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New England Fishery Management Council

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John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

DRAFT

Mr. Michael Pentony
Regional Administrator
NMFS/GARFO
55 Great Republic Drive
Gloucester, MA 01930-2276

Dear Mike:

The Council met on January 28, 2021 via webinar. Under other business an issue came before the Council from the December 11, 2020 meeting of the Atlantic Herring Committee related to notification of fishery closures. The sub-ACLs in the herring fishery are monitored in-season and closed to the herring fishery when NMFS projects that 92% of a sub-ACL has been harvested. Herring sub-ACLs are currently relatively low and most vessels that participate in this fishery are high-volume. Therefore, it is critical that herring management areas close quickly when the fishery is estimated to catch 92% of a sub-ACL to help prevent overages.

The challenges surrounding in-season monitoring of a high-volume fishery are exacerbated when fishery quotas are relatively low. Under these conditions the fishery has the capacity to quickly reach and exceed a sub-ACL in a matter of days. Currently, when NMFS projects that an area will reach 92% of the sub-ACL they publish a notice in the Federal Register notifying vessels that an area will close. This typically takes several days to get the notice ready to publish, then vessels are typically given several days' notice before an area is closed. While this fishery is in close communication with NMFS and each other during the fishing season and have voluntarily stopped fishing before area closures in the past, lower quotas are expected to intensify this issue. Furthermore, overages are deducted from sub-ACLs in future years. Therefore, with quotas as low as they are, the potential for overages is relatively high and could keep an entire area closed in future fishing years if areas are not closed efficiently.

At the recent Atlantic Herring Committee NMFS explained that they are investigating whether other notification systems are feasible to close herring management areas more efficiently, e.g., vessel monitoring system (VMS), US Coast Guard notifications, NMFS bulletins, etc. Federal Register notices are currently used to comply with Administrative Procedures Act (APA) requirements, but there may be other methods that meet the notification requirements. This issue has come up in other fisheries, and the Council recently identified this for Executive Order 13921, Promoting American Seafood Competitiveness

and Economic Growth relative to the scallop fishery only. The Atlantic Herring Committee passed the motion below, which was discussed by the full Council:

The Herring Committee recommends the Council support efforts NMFS is currently doing related to exploring the potential use of closing the herring fishery when it is approaching a sub-ACL by VMS notification rather than a notice in the Federal Register.

The Council requests that NMFS continue to investigate this issue related to closures of herring management areas, as well as other potential uses for fisheries in the Northeast. There may be other regions that use different notification processes that could be incorporated in this region as well. If regulatory adjustments are needed it is possible this administrative issue could be added to actions currently under development or developed in an omnibus action in the future. If you have any questions, please contact me.

Sincerely,

Dr. John Quinn
Chairman