

**PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
ATLANTIC HERRING SECTION**

**Crown Plaza Old Town  
Alexandria, Virginia  
February 3, 2009**

Section Approved: August 2009

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## INDEX OF MOTIONS

1. **Motion to approve agenda** by Consent (Page 1).
2. **Motion to approve proceedings of October 20, 2008** by Consent (Page 1).
3. **Move to adopt Option F for 2009 with Option H being for 2010 and beyond.**  
Motion by David Pierce; second by Sen. Damon (Page 13).
4. **Amend that Option H would provide the three states or the section, whoever is making the decision, with the ability to use Option C, which is allocating seasonally according to percentages under the trimesters; Option E, allocated bimonthly according to the percentages in Table 1 under bimonthly quotas with no landings prior to June 1; and Option F, allocated seasonally according to the percentages in Table 1 under seasonal quotas with no landings prior to June 1** (Page 13). Motion by Doug Grout; second by Pat White. Motion carried (Page 15).
5. MAIN MOTION REWORDED (PAGE 14): **Move that the section adopt Option F for 2009; and Option H, to include under Option H to allow the use Option C, E and F with the percentages in Table 1 of the draft addendum for 2010 and beyond.** Motion carried (Page 15).
6. **Move to adopt for Issue 2.1 Option G for 2009 and for 2010 and beyond it would be Options F and G** (Page 16). Motion by David Pierce; second by Pat White. Motion carried (Page 16).
7. **Move to adopt Option C for 2.2, which is rollover of quota underages** (Page 16). Motion by David Pierce; second by Doug Grout. Motion carried (Page 17).
8. **Move to adopt for Issue 3 Option C** (Page 17). Motion by David Pierce; second by Rep. Abbott. Motion carried (Page 18).
9. **Move to adopt Options A, C and E for Issue 4** (Page 19). Motion by David Pierce; second by Rep. Abbott. Motion carried (Page 19).
10. **Issue 5, move to adopt Option D** (Page 20). Motion by David Pierce; second by Doug Grout. Motion carried (Page 20).
11. **Motion to move Addendum I forward as amended** (page 20). Motion by Sen. Damon; second by Bill Adler. Motion carried (Page 20).
12. **Motion to adjourn by Consent** (Page 20).

## ATTENDANCE

### Board Members

George Lapointe, ME (AA)	Vito Calomo, MA, proxy for Rep. Verga (LA)
Terry Stockwell, ME, Administrative Proxy, Chair	Mark Gibson, RI (AA)
Pat White, ME (GA)	Kelly Mahoney, RI, proxy for Sen. Sosnowski (LA)
Sen. Dennis Damon, ME (LA)	Dave Simpson, CT (AA)
Doug Grout, NH (AA)	Pat Augustine, NY (GA)
G. Ritchie White, NH (GA)	James Gilmore, NY (AA)
Rep. Dennis Abbott, NH (LA)	Gil Ewing, NJ, proxy for Asm. Fisher (LA)
David Pierce, MA, proxy for P. Diodati (AA)	Peter Himchak, NJ DFW, proxy for D. Chanda (AA)
William Adler, MA (GA)	Tom Fote, NJ (GA)

(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

### Ex-Officio Members

Matt Cieri, Technical Committee Chair	David Ellenton, Advisory Panel Chair
Jeff Marston, Law Enforcement Committee Rep.	

### Staff

Vince O'Shea	Brad Spear
Robert Beal	Chris Vonderweidt

### Guests

Mary Beth Tooley, Small Pelagic Group

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, February 3, 2009, and was called to order at 8:00 o'clock a.m. by Chairman Terry Stockwell.

### **CALL TO ORDER**

CHAIRMAN TERRY STOCKWELL: Welcome to the Atlantic Herring Section meeting. I would like to call this meeting to order and look for approval of the agenda.

### **APPROVAL OF AGENDA**

CHAIRMAN TERRY STOCKWELL: Any changes or additions to the agenda? Without objection, the agenda is approved.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN TERRY STOCKWELL: Any changes or edits or deletions for the proceedings from October? Seeing none, without objection the proceedings are approved.

### **PUBLIC COMMENT**

CHAIRMAN TERRY STOCKWELL: Public comment on matters that are not on today's agenda. Okay, without any public comments, we'll get down to the meat of the meeting here and consider approval of Draft Addendum I, starting off with a summary of the 2008 fishery. Matt.

### **DRAFT ADDENDUM I**

#### **SUMMARY OF 2008 FISHERY**

DR. MATT CIERI: Good morning. My name is Matt Cieri with the Maine Department of Marine Resources, and I am the technical chair. I just figured I would give you guys a little bit of an update of what happened in 2008 via the IVRs. As you can see here, the table of the catch, 2006 through 2008, using IVR data – note 2008 data are still preliminary – and as you can see by management area here and the total, 2006, 2007 and 2008 looked radically different, mostly because of the drop in the 1A quota but also because of changes within the fishing effort over time.

Note in 2006 there was about 13,000 metric tons taken out of 1B. That is an overage of about 3,000 metric tons. However, during 2007 we didn't take quite so many, and in 2008 we took about 8,000. Again, this is according to the IVRs. For Area 2 there has been some fairly interesting changes; in 2006, about 21,000; 2007, about 15,000; and then in 2008 back up to about 20,000.

Area 3 has also seen some dramatic changes. In 2006 you were looking at about 4 and a half; closer to 10 for 2007; and nearly 12 for 2008. And if you look at the totals, the totals have been fairly different, roughly about a hundred thousand metric tons, dropping to about 77; and then back up to about 80.

The interesting thing to note is that the National Marine Fisheries Service, on its website, gives different numbers than what pops out of the IVR, and that is partially due to the fact that NMFS, during their quota monitoring, also includes some dealer data, so there are some significant differences here; notably in 2008 about 3,000 metric tons more showing from the National Marine Fisheries Service than is currently in the IVR.

And just to remind everyone the IVR is the Interactive Vessel Report System. That's the call-in of catch by management area by week. If you look at the cumulative catch, 2004 through 2007, again you can see some pretty interesting changes. Note that one of our highest years was 2006 here in the black line, with catch over here and the week down here.

For 2007 you can see that the numbers were – you know, the fishery started off a little bit higher, right on target with 2006, but then significantly dropped off as far as catch rate. It is the open circles here. And looking at 2008 you can see, again, it started off much higher and much quicker fishery-wide in 2008, but then drops off – the catch rates drop off and we end up coming back to roughly about the long-term average.

Note the stair sort of appearance here. That's the effect of 1A and we'll get into that in a minute. If we look at the catch for Area 1A and what it has been like, comparing all these years, you can see in 2006 the numbers were quite a bit higher. The catch rates were really, really fast. I mean, for example, by August 31<sup>st</sup> we were in 2006 well over what our current quota is, hanging out up here at about 45,000 metric tons.

However, in 2005 and 2004 and even 2007, during this time period in the summer we were roughly right

around the same point. 2008 is interesting. It certainly started a lot later and that was in part due to the fishery not really being open until June 1<sup>st</sup>. The catch rates, though, were fairly high right up until about this point, about August 31<sup>st</sup>, and this is when some of the days-out management started to take effect.

Note that between the week of August 31<sup>st</sup> and nearly mid-October there was almost no catch, and again that comes down to the days-out management that was in place. Also not that prior to that week in August 31<sup>st</sup> we were directly on target with past years as far as cumulative landings go from 1A. The interesting thing to note is that in 2005 and 2007 the quotas were a whole lot higher.

If we look at Area 2, 2004 through 2007, again some fairly significant differences. However, the overall shape is roughly the same, a fairly dramatic increase usually between January 1<sup>st</sup> and sometime at around mid-April, and then it levels off. In some years, such as in 2006, there is a secondary fishery that opens up later in the fall and early winter, and you can see that bump in 2006 and slightly in some of the other years here in 2007 and 2005 and 2004 as the fish move around Cape Cod.

Looking at the entire area catch in 2008 alone, you can see there has been some – there are a lot of differences among the different areas and how they are actually prosecuted. This gives you an idea that early in the year we're looking at Area 2 followed some 1B activity early in the year as the fish move around Cape Cod; transitioning into a fairly large 1A fishery. And again in 2008 note right about August 31<sup>st</sup> the fishery stops for the most part, and there is only a slight increase in landings.

Also note that the catch rates after this period, from, say, end of October through early November were some of the highest. We're talking roughly about 5,000 metric tons a week. Getting into some of the days-out management, which has been the impetus for this current addendum, in 2008 we met four times and changed management measures quite often. In March we settled on January 1<sup>st</sup> through May 31<sup>st</sup> with basically seven days out the fishery was closed and then a four-day-out system starting June 1<sup>st</sup>.

We met again in July and went with the status quo, still four days out. At the end of August we started choosing days in which landings could occur, and it was usually two landing days per week every other week. Then by September we were going down to one landing day per week until about mid-October

and then it was two; and then followed by the close of the fishery was November 14<sup>th</sup> this year.

