as such NMFS has established criteria to guide any decision to by-pass notice and comment rulemaking. As outlined below, this request for Emergency Action meets those criteria. It should also be noted that the new monitoring rules requested herein have already been the subject of extensive public discussion and comment during the two Council cycles which ultimately led the Council to make this request to NMFS. We are compelled to engage the Secretary of Commerce in this action due to the serious timing issues related to implementation of the request, as described below.

1. *The need for the action must be driven by recent, unforeseen events.* The upcoming midwater trawl effort in CAI, its associated risk of groundfish bycatch, and the need for higher monitoring standards was not unforeseen. However, this is the first time since the bycatch in CAI was identified as a exceeding regulatory thresholds that midwater trawlers will again access CAI. With NMFS currently unable to implement the Council's request in time for this fishing season, the realization that these much needed and requested updated access criteria will not be in place for 2009 is a recent, unforeseen, and highly problematic development. We are now nearly a year removed from the bycatch events of fall 2008 and after two clear requests from the Council for NMFS to take action, and over three months after NMFS announced that it would initiate rulemaking, no concrete action has been taken. Quite simply, no one foresaw that NMFS would fail to put the new monitoring requirements in place for 2009, based on the assurances of the Regional Administrator that notice and comment rulemaking was expected to take several months to complete. However, nearly five months have passed and the failure

to publish a Proposed Rule, combined with the minimum time it would take subsequent to such a publication to actually implement new regulations, clearly preclude the possibility of having the new program in place in time to cover herring vessel effort in CAI this year under rulemaking.

2. Failure to act must present serious conservation and management problems. Delaying implementation of the Council's request in order to accommodate notice and comment rulemaking will result in the failure to require higher monitoring standards when herring midwater trawlers fish in CAI this year. This presents a serious conservation and management problem. The Council and NMFS have already determined that better catch and bycatch data are needed in this area. NMFS has already determined that midwater trawlers have exceeded their allowable bycatch threshold of 1% in CAI. Status-quo monitoring standards were unable to provide enough information on haddock bycatch last year. In fact, NMFS was unable to provide any observers in the second week of October 2008, even though the bycatch problem was clearly detected in the first week of the month. Zero observed trips took place in week two, even though the total herring catch doubled relative to week one. Some coverage took place in the third week of October which again detected haddock bycatch. Week two of October 2008 represents a hole in the data that cannot happen again and will not under the NEFMC's recommendations. Absent an Emergency Rule there is the potential to face similar monitoring shortages this year. Failure to accurately and completely account for groundfish bycatch by herring vessels in CAI presents a serious conservation and management problem, as recognized by the NEFMC in its April 2009 vote.

3. The immediate benefits of the emergency rulemaking must outweigh those that would otherwise be provided by public notice, comment and deliberation. The Council and NMFS have both acknowledged the importance of the additional monitoring requirements. It is now clear that there is no longer sufficient time to allow for notice and comment rulemaking to take place and still get the new measures in place. Therefore emergency rulemaking is not only justified, it is necessary, as it is the only option now available. The management measures under contemplation are not radical, unique or untested. One hundred percent observer coverage in a groundfish closed area for a gear capable of catching groundfish and that has not gone through an Experimental Fishery is no different from the protocol required for any vessel to access these areas today. Furthermore there are already regulations in place that prohibit the dumping of unsampled fish in groundfish closed areas (see *50 CFR Part 648.14 (k)(12)(i)(B)*) and there is a schedule of penalties for such dumping if and when it is detected.

Recommended Action

Understanding that the logistical and regulatory components of this action are just as important as the justification for undertaking an Emergency Action we have included some brief recommendations.

Specifically, we recommend that the Emergency Action include the following:

- Prohibit herring vessels from fishing inside CAI without a NMFS observer.
- Prohibit the dumping of catch prior to an examination (sampling or subsampling) by an observer.
- NMFS observers should continue logging all dumping events as under current protocols using the midwater and midwater pair trawl haul logs.
- Observers should be insulated from the enforcement of the dumping prohibition as follows: all haul logs in CAI should be forwarded to the NMFS Office of Law Enforcement (OLE), who

will review the dumping-related questions on the midwater trawl and pair trawl haul-log sheets used by the observer program.

