

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

**May 25, 2004
Radisson Hotel
Alexandria, Virginia**

ATTENDANCE

Board Members

George Lapointe, Maine DMR
Pat White, Maine Governor's Appointee
John Nelson, NH Marine Fisheries
G. Ritchie White, New Hampshire Governor's Appt
David Pierce, Massachusetts DMF
Bill Adler, Massachusetts Governor's Appointee
Vito Calomo, proxy for Representative Verga (MA)
David Borden, Rhode Island DEM

Gil Pope, Rhode Island Governor's Appointee
Eric Smith, Connecticut DMR, **Vice Chair**
Fred Frillici, proxy for Senator Gunther (CT)
Pat Augustine, New York Governor's Appointee
Bruce Freeman, New Jersey DFG&W
Dick Herb, proxy for Asm. Smith (NJ)

Ex-Officio Members

Matt Cieri, Technical Committee Chair

Jeff Marston, LEC Representative

ASMFC Staff

Megan Gamble
Vince O'Shea

Robert Beal
Brad Spear

Guests

Lori Steele, NEFMC
Peter Moore, Norpel/APA, New Bedford, MA
Jeff Kaelin, Stinson Seafood, Inc., Winterport, ME
Mary Beth Tooley, East Coast Pelagic Assn,
Camden, ME
Bill Quinby, Mayflower, Boston, MA

Byron Young, NY DEC
Gregory P. DiDomenico, GSSA, Cape May, NJ
Rob Winkel, NJ F&W/ Law Enforcement
Mark Dobelbower, NJ F&W/ Law Enforcement
Chris Bonzak, VIMS, Gloucester Point, VA

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MOTIONS

1. Move to eliminate option 2d of the objectives.

Motion by Mr. Calomo; second Mr. Fote. Motion withdrawn.

2. Move to modify objectives 9 and 11 of option 1, “To maximize domestic use, such as to maintain a steady supply of herring to the lobster bait and sardine market, and encourage value added product utilization.”

Motion by Mr. Augustine; second by Mr. Fote. Motion fails.

3. Move to eliminate objective 11 of option 1.

Motion by Mr. Fote; second by Mr. Nelson. Motion passes.

4. Move to include options 1 and 2 of spawning areas.

Motion by Mr. P. White; second by Mr. Calomo. Motion passes.

5. Move to eliminate options 2, 3, and 4 of IWP.

Motion by Mr. Calomo; second by Mr. Pope. Motion withdrawn.

6. Move to eliminate options 2, 3, and 4 of the midwater trawl closed area section.

Motion by Mr. Calomo; second by Mr. Augustine. Motion passes.

7. Move to add as option 2 to prohibit landing of herring taken by midwater trawls from areas and during times in which the activity is prohibited by the NE Council Plan.

Motion by Mr. Lapointe; second by Mr. Augustine. Motion withdrawn.

8. Move to in addition to midwater trawl add a prohibition of purse seine in the directed herring fishery.

Motion by Mr. Nelson; second by Mr. Augustine. Motion fails.

9. Move to eliminate option 1 of the midwater trawl closed area section.

Motion by Dr. Pierce; second by Mr. Pope. Motion passes.

10. Move to replace objective 9 with, “To maximize domestic use, such as lobster bait, sardines, and other products for human consumption, and encourage value-added product utilization.”

Motion by Mr. P. White; second by Mr. Pope. Motion passes.

**ATLANTIC STATES MARINE FISHERIES
COMMISSION**

ATLANTIC HERRING SECTION

**Radisson Hotel
Alexandria, Virginia
May 25, 2004**

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Presidential Suite of the Radisson Hotel, Alexandria, Virginia, on Tuesday, May 25, 2004, and was called to order at 8:00 o'clock a.m. by Vice Chairman Eric Smith.

WELCOME & INTRODUCTIONS

CHAIRMAN ERIC SMITH: I'd like to introduce myself. My name is Eric Smith. I'm the vice chairman of the group, and I'm sitting in for Lew who is apparently on vacation in the Azores.

BOARD CONSENT

CHAIRMAN SMITH: We'll proceed with the agenda. I'd like you to look through the agenda. I'm going to talk a little bit about Item 1 and ground rules for how we hope today will go. I also have three orders of business to discuss under other business; and if other people have those, add them.

The three I have are the issue of Massachusetts and their compliance report, which is long past due; the announcement of the June 15th joint meeting of the Commission's section and the council's oversight committee for herring on June 15th in Portland to deal with specifications for the '05 fishing year; and a letter that Gil Pope -- an e-mail that Gil Pope had sent with several questions about limited access, which I would hold to other business.

I think part of where we go today may resolve some of those questions. Others, I think, may be more appropriate to the Policy Board, but since he sent it here for Herring consideration, we can talk about that briefly under other business. Are there other issues that people would like to add? George.