Looking at this in terms of graphically, here is the 1A fishery in 2008 in the red line. We started off with the seven days out, moved to four days out here at June 1<sup>st</sup>. We met here and decided to keep it at status quo. The catch rates escalated up. Then we did two landing days every other week here right at about the end of August, and this is when the fishery pretty much came to a grinding halt. During this time period we went to six days out per week, basically one landing day and then switched it to five and then the fishery again took off at a very rapid pace until it closed. I believe that's it.

CHAIRMAN STOCKWELL: Thank you, Matt. Questions? Dennis.

REPRESENTATIVE DENNIS ABBOTT: Matt, could you go back to the previous slide? If you continued that line of where we were before we took management measures, at what day would we approximately have closed?

DR. CIERI: Probably end of September.

REPRESENTATIVE ABBOTT: So our efforts, we extended the season probably six weeks by the various measures we took?

DR. CIERI: Yes, probably a little more, because the rate of catch, as you can see, was actually increasing; not the just cumulative rate but the actual rate of increase is increasing.

REPRESENTATIVE ABBOTT: And a follow-up question, and obviously the method of fishery wouldn't have changed over. The mid-water trawlers would not have had an opportunity under that regime to have any quota left to catch if we didn't –

DR. CIERI: That is correct.

MR. G. RITCHIE WHITE: Matt, that last surge of harvest when we opened it back up, is there any breakdown as to gear type in that harvest?

DR. CIERI: Not yet. The IVR is a simply call in, and I don't have that information readily available until the VTRs are ready. The VTRs I'm going to work on when I get back. They may not be done until maybe March.

DR. DAVID PIERCE: Matt, you noted in one of your figures that in one year – I can't recall which

year – you cited the fishery returned; was it in the fall, to Area 2? I assume that Block Island Sound, Rhode Island Sound? Could you put that back up again? Okay, so that is 2006.

DR. CIERI: Yes, 2006 is when the fishery in Area 2 actually started up again, and this was just about the end of September.

DR. PIERCE: Okay, would you happen to know whether that was an increase in effort caused by bottom trawling for sea herring or was that actually a mixture of different gear types?

DR. CIERI: Probably not. Here is 2006 in Area 1A and what you can see is that the fishery was almost closed, so what we have got is Area 1A is near closing, and there is fish in Area 2 and people start going after fish in Area 2.

CHAIRMAN STOCKWELL: Any other questions for Matt? Okay, Chris is going to provide us with a summary of the written comments.

#### **SUMMARY OF THE WRITTEN COMMENTS**

MR. CHRISTOPHER VONDERWEIDT: I am going to start by giving a quick review of what exactly Addendum I is, although pretty quickly because we have discussed that before. Staff is going to hand out – Tony I think has copies of the actual addendum. It was available on the CD so everybody should have copy. The rest of the staff is handing out the written comment and the public hearing summary documents.

Just to review Draft Addendum I, Draft Addendum I was basically developed because there was an increase in the herring fishery in 2007 and 2008 in effort. The effort controls stopped working as well as they had in the past for a variety of reasons that are listed in the document. Basically, they wanted to ensure a steady supply of herring throughout the year.

It aims to do that through five different issues or strategies using quotas, using paybacks and rollovers; alongside of those quotas, determination of landing and fishing days, days-out restrictions and timely reporting of state landings. The bimonthly or seasonal quotas, just quickly, there is bimonthly, which is two-month periods; there is seasonal, which are two periods using the October 1 mid-water trawler break. Trimester is three periods using June 1<sup>st</sup> as the first break and then October 1 mid-water trawl as the second break.

There are also options included that would prohibit landings before June 1<sup>st</sup> or give the board flexibility to decide whether or not they want to prohibit landings and allocate that quota to later on in the fishing season. I'll let you look at the document for more specifics, but basically any combination of these options that you can think of are in the document and it is also listed. I think Option I is any combination of the above that is not specifically listed in the document; that was included to increase flexibility.

2.1, payback of overages – and this is basically if the section decides to go with quotas and there are overages, how to handle that. The options here are status quo; there would be no payback at all. Remember the fishery closes when the National Marine Fisheries Service projects it to be harvested, and the quotas are set for usually three years.

I believe there is going to be a TRAC this year and they are likely to do a three-year specification process, so it is not going to change from year to year based on one overage, so it is important to keep that mind. Option B would be to remove the overage from the next period in the calendar year. Option C would be to remove it from each period equally. Option D would be to remove it from all the remaining periods based on their quota share so those that have a higher quota would have more removed from the overage amount. Option E would be the same period in the next fishing season. This may be directly in conflict with the specification-setting process.

Option F and G are a slightly different strategy. They're designed to avoid overages and close at 90 percent or 95 percent when that amount has been harvested from the quota. Rollover of underages, that is if the quota is not fully harvested. Option A would be no rollover. Option B would roll into the next period in the calendar year, just sequentially. Option C would be rolled into the remaining periods equally. Option D, rolled into the remaining period based on their quota share. Option E is to the same season the following year. This may be in conflict with the current specification-setting process.

Issue 3 is determination of landing and fishing days; how the days are selected. Currently the states adjacent to a management area, so this addendum is specific to Area 1A, so that's Maine, New Hampshire and Massachusetts – to have these days-out meetings that Matt just mentioned, and they basically just have to agree, so that is what the language is.

Option A is status quo. Option B would be the full section votes at the beginning of the year. Adjustments would be made by the full section. This would include four states that are not adjacent to the management unit. Option C is basically status quo; that the states need to agree. However, in the case of no agreement it would get sent to the section for discussion and resolution.

Issue 4 is days-out restrictions, and you will notice that one or more of these could be selected as best meets the needs. Currently days out prohibits landing but fishing is unrestricted, so potentially you could fish three days before a day out and then land it on one day. It wouldn't necessarily curb your fishing effort, and a lot of people think that is the reason why we're in the predicament that we're in this year that requires this addendum and who think we should do the addendum.

Option A would be status quo. Option B is that you can never offload herring that were caught on a day out, so this aims to effectively prohibit fishing on a day out. Option C would be one landing per calendar day. Option D is 24 hours of fishing prior to a landing event. Option E is an incidental catch of 2,000 pounds, which was included in the prior days-out regulation, so it was included again.

Issue 5, timely reporting of state landings, and these were developed because it may be necessary to make adjustments to the state reports to effectively monitor and manage quota. Option A is status quo. Option B is IVR or a similar weekly system. The key word here is "weekly". Option C is VTR or monthly; the key word being "monthly". Option D is IVR; states that can't implement weekly reporting could prohibit their state fishermen from fishing and then they would be compliant, only allowing people who had vessels that had a federal permit to fish. Option E is the same thing except with VTR.

Unless there are any questions, I'll go right on to the written comment summary. For written comment, staff just passed around a matrix and then also the actual written comments themselves, which were provided to the section early last week. It is 26 pages. Hopefully everybody had time to read it. I'm not going to spend a lot of time going through it because it was available.

#### **PUBLIC HEARING SUMMARY**

The matrix should hopefully give you a snapshot of what the different groups thought. For the public hearings, I am just going to go north to south.

Rockland, Maine, for Issue 1 they were adamant that for this option the vessel trip reports from 2000 to 2007 represent the historical landings and historical demand. Because of that, whatever quota options that are selected should use this as a baseline, 2000 to 2007.

Table 1, which all the options are based on, use VTR 2000 through 2007, but there are options that propose not to use VTR. I think it is Option H. They would like to prohibit landings until June 1, being that June 1 through October are more important and more valuable with September through October being the most important of this period. They didn't specify which quota periods they would like.

Payback and rollovers, they thought it was difficult to choose without knowing which quota option would be selected, but they thought that paybacks should go to the next period or payback should be paid back – overages should be paid back by the next period and rollovers should go to the next period.

To continue on with Rockland, Maine, landings and fishing days, they thought status quo was fine. They thought there was plenty of incentive to agree being if the states don't agree, there will be no days-out regulations put in place, and that is pretty strong incentive. Nobody wants that. Issue 4, days-out restrictions, they like Option B. This is the one that effectively or aims to stop fishing on a day out.

They think it solves all the problems, and you also get more catch days because if you're modeling for catch, you're looking at the three days prior to the landing potentially because there were these high 5,000 catch rates, but if you have landing days it is going to be a lower amount. So potentially you would be allocated more landings days which gives fishermen more flexibility on when they want to fish.

So if there is a storm, they have an equipment malfunction, if the herring just aren't in Area 1A, then they might be out a whole week's worth of fishing if they only have one day. Issue 5, timely reporting of state landings, they like Option B and Option D which are weekly. They think weekly is necessary.

Moving on to Ellsworth, Maine, I didn't attend this hearing but Matt sent me the notes. Issue 1, bimonthly and seasonal quotas, they also felt strongly that the VTR 2000 through 2007 is an appropriate baseline to use, and it's important to make sure that whatever options are chosen, to use this baseline. Three people liked Option E, which is bimonthly



with no landings prior to June 1<sup>st</sup>. One person supported Option C, which are trimesters.

2.1, paybacks, three people like Option F which tries to close the fishery at 90 percent and one person liked Option B which allocates the quota to the next period – or the overage would be deducted from the next period. 2.2, rollovers, three people liked Option B which would allocate the underage to the next period. Nobody at the hearing thought that it was appropriate to roll quota that had been historically landed between January and September until after October 1<sup>st</sup>.