- Failure to make the cod-end visible to the observer or presence of fish in the cod-end should be considered dumping violations by OLE and penalties should be assessed by OLE according to its existing schedule of penalties, which includes specific penalties for dumping unsampled fish.
- Access to CAI should be revoked for dumping and all other infractions.

Conclusion:

For the reasons explained herein, we request immediate implementation, through Emergency Rulemaking, of the Council's requested requirements, in full, for herring vessel access to CAI. For technical and logistical procedures to achieve the Council's intent, we recommend the measures outlined by the CHOIR Coalition in its letter to the Regional Administrator dated July 6, 2009. That letter has been included here as Appendix A for reference.

Thank you very much for your consideration of this request.

Sincerely,

/s/ Sue Nickerson
Sue Nickerson
Executive Director
CCCHFA

/s/ Tom Rudolph
Tom Rudolph
Herring Campaign Operations Director
CCCHFA

/s/ Charlie Dodge
Charlie Dodge
Owner/Captain
FV Edward and Joseph

/s/ Stu Tolley
Stu Tolley
Owner/Captain
FV Dawn T

/s/ Jamie Eldredge
Jamie Eldredge
Owner/Captain
FV Yellowbird

/s/ Ken Tolley
Ken Tolley
Owner/Captain
FV Hunter

/s/ Peter Taylor
Peter Taylor
Owner/Captain
FV Seahound

/s/ Bob St. Pierre
Bob St. Pierre
Owner/Captain
FV Rug Rats

/s/ John Our
John Our
Owner/Captain
FV Miss Fitz

/s/ Greg Walinski
Greg Walinski
Owner/Captain
FV Alicia Ann

/s/ Mike Terrenzi

Mike Terrenzi
Owner/Captain
FV Kelly J

/s/ Earl LeGeyt

Earl LeGeyt
Owner/Captain
FV Sea Hook

/s/ Tom Barker

Tom Barker
Owner/Captain
FV Tuna Eclipse

/s/ Kurt Martin

Kurt Martin
Owner/Captain
FV Time Bandit

/s/ Glen Legeyt

Glen LeGeyt
Owner, FV Morgan I
Captain, FV Decisive

/s/ Eric Hesse

Eric Hesse
Owner/Captain
FV Tenacious II

/s/ Jan Margeson

Jan Margeson
Owner/Captain, FV Great Pumpkin
Owner, FV Decisive

/s/ Ted Ligenza

Ted Ligenza
Owner/Captain
FV Riena Marie

Cc: Dr. Jane Lubchenco, NOAA Administrator and Under-Secretary of Commerce
Dr. James W. Balsiger, Acting Assistant Administrator for Fisheries, NOAA Fisheries
Pat Kurkul, Regional Administrator, Northeast Region, NOAA Fisheries

Enclosure (1)

Appendix A: Letter from CHOIR Coalition to Pat Kurkul dated 7/6/09

Appendix A: Letter from CHOIR Coalition to Pat Kurkul dated 7/6/09



Coalition for the Atlantic Herring Fishery's Orderly, Informed and Responsible Long Term Development

July 6, 2009

Patricia Kurkul, Regional Administrator
NMFS NERO
55 Great Republic Drive
Gloucester, MA 01930

Re: Midwater Trawling in Groundfish Closed Area 1

Dear Pat,

I am writing on behalf of the CHOIR Coalition to urge the agency to act swiftly in publishing the proposed rule regarding midwater trawl access to Closed Area I (CAI), and also to offer our comments on what the rule should look like. It is very important that the agency publishes the rule as soon as possible so that fishing operations in CAI in the current fishing year can be covered by the rule; and the rule must be written the right way so that it can be effective.