Okay, no other items of other business, so let's just move right into the agenda. Ways I'd like to approach this meeting, we're going to look through

the options document, and we need options for every issue.

If you're going to have an Option 1, or a 2 or a 3, we want to know that today at the end of the meeting. If we can pare down the list and discard things that just simply don't make sense to proceed with, that will ease the staff time and also our time in reviewing the draft as they go forward.

We don't want to throw something out too soon, but if we know it's a non-starter, maybe today is the time to do it and in effect eliminate unreasonable options. Let's have a good justification if we do that, though, so we don't have something coming back at a later date that people say, oh, you shouldn't have gotten rid of that because that will just slow us down.

We don't need to debate the issues today. We really just need to make sure the document has everything in there in the right order that we need to have. We'll get to debate and decide on what we want to do on herring in this amendment later on. It's really kind of a thumbs-up, thumbs-down on the issues.

And, finally, there are some issues and questions that the PDT has a need for clarification on; and as we go through the process, Megan in her presentation, and as we go through the document, she'll identify those and then we can devote our attention to some of those answers.

So, with that, if we agree with the agenda, there is no disagreement. Is there a motion to approve the proceedings from the March 8th meeting?

MR. LAPOINTE: So moved.

MR. JOHN I. NELSON, JR.: Second.

CHAIRMAN SMITH: Okay, motion made and seconded, George Lapointe and John Nelson. All those in favor say aye. Okay, the proceedings of March 8th are approved.

PUBLIC COMMENT

CHAIRMAN SMITH: Public comment time now. Are there members of the audience that would like to talk about issues that may not necessarily be coming up on the agenda but herring specific?

Okay, thank you, seeing none, move to Item 4, review of issues and options paper for draft

Amendment 2. Megan, I believe, has a presentation on that.

AMENDMENT 2: ISSUES & OPTIONS PAPER

MS. MEGAN GAMBLE: Thank you. Let me just set the scene a little bit so everybody is on the same page and understands what we're doing today. At our last meeting in March, the public comment period had just ended for the public information document.

I overwhelmed you all with the voluminous comments we received, and you guys did not have time to digest all of those comments. So, what we did is we did walk through those comments. I got some suggestions from you all at the last meeting. We went back home and the PDT worked on a document that is supposed to be in progress. This is still developing.

So the document you have in front of you has all the issues that appeared in the public information document as well as some new ones that come from trying to coordinate with the council's Amendment 1. All of those issues have various options under there.

Those options come from direction from this section. They come from public comments we received during the public information document public comment period. They come from the council's amendment, and they also come from the plan development team.

So we'll see all of those under each of the issues. What I need from all of you is to let me know whether or not you think these are a reasonable set of options for each of these issues. I'm expecting that you guys will probably want to eliminate some of these options.

You may want to add some options, but I'm looking for that kind of direction. I would really like to not get into a discussion on the issues today. We can save that for the next meeting when we have a more fully fleshed-out document. So that's kind of what I'm looking for today.

So if you have the document in front of you all, I believe it was handed out to you just a moment or two ago.

CHAIRMAN SMITH: Just to be sure, there are several drafts of this out. We should be working from the May 19th draft.

MS. GAMBLE: Everyone should have just gotten a brand new copy so that we're all on the same document. The document you have in front of you kind of has a table of contents that lists all the issues and succinctly says what the options are underneath each of those issues.

The options that are very dark and almost unreadable are the options that appear in the council's amendment so that you know where we tried to overlap and coordinate with the council's amendment for herring.

Okay, so our first issue in the document is goals and objectives. And, in March the section agreed to move forward with the Commission's Amendment 1 goals and objectives, so we eliminated the New England Council's proposed goals and objectives for their Amendment 1.

The section felt that our current goals and objectives better reflect the needs for state waters. So, what I have tried to do in this document just for you today is to indicate where the council's goals and objectives overlap with our goals and objectives from Amendment 1; and in doing that, trying to identify the areas where we do not have complementary goals and objectives.

So, if we carry over our Amendment 1 objectives, we do not have complementary objectives for the council's Objective 6, which is to prevent excess capacity, and Objective 7, which is to minimize to the extent practicable the race to fish for Atlantic herring in management areas.

And then additionally in the council's amendment they won't have a complementary objective for our Objective 8, which deals with full utilization; 9, which deals with domestic use and value-added product utilization; 10, which deals with use resource to maximize social and economic benefits and take into account the protection of marine ecosystems; and then finally 11, which was the new one that you all added at the last meeting that deals with ensuring a steady supply of lobster bait to that market.

Otherwise, all the goals and objectives overlap in some way. What also appears in this section is some comments from the public. Under the goals you will see that the public suggested we eliminate Goal Number 3, which is to provide controlled opportunities for fishermen and vessels in the Mid-Atlantic and New England fisheries.