Landings and fishing days, Issue 3, there is unanimous support for status quo, which would be that the states just agree, the section doesn't get involved. Issue 4, days-out restrictions, Option C was the unanimous preferred option, which is one landing per calendar day. Then there was some support for also including Option B, which is that you cannot land herring that were caught on a day out. This one tries to prohibit fishing during days out.

There was also some support for using Option C and Option D, which says that you can only fish for 24 hours prior to each landing event. Then Issue 5, timely reporting of state landings, Option B and D, weekly, is necessary. They liked weekly reporting because monitoring is so important to this fishery.

Moving south to Portsmouth, New Hampshire, for Issue 1, the seasonal quotas, the participants liked no fishing until June 1. They felt that the herring that traditionally got caught from January through May are full of feed; therefore, they are poor quality. Area 1B has 10,000 metric tons allocated to it, and it can adequately supply enough herring to meet the demand, but moving this quota forward is better for the markets. It is when lobster fishermen need it, so it is going to pull a higher price and it's a better quality product.

They thought that bimonthly was the best because it gives the most control. They also wanted to note that the smaller boats have been disadvantaged since the days-out regulations have started. They need a separate quota. 2.1, paybacks, Option G was preferred. They would like to close at 95 percent to prevent overages. 2.2, rollovers, Option B, if there is an underage, send into the next quota period.

For landings and fishing days, the participants supported Option C, which is status quo, except if the states cannot agree, the section resolves the issue.

For Issue 4, days-out restrictions, Option B was preferred. This is the option that has no landing of herring caught on a day out. They also liked one landing per 24 hours, which is Option C; and Option E, including carrying over the 2,000 pound bycatch.

They also reiterated that because the small boats have had a hard time since days out was implemented, they would do a lot better with a higher catch or a higher bycatch allowance of a 6,000 pound minimum to allow them to have a viable fishery on a day out because they feel they're disadvantaged.

Issue 5, timely reporting of state landings, they liked Option B or D, weekly reports are necessary. However, they were concerned that negative weekly reports might be overly burdensome if they don't plan on fishing for three months, you know, to do 12 reports rather than just do one report saying they're not going to fish; and then whenever they start fishing again, file another report saying, "Here is my catch; I plan on fishing."

Moving further south to Gloucester, Issue 1, bimonthly or seasonal quotas, participants strongly favored status quo. They don't want to go forward with quotas. They felt that this addendum is unnecessary and reduces flexibility for the fishermen as the fishery might change. They felt that you can use days out effectively through allocate quota; just going to seven days out when you hit a certain amount.

Issue 2.1 and 2.2, they felt that there shouldn't be quotas. Paybacks and rollovers can't properly be handled because you can't make adjustments between years, which would be the most appropriate way to do it for these people. They felt that it is overly complicated and will not work. For Issue 3, landings and fishing days, Option A, they liked status quo that the states adjacent just agree.

For Issue 4, days-out restrictions, they feel that all the problems are stemming to fishing on a day out. Instead of the landings' restriction, they want to prohibit fishing so, therefore, Option B will fix that. It solves the problem and it also will increase flexibility because you will get more catching days than landing days for the reasons I mentioned before. Then Issue 5 is timely reporting of state landings; they all prefer Option B or D. They think weekly is necessary to monitor this fishery.

So, where was the agreement amongst the states? For Issue 1 there was a lot of support for no fishing prior to June 1. For payback of overages, there was

the most support for preventative options, to close the 90 and 95 percent. For rollover of underages there was the most support for Option B, roll into the next period. The Massachusetts' participants didn't comment on that option.

For determination of landings and fishing days, there was the most support for Option A, which is status quo; states adjacent just agree during days-out meetings. There was the most support for no landing of herring caught on a day out, which is Option B. There was some support for one landing per day and 24 hours of fishing per landing event, which are Options C and D. Then as far as state monitoring and reporting, there was unanimous support for weekly reporting of one sort or another. Whether it is Option B or Option D, everybody thought that weekly is necessary for this fishery. I'll take any questions.

CHAIRMAN STOCKWELL: Any questions for Chris? Okay, Matt, you're up again on the TC recommendations.

#### **TECHNICAL COMMITTEE RECOMMENDATIONS**

DR. CIERI: For this addendum the TC met via conference call on January 23<sup>rd</sup> to discuss the addendum and to make comment on it for you guys. I believe a report is being passed out now. Issue 1, bimonthly or seasonal quotas for Area 1A, the TC agreed that all the options were certainly doable; that they could all be monitored.

There were some concerns expressed that bimonthly quotas would require more staff time and a little more work than trimester or seasonal quotas, and that is because you would be predicting and monitoring the quotas a lot more closely. The TC did come to a consensus that the VTR landings from 2000 through 2007 probably provide you a good baseline on which to allocate a lot of the seasonal quotas.

There is some concern – and this will be apparent throughout – that shifting landings later in the year will increase the mortality on the inshore component. This is particularly problematic because of the mixing ratios during the summer months. Fish taken out 1A are considered to be part Georges Bank and part inshore Gulf of Maine spawning component. The later that you shift it in the year the more likely those fish are to be from the Gulf of Maine inshore spawning component.

Increasing the mortality on that particular component may result in lower 1A TACs during the specifications' process that is going to be going on this year, just to be clear. That is part of the TC's difficulty with this particular addendum. There are also some concerns that smaller quotas may cause many races to fish, and that these bimonthly quotas will have very high catch rates and will make the prediction process for closing them even harder.

There is also some concern that if those catch rates are higher within those bimonthly quota periods, that this may lead to localized depletion in certain locations. Paybacks for quota overages, the TC agreed that adjusting quotas within the fishing season can be very problematic and that the section should probably select Option F or Option G which closes the fishery either at 90 or 95 percent.

Both of these approaches have risks associated with them. If you close at 90 percent there is a good probability that you might go under; and if you close at 95 percent there is a higher likelihood that might go over your quota. These approaches are going to be a little bit more effective the larger the quotas are, so the longer your quota period is the larger your quotas are going to be and the more likely you are to be able to get it on target.

The TC also noted that Option E is completely unfeasible under the current specification process. Rolling quota from one year to the next is simply not possible. Rollover of quota underages, for example, if you end up having less fish taken out of the water than the quota specifies, the TC is concerned that rolling catch from an earlier period after September 1<sup>st</sup>, they're very concerned about this particular issue.

They suggest it will increase fishing mortality on the inshore component of the stock. For example, if you go under your quota in the summer period and you roll that underage into the next period after September 1<sup>st</sup>, that you're going to be taking more fish out of the inshore component and the result will be a lower TAC during the specifications' process. The TC would strongly caution not to select any option that moves catch from earlier in the year to after September 1<sup>st</sup>.

For Issue 3, determination of fishing days, the TC really didn't have much of an opinion on this particular option. As far as Issue 4 for days-out restrictions, the TC felt that prohibiting fishing is a much more effective and efficient way of reducing effort in this fishery rather than restricting landing

days, and so therefore Option B is the preferred option for the TC.

For Issue 5, timely reporting of landings, the TC agreed that weekly reporting by all states is necessary and therefore supported Option B or Option D. They also made some other recommendations, including having one database in which to be able to make queries off of reducing staff workloads rather than trying to piece together multiple databases at once. That's it.

CHAIRMAN STOCKWELL: Thanks, Matt. Questions. Bill.

MR. WILLIAM A. ADLER: You just said that the TC recommended one of the options here, and in the printed material here it had a different number or a letter. I can't find it now. I'll have to return to it. It was just two issues ago and you had unanimously supported C, let's say, and this thing said B or something like that. I didn't know if there was a –

DR. CIERI: I can't help you.

MR. R. WHITE: Matt, could you elaborate on the difference between what the harvest rate that we had this year and racing to fish? In other words, it kind of feels to me why we are at this table now is there was a race to fish this last year and we had high rates, so how do you see that being standard or different under the bimonthly?

DR. CIERI: The TC's suggestion is that when you start breaking quotas down into smaller and smaller portions, that there is this idea that if you've got 5,000 metric tons for the month, that you will fish at a higher rate than if you had 10,000 metric tons for two months or 15,000 metric tons for three months, the same amount of quota.

That's because of the phenomenon that whenever we get close to a quota fishing and catch rates go up, and that's partially just the nature of the fishery itself. It has happened every single time in this particular fishery, and you will see it when you go and you look at whenever we're coming close to a quota the catch rates just go through the roof that last week. People want to get their fish.

MR. PATRICK AUGUSTINE: I'm just wondering what – we have Dave up there and the advisory panel. We have heard it from the technical committee and you have looked at numbers as the catch rate continues as we get closer to the end of the season. Is it really because they want to catch them

or is it they want to have backup? What is the association between coming to the end and we want to catch as many as we can, get the fish in storage; is that just normal in the herring fishery?

CHAIRMAN STOCKWELL: Do you want to give a quick answer, Dave, before we get off track.

MR. DAVID ELLENTON: Your question was as far as the race to fish, to catch fish before the quota closes?

MR. AUGUSTINE: Yes, is it because of market demand or is it just for storage purposes to carry over through the closure?