First and foremost, we want to say that we were pleased to see your May 15th letter to the New England Fishery Management Council in which you state that the agency believes that the 1% threshold had been met and that you therefore intend to initiate proposed and final rulemaking to implement the Council's recommendation regarding midwater trawl access to CAI. As we have said in recent correspondence, we feel strongly that the 1% threshold had been met and that the Council's decision to require 100% observer coverage, a prohibition on dumping and for the vessels to pump all fish aboard for sampling as a condition of the LOA is warranted.

Groundfish Closed Areas were put in place for a reason: to allow these stocks to rebuild so that they can support our important groundfish fishery. Access to these areas is a privilege, not a right. While observer data has been scant in the herring midwater trawl fishery, what data we do have shows that these vessels are more than capable of catching groundfish. This was shown conclusively during November 2008, when the 1% threshold was exceeded. Therefore, it is not only within the authority of the Regional Administrator to act, it is essential that you do so. The groundfish fleet has sacrificed far too much to rebuild these stocks to then allow another fleet to hinder this effort.

It is important that the proposed rule is written correctly to ensure that it captures the intent of the Council's recommendation. We recommend that the rule be based on the following three-part core:

1) *True 100% Coverage* in CAI defined by catch weight and not just trips, i.e. all fish must be sampled or sub-sampled by a Federal observer. This naturally starts at the trip level, so the critical first step has to be "no observer, no fishing in CAI". VMS detection of a trip inside CAI without

an observer should be an enforcement violation. It is also critical that the LOA’s specifically stipulate that both vessels in a pair trawl team must be observed in order to take on fish in CAI.

2) *Detection of dumping events* should be based on the two existing questions on the Northeast Observer Program (NEFOP) midwater trawl and pair midwater trawl haul logs that are designed to provide dumping data. These questions are as follows:

- A) #17 was the observer able to see the cod-end at the conclusion of pumping?
- B) #18 was fish present in the cod-end at the completion of pumping?

3) *Consequences of dumping* should be handled as follows: NEFOP should provide all MWT and PMWT haul logs with coordinates inside CAI to the Office of Law Enforcement (OLE). An answer of “no” to question #17 or an answer of “yes” to question #18 should be considered a violation by OLE. OLE should apply their existing schedule of penalties for dumping unobserved fish in the event of such a violation (see Northeast Regional Civil Administrative Penalty Schedule excerpted below with highlight added)

VIOLATION	VIOLATION HISTORY -- PENALTY AMOUNT		
	FIRST	SECOND	THIRD
VIOLATIONS REGARDING THE FACILITATION OF ENFORCEMENT, SCIENTIFIC MONITORS OR OBSERVERS			
All violations including, but not limited to: interfering, delaying, obstructing, assaulting, making false statements, failing to comply with an enforcement and or observer provision; refusing to allow an inspection, boarding or entry to an area of custody; dumping fish ; interfering in the apprehension of another; and resisting arrest.	\$5,000 - \$50,000 (and/or up to 90 day permit sanction or denial)	\$10,000 - \$80,000 (and/or up to 365 day permit sanction or denial)	\$30,000 - Statutory Maximum (and/or up to permit revocation or denial and/or vessel seizure)

The reason for Step 1 is that 100% coverage in itself may be too ambiguous a term and therefore the Proposed and Final Rule and the LOA’s should be specific in outlining what is meant by 100% coverage. Observing 100% of trips is not the same as observing 100% of the catch. Due to the nature of the midwater trawl fishery, it is important to ensure that 100% of catch is observed and sampled so that large and/or significant events are not missed. And unless there is an observer on both vessels in a pair trawl team, observers will not be able to sample all catch on that trip. NERO staff should be aware that any tow pumped aboard an unobserved vessel in a pair trawl team is officially classified as “unobserved” by NEFOP. NERO staff should also be aware that any tow on which dumping (slippage) occurs, either partial or complete, is also officially classified as “unobserved” by NEFOP.