MR. ELLENTON: Well, there is an ongoing market demand for the quota just because of the level of the quota. What is happening there at the end of the quota period, when it's obvious that the area is going to close, yes, because an area is going to close everybody is going to try and get their last fish in as quickly as possible.

MR. AUGUSTINE: So it continues to be a race for the fish no matter what way we –

MR. ELLENTON: I don't like the term "race to fish". I mean, there is a quota to be caught and there are people out there to catch the fish and they're going at it as regular business.

REPRESENTATIVE ABBOTT: For Matt, on 2.1 where you talk about the risk if we close at 90 percent causing a risk in one direction and at 95 a risk in another direction. Why don't we choose a number in between?

DR. CIERI: We're talking about literally splitting hairs. I mean, you're talking about the difference – you know, even the difference between this is 5 percent of what might be 10,000 metric tons or five or one.

REPRESENTATIVE ABBOTT: Well, I won't disagree with you on that point, but you're splitting hairs when you're choosing 90 and 95 percent, also.

DR. CIERI: Right, so the TC basically said it doesn't really make a lot of difference. There is not more of a risk at 90 than there is at 95. They just wanted to make you aware that there is a risk when you close it early versus not closing it early. They don't really have that much to say. The difference between 90 and 95 percent isn't that much. If you were going to make it either 90 or 95, the truth of the matter is you

probably should make it 90 is what they're suggesting because that just gives you more of a precautionary buffer so that you don't go over and so you don't have deal with the overage problem.

CHAIRMAN STOCKWELL: Any further questions from the section? I saw a couple of hands in the audience. We will take a couple. We have a lot of business so we're going to try to move along.

MS. MARY BETH TOOLEY: Mr. Chairman, I just wanted to highlight one issue from the public hearings. I attended one public hearing in Rockland, Maine, and I think there was some confusion on the part of the public about what we were doing. I mean, really this addendum is about process, you know, what is the process going to be. It seemed to me that the public really got kind of stuck on what are we going to do next year?

I think one issue that highlights that well is that a lot of people said they want to start the fishery on June 1<sup>st</sup>. Well, I think that next year, with the quota levels we have, that it is very likely we're going to need to have some delayed start to the fishery, whether it be June 1<sup>st</sup> or whatever date might be.

In future years we would hope that the quota would go back up where it should be and there would be some fishing that would take place prior to June 1<sup>st</sup>. I just wanted to note that for the commissioners that even though some of the comments that were made, there was confusion about the difference between process and what we're going to do in 2009. Thank you.

CHAIRMAN STOCKWELL: Thank you, Mary Beth. For all the commissioners here the TRAC is going to be in June this year. The results will be available to the council in July, and the council intends to move forward with setting a three-year specification package this calendar year rather than the one-year rollover which had been a plan in years past. We will know what the next three years are going to be probably by the end of this year.

MR. JEFF KAELIN: Mr. Chairman, I'm Jeff Kaelin from Winterport, Maine. I am representing Lunds Fisheries, Incorporated, from Cape May, New Jersey. As most of you know, I have been in the herring fishery in Maine a long time, but I've been with Lunds for the last few months. In terms of the advisory panel summary which you will see, I am listed as Maine but I should be listed as a New Jersey interest on there.

The reason why I came to the microphone today was to register our continued concern with the technical committee's position on 2.2, rollover quota underages, when they strongly caution the board not to select options that move catch from early in the year to September 1 or later. We don't understand why this additional layer of caution is applied to at least two layers of caution that have already been applied; the first one that reduced the TAC in Area 1A from 60 to 45; and the overarching caution that is in the herring specifications which allows 29,000 metric tons of fish to reside in reserves which represents the difference between ABC and OY.

I think that where we are now says you get 45,000 metric tons of herring from the Gulf of Maine stock from whatever day we start until the end of the fishing year, and we just want to register our opposition to the perspective that the technical committee has that there should be an additional potential layer of caution applied when we take fish that has been allocated from the area after September 1<sup>st</sup>.

That is why I came to the microphone. We have a real difficult problem with that. It is not going to get resolved until the next assessment, but we as fishermen are concerned when precaution gets ratcheted down once, twice, three times. We think the third time in the instance of this recommendation is inappropriate. We just wanted to say that. Also, I think it's strange that the technical committee is identifying preferred options as well. Thank you.

MR. PETER HIMCHAK: Mr. Chairman, I would just like to offer one comment before we leave the 90 and 95 percent projection exercise. We have bimonthly quotas in summer flounder, and it takes a couple of years to get the projection really fine tuned. We deal with 90 percent, and admittedly it's not a high-volume fishery like Atlantic herring, but at the same time it's a highly desirable product.

The intensity there and the need for close monitoring are as acute in summer flounder as you're dealing here with bigger volumes of fish. In that sense I would recommend the 95 to start out and maybe after a couple of years you can fine tune this better, but you have to learn how to guess.

CHAIRMAN STOCKWELL: Thanks, Pete, you can hold that thought until we get to that issue in a little bit. Any other questions for Matt from the section? Okay, Dave, could you give the AP report, please.

## ADVISORY PANEL REPORT

MR. ELLENTON: You will have received a copy of the summary of the conference call that the advisory panel had on January 30<sup>th</sup>, just last Friday. I have got to compliment Chris on pulling it together after a couple of hours of conference call and the document had to be finalized over the weekend. For the sake of keeping this thing moving along, I am just going to go through the documents and then I think take any questions on each of the subject headings as we go through.

You can see who was present at the advisory panel meeting that day. Actually it is the same number of people who met probably just a few weeks earlier with the addition of Greg DiDomenico who represents Lund Fisheries in New Jersey and with the exception of one person. Glenn Robbins who had been at the previous meeting was not able to participate in this conference call. To go through each of the sections – and I'll go through them in the order that they appear on this piece of paper. I guess I went through them in a different order the last time and confused a few people.

The bimonthly or seasonal quotas in Area 1A; throughout this addendum the advisory panel has unanimously supported Option A, the status quo. Quite honestly, a lot of our discussion and a lot of our choices and preferences were based on the underlying thought process that we would all like to continue with Option A, the status quo.

The advisory panel unanimously opposed any quota options that used fixed percentages because they remove flexibility which could allow management to adapt to changes in the fishery. Fishermen aim to sell their catch when the market value is the highest and locking a certain percent of the catch into a quota period does not allow them to adjust to markets. Meeting participants preferred to fish based on markets rather than quotas.

The advisory panel wanted to point out that the existing system can be effectively used to distribute TAC into quota periods by using the seven days out of the fishery when a certain weight has been harvested. There has always been some discussion as to how we would close areas, but we certainly closed the area from the 1<sup>st</sup> of January to the 31<sup>st</sup> of May by using the seven day out method.

A fallback position, if the status does not prevail we discussed the various options that were available to us, and we finally decided that Option H would be the preferred option. That in fact was the option that

we developed at our previous advisory panel meeting in New Hampshire. You can see that on Page 5 of the February meeting, I think it was – no, the January meeting.

The option was developed by the advisory panel. The AP was comfortable with trimesters rather than monthly or bimonthly quotas because there are three natural breaks in this fishery. We have always worked on three natural breaks in this fishery. One of them is from the beginning of the year to the 31<sup>st</sup> of May when only a small amount of herring are historically caught.

This season, as with last season, we decided we wouldn't catch any herring in 1A in that timeframe. The next natural part of the season is June the 1<sup>st</sup> through September the 30<sup>th</sup> when mid-water trawlers are not allowed to fish in Area 1A. Then the last part of the season in the fall and early winter from October through to December the 31<sup>st</sup> when 1A opens up to mid-water trawlers. In fact, it is accessible by every gear type at that time.

But we not want the trimester dates locked into the management program and prefer to have the flexibility to set them at the beginning of each year. That was our preference on that. Payback for quota overages, we had lengthy discussions about quota payback strategies by making adjustments from year to year. However, it was understood that is not possible under the existing TAC specification process.

We may find out that is possible but we actually moved forward on the understanding that it would not be possible to transfer overages from one year to another. The panel unanimously agreed that the best strategy is to prevent overages which can be accomplished best with a combination of good monitoring.

We discussed the possibility of going to daily reporting and Option G, which proposes to close the fishery when 95 percent of the quota is projected to be harvested, so it would take some monitoring, but we don't think it is out of the realms of possibility that landings could be monitored.

The 95 percent of the quota projection is what the Service does to close the fishery totally, and we think that could be applied to control or actually eliminate quota overages. The option has the potential as an effective tool to prevent overages but should not leave quota unharvested. Matt actually mentioned this in his report. We would suggest that the option

should be altered to allow the fishery to reopen if it closes early.

In other words, if it is closed and the final collection of reports in from fishing vessels and from dealers shows that we have actually still got some of that quota left, then we would highly recommend – in fact, we wouldn't even support Option G unless there was a willingness to readdress that quota that has been left unfished and reopen the area.

As I said before, Option G would work best with longer quota periods rather than monthly or bimonthly, in other words, the quota periods that we're used to working with right now. The rollover of quota underages, the AP unanimously supports Option C, which allocates underages to the remaining periods equally because it is the most fair and equitable of all the options.

In our vision of where this fishery is going – and it remains to be seen if this is the case – our vision of where it is going to be is there are going to be these three periods as I've described, end of May, end of October or middle of October, and end of December, it is highly unlikely – it is obvious that there will not be any underages in the first period because there wouldn't be any fishing. The underages would occur in the next to last period, and it would then be added to the quota for the last period because everybody has access to the fishery at that time, both purse seiners and mid-water trawlers.

Issue 3, yearly determination of landings or fishing days, the advisory panel unanimously supports Option C whereby the adjacent states must agree on the start date, number of days out, et cetera. Again, it is the status quo. If they cannot agree, then the matter will go before the entire section. Quite frankly, we went in this direction assuming that there would be agreement. None of us actually wants this go before the entire section. We think it is being handled quite expeditiously and with great flexibility by the adjacent states making the decisions as they have in the past.

Issue 4, the days-out restrictions the advisory panel unanimously supports Option C which restricts vessels to one landing per calendar day. One member commented that the unusually large catch rates in 2008 were a result of carrier vessels landing twice in the same calendar day. This is a phenomenon that we haven't seen in this fishery in previous years.

The actually landing more than once on any given calendar day really blew out of the window the projections that Matt had done prior to determining days out of the fishery because the increased effort was the result of carriers landing more than one trip per day and also fishing outside of the closed days.

In addition to all members preferring Option C, there was a consensus for a combination of both Option C and Option B; in other words, no landing herring caught on a day out, so getting back to where we had always assumed that when we have days out in this fishery those days out are days out of fishing as well as days out of landing. The members discussed a combination of Option C and D, the 24 hours of fishing per landing event. Some of the advisory panel was looking at the possibility of having a 24-hour period before the landing event for fishing. Eventually the consensus was agreed on Options B and C.

Issue 5, timely reporting of state landings, the advisory panel unanimously supported Option B or D, which requires weekly reporting. Weekly reporting is not too much to ask of fishermen especially when it is necessary to properly manage the fishery. I think this much more a state matter and most of us were not quite clear as to what the reporting system is for state vessels.

There was a discussion about negative reporting is necessary, but we think it is overly burdensome to ask fishermen to report every week if they do not catch herring. They think there is a way that they can report for a period of time rather than reporting weekly; and, again, we're talking about state landings only here, of state permitted vessels.

If a fisherman or vessel is not going to land herring for a month, they should only have to fill out one negative report until they begin landing again, so taking away the weekly negative reports from them. There was a question about what would happen to states that could not implement weekly reporting requirements, if they would be found out of compliance. We don't know what the answer to that question is.

Finally, there were just some other comments that the AP made. They wanted the section to be aware that the 2007 to 2009 Area 1A TAC reduction has not been justified scientifically, and we were quite strong on that point, and we just wanted to bring it to you. You can see from the advisory panel that the majority of the industry participants that participate

in these advisory panel meetings believe that the stocks are extremely healthy.

We look forward to the stock assessment results, which we now understand will take place in the summer of this year, in June or July, and we expect that instead of the one-year quota setting, that there will be three-year specifications set by the National Marine Fisheries Service starting this year.

CHAIRMAN STOCKWELL: Thanks, Dave. Questions from the section. Ritchie.

MR. R. WHITE: Dave, on the seasonal quotas where the AP supported status quo; did the AP feel that the status quo worked this year; and if not, then how do they think status quo will work next year?

MR. ELLENTON: Well, I don't know that we had discussion as to whether it worked this year or not. As a matter of fact, as it always seems to do, it did reach the numbers that we expected to reach at the times that we expected to reach them. We obviously think that going forward the status quo will work and has worked for us in the past, and there is no reason why it shouldn't work for us going forward.

MR. R. WHITE: So the AP didn't have a concern, then, about where we had to meet four times in Durham and we had a room full of angry lobstermen, that we shouldn't be doing something about trying to solve that? In other words, I don't understand if we continue with the same situation this coming year as we had last year that we won't end up with the same results.

MR. ELLENTON: Well, we're always going to end up with that kind of result when the quota is only 45,000 tons, so it is just a matter of how we handle that. Prior to this year we have had meetings where there has been a room full of angry mid-water trawler guys or a room full of angry purse seiners. You know, we deal with it and then we walk out of the room and go fishing on the basis of what has been decided.

MR. PATTEN D. WHITE: Well, I think sort of referencing where Ritchie was headed, Dave, I had a question on your overages. You talked about if the fishery was shut down because it had reached a 95 percent overage, if there was something left, that it would be opened again; is that within a monthly period and how on earth would we respond to that in a timely manner did they think?

MR. ELLENTON: Well, we would hope it could be responded to within a timely manner, either by a meeting or a conference call. I think reporting is getting better and better in this fishery; and within a week of no fishing, then the vast majority of reports should be in, and then it will be obvious whether there is an amount of fish left out of that quota that could still be caught. Then I would have thought that a conference call or meeting between the states could reopen that fishery for that specific quantity of fish. Is that what you're asking me?

MR. P. WHITE: I guess that is assuming that we're not doing the bimonthly or quarterly or that kind of thing, then, because it would be difficult if we got to the third week of something and reached our 95 percent, it is going to take another week and we're already into another quota period.

MR. ELLENTON: Yes, that is assuming that we do it weekly.

MR. ADLER: Dave, the status quo I hear a lot, and yet there is one section in here that talks about you can't basically fish on days out. Now, isn't that something the AP wants to put in that when you have days out you can't go fishing on those days out; isn't that what they want?

MR. ELLENTON: Yes, that's exactly what they want. We had this in place with the so-called "gentleman's agreement"; and when we had days out it was understood by everybody in the fishery that during those days out no one would fish. They could be out there looking for fish but nobody put their nets in the water.

What happened this past season was that people did start fishing heavier than was intended by the managers. We know that there is the ability to – I know each state is different and this may not be correct, but there is the ability to put wording in place whereby the catches cannot land fish that was caught outside of the days out; in other words, putting what was a gentleman's agreement into a regulation.

MR. ADLER: So that part which isn't in the current status quo, you would like in the addendum; is that correct?

MR. ELLENTON: Yes.

CHAIRMAN STOCKWELL: Any other questions for Dave? Go ahead, Mary Beth.

MS. TOOLEY: Mary Beth Tooley, a member of the AP. I think that Dave's report summarized the conversation the AP had very well. I just wanted to note one item under Issue 4, which was just discussed about not fishing on days out. The majority of the AP did agree to Option B and C, but it was not a consensus statement.

There was a minority of people who chose Option D, 24 hours of fishing prior to a landing event. The reason for that is that many times if you have this many days out of the fishery, you need a little lead time to that first landing day of the week. I think it would only need to be applied to that particular day. I just wanted to make note of that so that the AP report would reflect that. Five people felt that Option C and B were the correct ones, and two people felt it was Option C and D. Thank you.

CHAIRMAN STOCKWELL: Okay, thank you, Mary Beth. Anybody else for the AP? Jeff, your turn.

## **LAW ENFORCEMENT COMMITTEE REPORT**

MR. JEFF MARSTON: We met by conference call on January 27<sup>th</sup>, and you have the call summary probably in front of you listing the members that were present on the call. Under Issue 1 the Law Enforcement Committee felt that all options are enforceable. The longer quota periods seemed to be – not that we're recommending any of the options, but the longer quota periods would allow the days out to be set ahead of time so there would be fewer change throughout the season. The more consistent the regulations the better for the Law Enforcement Community.

Issue 2.1, payback for quota, and 2.2, rollover of quota, there are no law enforcement issues associated with the options in either 2.1 or 2.2. Yearly determination of landing or fishing days, Issue 3, there are no law enforcement issues associated the options contained in Issue 3. Again, I stress the more consistency with the regulations, the fewer changes throughout the season the better.

Days out restrictions, Issue 4, it was determined that Option B is not enforceable as the vast majority fishing takes place in federal waters where state officers have no authority to enforce these regulations. The only effective way to stop the fishing on the days out would be for the National Marine Fisheries Service to adopt these regulations;

and then if they did so, the states could then enforce them throughout their JEA agreements, and then the regulations would be set in place by all the states so they can enforce them.

Option C, vessels may only land once per calendar day, is enforceable. It was felt it was enforceable because it is a high-volume fishery and the boats are at the dock for a period of time. Option D, vessels may only fish for 24 hours prior to landing, this is also difficult to enforce for the same reasons as Option B. State officers have no authority to enforce the regulations in the federal waters. Option E, a 2,000 pound bycatch allowance, is enforceable. There are no law enforcement issues associated with Issue 5, the timely reporting of state landings.

CHAIRMAN STOCKWELL: Thanks, Jeff. Any questions from the section to Jeff? Okay, what I want to do is take each issue one at a time, have some discussion and then take a motion and vote it in. At the end we will then make a motion to adopt all the issues as amended as one final document. Ritchie.

MR. R. WHITE: Just to clarify, Mr. Chairman, we could put multiple options and vote them in the tool box, and that doesn't mean that those are the regulations that will go forward for 2009; is my understanding correct with that?