The reason for Step 2 is that a simple prohibition on dumping will not work without specific and effective guidelines to ensure that events are detected and addressed. The existing haul log data fields mentioned above are the simplest and most effective way to ensure that this happens. In addition, by simply having the NEFOP observers collect the same information they always do, and then provide the deck sheets to OLE, concerns over having observers acting as quasi-enforcement officers are assuaged.

And Step 3 is necessary to ensure that the rules are followed. Unless dumping is considered a violation, punishable by fines and other penalties, there will be no incentive for vessels to follow any rules prohibiting the practice. And since ‘dumping fish’ is already included in the current penalty schedule, no new work will be needed to outline penalties under this CAI program.

We would also like to point out to NMFS that there is regulatory precedent for a specific and comprehensive prohibition on dumping fish without bringing them aboard. Please see *50 CFR Part 648.14 (k)(12)(i)(B)* which prohibits dumping in certain special management programs in the multispecies fishery, as follows:

(B) If a vessel is fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in §648.85(b)(3), the Regular B DAS Program specified in §648.85(b)(6), or the Eastern U.S./Canada Haddock SAP specified in §648.85(b)(8), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

The herring fishery in CAI takes place under an LOA, and is authorized by and subject to certain higher standards of performance described in regulations, similar to those for special management programs in the multispecies fishery. As such the application of a specific and comprehensive prohibition on dumping by herring vessels in CAI, through their LOA, is both appropriate and necessary and should be based on the prohibition above.

We believe that a Proposed Rule based on these steps will ensure that the final rulemaking will fulfill the intent of the Council’s recommendation. As mentioned above, access to CAI (and any groundfish closed area) is not a right, it is a privilege. If a herring vessel feels these requirements are too stringent than they can fish elsewhere. This rule will be no stricter than the rules currently governing access to these areas by the groundfish fleet.

While we are very pleased to see that the NEFOP has been able to reallocate funds to allow for increased observer coverage in the herring fishery in 2009, this does not solve the problem of midwater trawl access in CAI. As we saw a couple years ago, reallocation in one year does not mean that the funding will be there in future years. In fact, in 2005 a relatively high level of coverage was seen in the herring fishery, only to be followed by two very low years of coverage (65 total midwater trawl trips observed in these two years combined). The midwater trawl industry itself points out in their June 3 memo to the NEFMC Herring Committee that “it is far from certain that additional funds will remain available in future years” for observer coverage in the herring fishery. Furthermore, despite the 2009 reallocation, given the likelihood that similar funding will not be seen in following years, there is the chance that these vessels will avoid CAI in 2009 and therefore no data will be gathered regarding bycatch in this area. Therefore it is critical that the proposed and final rulemaking include the Council’s full recommendations so that these problems are circumvented.

It is important to note that even with the increased observer days in the herring fishery for 2009 based on this reallocation of observer program resources, there is no guarantee that trips into CAI- if they do occur- will be observed. Unless NMFS specifically defines and requires 100% observer coverage in CAI, there is nothing to ensure that trips into the area will be observed.

Lastly, we would like to address the issues raised in the aforementioned June 3 letter from the herring midwater trawl industry to the NEFMC Herring Committee regarding the requirement to pump fish aboard for sampling. In general, we maintain that NMFS should not undermine the enhanced monitoring program in CAI by hobbling it though the addition of phrases like “when possible” and “to the extent practicable” in reference to providing fish for sampling (i.e. not

dumping). These phrases are loophole seeds and are highly problematic unless backstop measures are in place to prevent their abuse, for instance by limits (caps) on dumping.

We would like to reiterate our position that while caps on dumping may be an appropriate solution for the fishery as a whole, they are not appropriate in a voluntary fishery with an enhanced data collections program like the fishery in CAI. Herring fishermen do not have to fish in CAI if they are concerned about their ability to provide the catch to the observer to allow for sampling.