CHAIRMAN STOCKWELL: That is my understanding. In the spirit of full disclosure here and in anticipation of the section's interest in limiting fishing days rather than landing days, I consulted with Maine's AG just this last week. Maine is unable to directly or indirectly regulate fishing vessels outside of state waters, so Options B and D of Issue 4 will not be doable for us. I believe the same is true for New Hampshire. So as you contemplate the different options, just bear that in mind. David.

DR. PIERCE: All right, following your request, Mr. Chairman, regarding how we should deal with all of these issues within less than one-half an hour, I'll make a motion regarding the first aspect of this addendum and that is Issue 1. The motion that I'm going to make and any other motions that I may make regarding this particular addendum will reflect the summary of the problem statement.

We need to keep reflecting on that, the reasons why we have gone through all of this effort to get to this point today. My motion that I am now going to make is influenced by what happened in 2008, specifically what we tried to do and what we did do in the wintertime and what we attempted to do and I think



we accomplished for the fall; that is, starting October 1, and that is to try to provide a steady supply as we could possibly provide of herring throughout the entire fishing season. I would move that we adopt Option F for 2009 with Option H being for 2010 and beyond. I will elaborate if anyone cares to second that.

CHAIRMAN STOCKWELL: Is there a second?  
Seconded by Dennis.

DR. PIERCE: All right, we're already in February. We know we're going to have a number of meetings this year to deal with how we manage the fishery this year, specifically how to increase the chances of our having a steady supply of herring throughout the year, specifically to be there as bait for the lobster fishery and for other purposes, of course.

With this particular Option F for 2009, we set the course for this year; that is, we have the seasonal split as shown in Table 1. There would be no fishing prior to June 1<sup>st</sup>. That's what we did last year. Then we would have from October through December 27.2 percent set aside. That I believe equates to about 12,000 metric tons of Area 1A fish.

That, therefore, would make us consistent with what we did last year, but set it more in stone for this year. Now what happens in 2010 and beyond I think we'll have to return to as a consequence of what we get out of the assessment that is occurring this year. I believe you said in the spring or early summer; I forget the exact day you said, Mr. Chairman. So, we will have to reflect on that outcome and how impacts the way in which we deal with the fishing throughout the year once we see the numbers.

If it is 45,000 metric tons or less for Area 1A, then that may prompt us to continue with an Option F-like strategy; or if it is greater than 45,000 tons, we may want to again revisit the percentages and do it in a flexible way through Option H. Let's make the decisions today for 2009 – that's Option F – and be flexible for 2010 and beyond that's Option H.

CHAIRMAN STOCKWELL: Thank you, David. Doug, you had your hand up earlier. Do you have a comment?

MR. DOUGLAS GROUT: Well, I will a comment to Dr. Pierce's motion. I would like to see in Option H a specific set of suite of options that we bring forward and not just a whole range of things; or as it says, basing it only on trimester seasons. I was wondering if Dave would be open to a friendly

amendment to that where we would pick, say, three of the options that we would bring forward that we could put in our toolbox for 2010 and beyond.

As I see it, depending on what happens with the specification system, we may want to have the flexibility of fishing from January through May in the future. We may find that we want to have the flexibility to go away from trimesters and go to bimonthly depending on how the trimester option goes this year.

DR. PIERCE: Okay, Doug has requested that I consider that to be friendly amendment, and I don't because of the comments we've already received from the technical committee and from the industry. The technical committee in particular made it very clear – and this is not new – races to fish under a bimonthly quota will make catch rate predictions harder and may lead to localized depletion. Localized depletion, of course, is an extremely important issue for us all to consider.

With that technical committee recommendation that I agree with and with the industry advisors' perspective, I don't think putting that in the toolbox does us any good. It won't accomplish anything. I believe that we have tried to work with the trimester approach and it has succeeded fairly well, not totally but fairly well. I don't want to go back to reconsideration of bimonthly quotas. I think it will lead to more problems for us than it will resolve.

MR. P. WHITE: I guess I'm sort of in between. I agree with what David is saying and where Doug was headed. I am just concerned in this proposal, with the carryovers that Matt referred to, if we had an underage in the second trimester, they're not excited about carrying that over after September. I guess I would like to have that flexibility to choose in 2010 before we do it now.

MR. GEORGE LAPOINTE: I guess first in response to Pat's question; wouldn't our ability to do that be based on what we choose for other options farther down the road – Issue 2, rather, for the rollover so we haven't dealt with it yet, so we have the choice to put it in the toolbox or not based on risk.

Then, Doug raised I think a question and I want a clarification from David. Under Option H we would have the option, again depending on what the specifications were like, to have a fishery before June 1, would we not? That's a question and not a statement, but the way I read it I thought we would have that option.

REPRESENTATIVE ABBOTT: Mr. Chairman, a point of order. With due respect to you as Chair and George sitting there, it seems to me we have two agency people from one state participating in this debate, and I don't think that is proper under our rules.

MR. P. WHITE: I thought we decided it was.

MR. LAPOINTE: Did we not deal with this issue in a past meeting, and I'm asking questions of clarification so that we can understand, so that Maine can vote as a unit. I thought we had dealt with this issue in past meetings.

CHAIRMAN STOCKWELL: I thought we had, too. I'm going to look to Bob and Vince for resolution to this issue.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Our recollection of the discussion was regarding more than one agency person sitting at the table in the delegation. Both Bob and I are drawing a blank on what the commissioners decided regarding the level of their participation. Whether it was questioning or debating, we're just drawing a blank on that.

CHAIRMAN STOCKWELL: Okay, Dennis and Pat, and then we probably need to move.

REPRESENTATIVE ABBOTT: I didn't intend to cause a problem, but it was unclear in my mind. If it is okay for George to sit there versus going to the public microphone, then you can proceed, but that's the decision of the section in my mind.

MR. P. WHITE: Well, I think I was one of the ones that brought it up, and it is fairly clear in my mind that we had discussed this and that it was okay for two members to sit at the table to enter into the discussions, but they weren't part of the vote. I thought we had put that to bed.

MR. GROUT: Well, as you know, I would like to have a toolbox of options to work with given our experience this past summer, and so I would like to move to amend this; that Option H would provide the three states or the section, whoever is making the decision, with the ability to use Option C, which is allocating seasonally according to percentages under the trimesters; Option E, allocated bimonthly according to the percentages in Table 1 under bimonthly quotas with no landings prior to June 1; and Option F, allocated seasonally according to the percentages in Table 1 under seasonal quotas with no landings prior to June 1.

CHAIRMAN STOCKWELL: Is there a second for Doug's motion to amend? Is that correct, Doug?

MR. GROUT: I would say under Option H, that those would be the three options that could be used in our annual setting of the quotas.

CHAIRMAN STOCKWELL: And, Doug, is that according to the percentages in Table 1?

MR. GROUT: Yes, Mr. Chairman.

CHAIRMAN STOCKWELL: Okay, thank you, and, Pat, you seconded it?

MR. P. WHITE: I'll second it for the point of discussion.

CHAIRMAN STOCKWELL: Okay, discussion on the motion to amend? Ritchie.

MR. R. WHITE: I appreciate David's comment on some of the issues raised by the technical committee, and that is based on the information that they now have. Two or three years from now things may change, and we may look back and say, "Gee, I wish we had this." This doesn't mean that we have to use any of these.

It just gives us the flexibility of being able to use these without doing an addendum in the future if we see that, gee, something isn't working and one of these might work. Why not throw it in and then we can have all the arguments and discussions if we ever decide to use. Then we can look back and have the technical committee, AP, all respond to it, but it gives us more flexibility.

CHAIRMAN STOCKWELL: Other section comments? Any public comments? Dave Ellenton as a member of the public followed by Bob Baines.

MR. ELLENTON: Dave Ellenton from Cape Seafoods and Western Sea Fishing Company. At no stage did I look at the percentages as being anything that could be used. These are percentages calculated from the 2000 to 2007 fishing seasons, and it is not clear to me that they're even relevant to what is going on today. The use of the percentages is something – we would rather see tonnages than percentages.

MR. BOB BAINES: Bob Baines from the Maine Lobstermen's Association. I want to speak to the total issue first. The Maine Lobster Industry depends on the herring resource to make our living, and we

need a steady supply of bait throughout the season, knowing that the quota is not adequate.

To this issue specifically the Maine Lobstermen's Association supports Option A which gives the most flexibility to allow the section to adjust throughout the season. To use just Option H, we could run out of bait by the end of August, and we cannot support that. Bimonthly, if it can be done, would work better just to keep us in a steady supply of bait knowing that it might run out, but it would be a shorter period of time.

MS. TOOLEY: Mr. Chairman, I'll be very brief. I do support the motion to amend because I do think it provides the flexibility that you need, identifies what the tools are in the toolbox; and as we move forward, it will allow us to adjust as hopefully the quota goes up, reporting gets better, and we will have what we need. Thank you.

CHAIRMAN STOCKWELL: Any further comments from the section on the motion to amend. Okay, caucus.

(Whereupon, a caucus was held.)

CHAIRMAN STOCKWELL: The motion to amend includes under Option H, allow the use of Option C, E and F with the percentages in Table 1 of the draft addendum. Motion by Mr. Grout and seconded by Mr. Pat White. Okay, everybody on the motion to amend, those in favor please signal; those opposed; abstentions. The motion carries. On the main motion, move that the section adopt Option H; allow the use of C, E, and F with the percentages in Table 1 of the draft addendum.

SENATOR DENNIS DAMON: Mr. Chairman, on the main motion we are using F for 2009 and then the motion that we just voted on, the amendment, will be relevant to Option H and that's 2010 and beyond. I believe that is what we're talking about.

CHAIRMAN STOCKWELL: Doug, was that your intention?

MR. GROUT: Yes, sir, Mr. Chair.

CHAIRMAN STOCKWELL: Okay, for clarification here, move that the section adopt Option F for 2009 and Option H, to include under Option H to allow the use Option C, E and F with the percentages in Table 1 of the draft addendum for 2010 and beyond. Is that clear to everybody? Do we need to caucus? Those in favor, please signal; any opposed; abstentions. The motion carries. Chris just raised a good point. I

know we're running shy on time, but we probably ought to have a short discussion on clarification for 2010 and beyond, when this is going to be made.

MR. GROUT: Isn't that something that we decide on in some of the further down issues? Isn't it Issue 3?

CHAIRMAN STOCKWELL: It would be Issue 3. Let's have the discussion under Issue 3 and move long. Issue 2, the payback of overages. Dr. Pierce.

DR. PIERCE: I would move for Issue 2, Option G; in order to prevent overages of the fishery for a period, season trimester will close when 95 percent of the quota is projected to be harvested.

CHAIRMAN STOCKWELL: Is there a second for this option? Without a second, the motion fails. Is there any other discussion? Doug.

MR. GROUT: Mr. Chairman, I would like to move a suite of options that we would have for our toolbox. I would move that we include Options F, G and D that we could use.

CHAIRMAN STOCKWELL: Clarification, F, G and D?

MR. GROUT: Yes, Mr. Chairman, F would be closing at 90 percent; Option G, closing at 95 percent; and Option D, if the quota in a period is exceeded, the amount of the allocation will be subtracted from the remaining period based on a percentage share of each remaining period.

CHAIRMAN STOCKWELL: Is there a second to this motion? Go ahead, Doug.

MR. GROUT: If that fails, can I try another one?

CHAIRMAN STOCKWELL: Your previous motion failed; try again.

MR. GROUT: How about I move that Option F and G be utilized for 2010 and for 2009 we use Option G.

CHAIRMAN STOCKWELL: Do we have a second for this one? All right, this motion fails for lack of a second. David.

DR. PIERCE: What did we do this past year; what approach did we use to determine when we would close the fishery? Was it 90 percent or was it 95 percent?

CHAIRMAN STOCKWELL: I'm going to defer to Matt, but I believe it was 90 percent.

DR. CIERI: No, 95.

DR. PIERCE: Right, it was 95?

DR. CIERI: Right, the National Marine Fisheries Service closes Area 1 when 95 percent of the allowable quota is taken.

DR. PIERCE: Okay, I made the first motion which was 95. It would be much consistent with what we did in 2008. No one would second that motion and now, of course, we're circling around and we don't know what we do. I would just ask the board for some flexibility. Where are we going with this? I think 95 percent makes a lot of sense. We have to have some decision.

MR. P. WHITE: Well, based on that discussion, if you want to bring it forward, I will second it, David.

MR. R. WHITE: I didn't second the 95 because now that we have in the toolbox options for different seasons I would like to see 90 and 95 in the toolbox because maybe if we go to a trimester or a bimonthly maybe we'll determine that 95 won't work quite right. I agree with using 95 but I would like to have 90 in the toolbox just in case down the road there is an issue with the 95.

DR. PIERCE: Well, that clarifies it, thank you, Ritchie. All right, I would move that we adopt Option G for 2009 and for 2010 and beyond it would Options F and G. That would then give us the flexibility to respond to if we go to bimonthly quotas.

MR R. WHITE: Second.

CHAIRMAN STOCKWELL: Seconded by Mr. Ritchie White. Okay, is there any discussion on this? No discussion, caucus.

(Whereupon, a caucus was held.)

CHAIRMAN STOCKWELL: The move is to adopt for Issue 2.1 Option G for 2009 and Options F and G for 2010 and beyond. Those in favor; those opposed; abstentions. The motion carries. Issue 3, David.

DR. PIERCE: Well, actually I forgot Issue 2.2. I would move that we adopt Option C for 2.2, which is rollover of quota underages. This is the option recommended by the industry. It reads, "If landings are less than the quota allocation for a given period,

any amount under the quota will be divided by the number of periods remaining, and that amount will be added to each remaining period within the same calendar year."

CHAIRMAN STOCKWELL: Thank you; do we have second. Seconded by Doug. Any discussion on Issue 2.2? Pat.

MR. P. WHITE: Do all states have the technical capability to do this?

DR. CIERI: What do you mean?

MR. P. WHITE: Can we find this out in a timely manner and can this be done? I just thought this was something that had been brought up earlier that was a difficult thing to do.

DR. CIERI: For F?

CHAIRMAN STOCKWELL: 2.2, Option C.

DR. CIERI: You can certainly do it. The question becomes whether you wish to roll over quota past September 1<sup>st</sup>. You can certainly take whatever underage you have and simply split that up into whatever your remaining quota periods are, and that is something that I can do fairly quickly. States don't have to; the TC will. If you understand my point, technically it can be done. The question is whether or not you wish to have it done.

REPRESENTATIVE ABBOTT: Matt, I think you said that if we rolled the quota over beyond September 1<sup>st</sup> it would have an adverse effect on the fish. I assume that would mean that at some further point we would be possibly looking at a change in the TAC for Area 1A. If we're going to a three-year program, what does that do to us?

DR. CIERI: Here is the deal. A lot of it is going to come down to whatever happens this year. If you blow the quota and you roll in quota past September 1<sup>st</sup>, the only thing the PDT is going to be able to base some of its analysis on is going to be this year. For example, if you roll two or three thousand metric tons that normally is caught in the summer into that time period after September 1<sup>st</sup>, that is going to be two or three thousand metric tons of inshore Gulf of Maine fish, and I would expect during the specifications' process an analysis done on something considerably lower than your current.

MR. LAPOINTE: When I think about this question period, the mechanics is what I think about. Period 1

ends the 1<sup>st</sup> of June and you have an underage. We're going to start Period 2 on the 2<sup>nd</sup> of June or the 1<sup>st</sup> of June, and it is going to take a while to calculate the underages and reapply them to the next period, and is that going to then impact how we're going to do days out or whatever? It strikes me that it is adding a lot of moving parts to the system all at once, and so that I think something the board needs to ponder.

MR. ADLER: But it is a matter of just putting it in the toolbox. We can determine exactly that, no, we better not use it, but at least it is there. I think that is what we're getting at here.

CHAIRMAN STOCKWELL: It would be the only tool in the toolbox. Other comments? Seeing none, caucus.

(Whereupon, a caucus was held.)

CHAIRMAN STOCKWELL: Okay, move to adopt for Issue 2.2 Option C. Motion by Dr. Pierce and seconded by Mr. Grout. All those in favor, please signify; those opposed; abstentions. The motion carries. Yearly determination of landing or fishing days; Dr. Pierce.

DR. PIERCE: I would move for Issue 3 Option C. I can read the text if you would like, but in the interest of time maybe I'll just leave it at that.

CHAIRMAN STOCKWELL: Seconded by Representative Abbott. Doug, a comment.

MR. GROUT: A comment and possibly a friendly amendment to this motion; offer a friendly amendment. What this Option C states is that the states must agree on the start date, number of days out and starting times of the days out for the following year. We have potential options under Issues 2 and 3 addressing quota overages and Issue 3, Option 3.

I would like to see if the mover and seconder would agree is that we would also determine at what percentage we're going to stop the fishery, 90 or 95 percent – that is something that needs to be determined each year – and also whether we're going to use Option C for the rollovers or not each year. That would be determine how to address quota overages each year.

CHAIRMAN STOCKWELL: So that is a friendly amendment?

MR. GROUT: Yes, quota overages and also we need to determine the percentage at which the – let me get the exact wording here – how about if we put whether we would use Option F or Option G for quota overages? It just clarifies all the things that we need to address at these yearly meetings.

CHAIRMAN STOCKWELL: And does this verbiage reflect your amendment?

MR. GROUT: I am not sure; I don't think so.

MR. GROUT: This would be that we add to Issue 3, Option C, that the adjoining states would also determine whether to use Option F or G under Issue 2 and whether or not to use Option C under Issue 3, 2.2.

CHAIRMAN STOCKWELL: That still leaves the issue whether or not it is going bimonthly or by season or by trimester.

MR. GROUT: A friendly amendment for choosing Option C under Issue 3; that we also need to add the decisions that we need to make about quota overages and quota underages, because that is not stated in Option C. We are moving to adopt Option C under Issue 3 in its entirety with – and think, yes, as Option G under 2.1 and Option C, whether or not to use Option C under Issue 2.2.

CHAIRMAN STOCKWELL: And you're going to remain silent on Issue 1?

MR. GROUT: Isn't that already in there that states must agree on the start date, number of days out and – yes, you're right, that does need to be added in.

CHAIRMAN STOCKWELL: I don't know how we can wordsmith it in there. Ritchie.