Furthermore, the June 3 letter implies that the NEFMC Enforcement Committee (EC) advised against implementing the Council's recommendation regarding pumping all fish aboard for sampling in CAI, and this is simply untrue. The EC expressed a safety concern with regulations that take the decision about bringing fish on board out of the captain's hands, but only in the context of more permanent measures for the fishery as a whole through Herring Amendment 4. The EC specifically declined to comment on the CAI implementation issue. Moreover, solutions have been proposed to address this safety concern in Amendment 4 and the NEFMC Herring Committee voted to include these solutions in Alternative 3. In regards to this CAI issue, again we believe that it is essential that all catch is sampled and that if herring vessels do not feel that compliance is possible they can choose to fish outside of the closed area.

The June 3 letter also raises three issues that we believe could create loopholes in the enhanced monitoring program for CAI if they are not carefully controlled. First, regarding the issue of safety, the memo states that there must be exceptions to the requirement to provide fish for sampling because of concerns about vessel instability, especially as pertains to vessel capacity and overloading. The other two issues are related and for the most part all of them ultimately come down to an inability to safely or conveniently bring fish aboard for sampling. The second issue is what to do when the vessel has a mechanical problem that will supposedly stop it from being able to bring fish aboard for sampling. While fishing vessels will have mechanical issues from time to time, we are concerned that this is a major loophole that could allow a vessel to dump nets whenever they feel they have bycatch and then to blame it on a mechanical issue. The second issue is what to do when a vessel catches dogfish and are unable to pump them aboard. This is another potential loophole that could be exploited anytime bycatch is encountered. While we feel very strongly that the industry should devise solutions to allow sampling in all these cases, if they do not, we believe a two-part strategy based on dumping caps and trip termination is necessary. This will ensure that these two exceptions are not abused to avoid the sampling of bycatch.

If the agency feels that dumping is necessary in certain extraordinary situations where safety is a concern then two steps need to be taken to ensure this safety exception is not abused. First, there should be caps on dumping. An assumed dumping rate should be set and whenever a dumping event occurs, the assumed tonnage should be applied against the dumping cap. The second step should be a trip termination clause in the regulatory language that would require a trip to be ended if fish must be dumped.

If a vessel encounters any of the safety or product related situations which require dumping fish (weather, vessel capacity, instability, gear malfunction, poor quality herring, dogfish problems) and which prevent sampling, it is appropriate and even advisable to require trip termination. While we feel strongly that all fish must be sampled, these tools will help assuage the concerns we have with the agency adding exceptions for safety and other reasons.

Another issue raised in the June 3 letter from the herring industry must be treated separately: the concept of the ‘test tows’. The industry claims that they engage in test tows in order to find out what they are towing on before engaging in full tows. They claim that the fish are often alive and so it would be wrong to bring these fish aboard for sampling. We disagree, and feel that it is absolutely necessary to sample these test tows. It is highly unlikely that the fish in the net will be alive and so there is no reason why sampling should not be done. Given the size of and efficiency of midwater trawl gear, even a tow of short duration could yield large catches and so it would be wrong to let this catch be dumped without being sampled.

We feel that “test tows” should not under any circumstances be included as an exception. There is absolutely no legitimate reason why the contents of a test tow cannot be provided to the observer for sampling prior to being discarded or retained. In fact, the very notion of a “test tow” is absurd absent inspection of the catch. Data in the literature do not support herring industry contentions that sampling will result in the death of otherwise healthy fish: data show extremely low survival rates for trawl discards and most of these fish are dead already anyway. NMFS should be careful not to confuse inconvenience issues with safety issues.

In short, we are very glad to see that agency feels that the issue of midwater trawl bycatch in CAI is important but it is critical that you act swiftly because time is of the essence. Furthermore, it is important that the rule is written correctly to make sure that it is effective. We feel that this rule will go a long way towards addressing the issue of bycatch in the herring midwater fleet and look forward to seeing the proposed rule in the near future.

Thanks for your time,

A handwritten signature in blue ink that reads "Stephen B. Weiner". The signature is written in a cursive style and is positioned above the typed name.

Steve Weiner, Chair

CC: George Darcy, NMFS; Carrie Nordeen, NMFS; Hannah Goodale, NMFS