MR. R. WHITE: Couldn't there be a way to have a general statement in here saying that the three states have the ability to implement anything in the toolbox on an annual basis; in other words, without having to list all these and we end up missing something? Couldn't that be possible?

MR. ROBERT E. BEAL: Well, I think the idea is that in the previous motions under the previous issues, Issue 1, Issue 2.1 and Issue 2.2, the section has provided themselves with some flexibility for the Year 2010 and beyond. The idea is that annually you're going to have to decide which of those options you want to select.

I think the record is pretty clear that there are a series of decisions that are going to have to be made at the outset of each fishing season. Hopefully, by the end of this year you'll know the quotas for '10, '11 and '12, so you can maybe make some decisions that apply to that whole suite of three-year specifications. I think the record is pretty clear that you guys have set yourselves up with a fair amount of flexibility.

The idea here under Issue 3 is that the states are going to have to come together and agree is the word that is used here, and agree on a number of provisions, including days out, when to close the fishery and whether or not to roll over unused quota. I think the discussion that the section has had in the last 15 minutes is pretty clear.

CHAIRMAN STOCKWELL: Everybody feeling comfortable about that? David.

DR. PIERCE: Well, in light of what Bob said – well, Bob, are you suggesting then that we don't need to add these additional elements suggested by Doug to this motion; that we already have that flexibility for us to use as a consequence of previous motions made. My preference is to stick with the original motion and not tinker with it because this issue is about yearly determination of landing or fishing days, and the language within this particular section relates to that. If we don't have that flexibility I wouldn't mind Doug's friendly motion to amend, but, again, from what you said I don't think we need to add all this on.

CHAIRMAN STOCKWELL: Yes, I agree with you, David. Does that make sense to you, Doug?

MR. GROUT: Yes, I will withdraw that amendment as long as it is clear that we're going to be using a variety of things that we have to set from Addendum I here.

CHAIRMAN STOCKWELL: Okay, is that clear and agreeable to everyone? Okay, we're going to move to adopt for Issue 3, Option C. Caucus, please.

(Whereupon, a caucus was held.)

CHAIRMAN STOCKWELL: All those in favor please signify. It is unanimous. Thank you, we're on a roll. Issue 4, David.

DR. PIERCE: Boy, am I torn on this. I know what I want, I know what we need. Based upon everything that we have gone through and all the discussions we have had about landing versus fishing, this has caused all sorts of confusion in my state and certainly

for the other states as well. If we continue with the status quo, which is go ahead you can fish on any day you want and just load that fish up on a carrier vessel or on whatever vessel you care to use such as a leased mid-water trawler and the landings on a given day when it is allowed, those landings can really be very, very, and that is what causes so much grief with last year's numbers of meetings, trying to predict where we are relative to the quota.

It was really difficult for us to wrestle with. We have succeeded but it was not a pleasant sight to behold. I am tempted to go with Option B, but law enforcement has said that they can't enforce it. Mr. Chairman, you said that the state of Maine can't do it and I think New Hampshire said you can't do it.

Massachusetts does it so I guess Massachusetts will have to change its regulations and just let them fish whenever they want or for as long as they want, but you can only land it on that day. Okay, with that said, recognizing I want Option B, I'll be sensitive to what the other states can and cannot do, and I will move to adopt Options A and C for Issue 4; that is, status quo, fishermen are prohibited from landing herring during a day out, according to Section 4.3.1, effort control measures, days out of Amendment 2; and then Option C, vessels may only land once per calendar day.

CHAIRMAN STOCKWELL: Thank you; do we have a second? Seconded by Representative Abbott. Discussion. Doug.

MR. GROUT: There is another issue that was brought up at our public hearing dealing with our small boat fisheries and that deal with incidental catch of herring in other fisheries. One of the options that I wanted to make sure was in here was also, first of all, Option E at a minimum. However, I would like to also present another option in here, if it is permissible, to look at an option where the days out of the fishery would not apply to boats that are in the open access category, D fishery permits.

Most of these boats are all fishing for other species and it has been made clear to us several times that sometimes they go over this 2,000 pound limit during a day out and they have to discard those fish. They're talking about having the ability to land a few more thousand pounds when they occur, and it is not a daily occurrence.

The other reason that they feel that it is important and would not negatively affect the stocks is because this group of boats does not land more than 5 percent of

TAC in any of the years we have ever had it under this. What they're trying to do is avoid discarding the herring. I would like to move Option E be added to this as a friendly amendment. Is that okay with the mover and seconder? And if that is acceptable as a friendly, then we can just add that in that we would have Options A, C and E to the original motion.

Then I would also like to make a second formal motion to amend that the days-out provisions that either the states or the section put in would not apply to boats with Category D open-access permits.

CHAIRMAN STOCKWELL: Do you accept that, David?

DR. PIERCE: This needs to be changed. What is on the board is I think incorrect. I believe that Doug is asking for a friendly to the motion I made, so it would be move to adopt for Issue 4, Options A, C and E –

MR. GROUT: Correct.

DR. PIERCE: So that is the motion that is on the floor, and now Doug is wanting to amend that to do what he has indicated up there. The friendly is fine by me.

CHAIRMAN STOCKWELL: I think we ought to separate the two issues. I would like to keep them separate because actually I think we need to probably have some technical review of what the impact might be to add this effort into the motion. I would like to get some comment about that. Dennis.

REPRESENTATIVE ABBOTT: As it was explained to us at our hearing by one of the fishermen, he said he is disadvantage in the sense that, as Dr. Pierce said, he'd like to put in Option B, but as we know fishing is occurring on days that you can't fish, but if he is out there in one of those days where he can't fish and lands the catch incidentally, he doesn't have the ability to keep it overnight or whatever because he is going back to port, so he is further disadvantaged from the people who are now prosecuting the fishery.

CHAIRMAN STOCKWELL: So what is your interest, to make a motion to amend this to add that or to separate the two?

MR. GROUT: Separate the two. I was trying to get a friendly amendment to add E to it. Dave and the seconder seem to be amenable to that. Then I would like to make another motion to amend.

CHAIRMAN STOCKWELL: We're bumping up against our time period here, so let's caucus on the move to adopt for Issue 4, Options A, C and E, and then we will address your other issue.

MR. HIMCHAK: One quick questions; why would you need to add Option E if the status quo already allows 2,000 pounds to be landed on days out?

CHAIRMAN STOCKWELL: Federally it does but not in state waters. Everyone all set to vote? Those in favor please signify. The motion carries. Doug, let's move along quickly.

MR. GROUT: I would like to make that motion, but if the chairman feels uncomfortable with this not going into effect this year without technical committee input on that; would it be possible to make this a motion for something that we could add in 2010, following technical committee approval or review of it, I should say.

CHAIRMAN STOCKWELL: I think that would make a lot more sense. The technical committee will be meeting a number of times as we move forward with days out this year, and we can add that to their task list.

MR. GROUT: Can I have that other motion brought up on the screen? I would like to move to allow federal open access D permits would be exempted from the days-out fishery and have this included in our toolbox pending review by the technical committee for 2010 and beyond.

CHAIRMAN STOCKWELL: Matt has a comment before we take a second.

DR. CIERI: Just for clarification just because I was interested; the open access trip limit for incidental catch permits is 6,600 pounds of herring, so this would basically give those people with the limited access permits between 2,000 and 6,600 to land.

MR. GROUT: That is correct.

CHAIRMAN STOCKWELL: Okay, do I have second? The motion fails for lack of a second. David.

DR. PIERCE: Issue 5, that is the last issue for us to address this morning. Just a quick point regarding the previous issue; the attorney for our agency has prepared a memo regarding the way in which the Division of Marine Fisheries of the Commonwealth

can actually control the fishing effort of our fishermen beyond state waters.

This is with the days not fishing; you can't land fish that you caught on a day when the landing was not prohibited. We're going to make that available to the other states, and I hope that will be instructive and perhaps we can pursue this for 2010. I recognize that for 2009 this is just not going to happen, so you can expect that fairly shortly.

With regard to Issue 5, I would move that we adopt Option D. This is timely reporting of state landings, and Option D is states have the flexibility to choose either B or to not allow any vessels to land in their state without a federal permit.

CHAIRMAN STOCKWELL: Is there a second; seconded by Mr. Grout. Discussion. I am going to call the question. Move to adopt for Issue 5, Option D; motion by Dr. Pierce; seconded by Mr. Grout. Those in favor please signify; those opposed; those abstaining. The motion carries. Thank you, all. What we want to do now is move the whole document forward.

SENATOR DAMON: Mr. Chairman, I would move that we move the whole document forward as amended.

CHAIRMAN STOCKWELL: Thank you, Senator. Seconded by Bill Adler. Reading into the record: Move to approve Addendum I as amended. Motion by Senator Damon; seconded by Mr. Adler. Those in favor please signify. It is unanimous; thank you very much for a long morning here.

## **ADJOURN**

We're way over our time period, so we're going to hold the other two agenda items until the spring meeting in Rhode Island. Could you send along your FMP reports sometime between now and then? The meeting is adjourned.

(Whereupon, the meeting was adjourned at 10:10 o'clock a.m., February 3, 2009.)