And then there is a suite of additional objectives on Page 6 that deal with various things like lobster and sardine fishery, facilitating the Americanization of the fishery, and so on; and then, finally, Option 3, which deals with modifying Objective 5 so that we have real-time management with Canada.

I just need to know whether or not the board would like to include those additional options that were suggested during the public comment period.

CHAIRMAN SMITH: This would, then, Megan, essentially be adoption of the bottom half -- well, what's on Page 6, and top two paragraphs of Page 7 as you have them written; and then if that's approved, then you would just amend the document to have those all addressed; is that correct?

MS. GAMBLE: I would. If the section sees that all of those new objectives are reasonable things we want to strive for in the state waters' fishery, then I can add them to the list.

CHAIRMAN SMITH: Okay, comments? Ritchie.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman. Does it create any problems that our objectives don't match the council's objectives?

MS. GAMBLE: Well, at the last meeting the section felt that it was okay because the characterization of the state waters fishery is very different or can be different from the federal waters fishery. You all seemed to be comfortable with that at the last meeting, but I wanted to bring it up against just to be sure that that is in fact true.

CHAIRMAN SMITH: My view on that would be only if they're inconsistent. You know, there is nothing wrong with each of us having an objective that satisfies our needs, one side being the council and the other the Commission. If you see a conflict between two of them, that's where we need to decide which way to go. Vito and then Bill.

MR. VITO CALOMO: I think Ritchie's question is a tremendous question, and I think it sets the format of what we do today. This is a dual plan, and I don't want to be driven by decisions made by the feds in any way. I want to be driven by what is right for the states in internal waters. I think this is very, very important.

I'm glad Ritchie White brought that up. Sure, we should be compatible in most cases, but I don't want to say, well, they said that and we can't say that.

We've got to do what's best for our states. I don't think we'll vary far, but if we do, this should be our plan because it is dual. That's my statement, anyhow. Thank you.

CHAIRMAN SMITH: Bill Adler.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. Are you adding the -- in Option 2 there we have four additional objectives. Is the idea to either pick Option 1 that has the 11 or those four or add them or what are we trying to do here?

MS. GAMBLE: It's an entirely separate option. These are separate objectives. The direction I got from you all last time was include everything and the kitchen sink, so you've got it right here.

If they don't seem reasonable to you, then I'd recommend that you guys talk about eliminating them. We have a lot of options in here. Some of them may not be reasonable. I'm just looking for guidance from you guys.

CHAIRMAN SMITH: Gil Pope and then Vito.

MR. GIL POPE: Thank you, Mr. Chairman. I'm just curious as to Option 2B there, to facilitate the "Americanization of the fishery." What would that entail? I mean, how far can we go with that as state representatives?

MS. GAMBLE: I'm guessing here, but the issue I can think of off the top of my head would be IWPs. That is something that the Commission does have the ability to allocate that TAC. So, if you guys felt as though you didn't want the IWPs to exist any more, then that's something the Commission has the ability to recommend to the state governors.

CHAIRMAN SMITH: Vito.

MR. CALOMO: I won't apologize. I think I'm going to speak a lot today. This is a very dear and important fishery to the Commonwealth of Massachusetts and to all the bordering states. I know for a fact how important the bait is in the sardine industry.

I'm just trying to figure out what do we mean by A, "The lobster and sardine fishery depend on access to herring throughout the season"? Well, the way it's set up, we have A, 1A, 1B, 2-3. I mean, people travel where the fish are. I just don't -- there seems to be an undercurrent here that I'm not quite sure where we're going with that.

There is, you know, freedoms for all to travel where the fish are. That's why we set up. For me the best fishery management plan created by the Atlantic States Marine Fisheries Commission and the New England Fisheries Management Council is the Herring Plan simply because -- it is probably because it is a one-species fishery, not like the multi-species, and it has hard TACs, hard TACs to protect that area.

And when that fish is caught, that area closes. It has been -- I'll try to make this short. It has been a very workable plan. People do get bent out of shape sometime when the TAC is caught in one area and you have to close it down.

We've addressed that to the best of our ability with consideration by taking days out of the fishery, by having discrete spawning closures where you could take, you know, some spawned fish and count.

We've stretched it out pretty far, but if an area has a problem and the TAC is low, that's the way the game goes. I just feel there is an undercurrent here that the lobster and sardine fishery depend on access to the herring throughout the season. So do the multi-million dollar plants that were placed in the Commonwealth of Massachusetts and in Maine.

CHAIRMAN SMITH: Let's not debate the points, please.

MR. CALOMO: Well, I'm not debating the point. I don't feel that this --

CHAIRMAN SMITH: Wait a minute now, hold it. I mean, you said you were going to speak a lot today, but you have to understand that's through the chairman, and it's in balance with everybody else who wants to speak.

MR. CALOMO: Sure.

CHAIRMAN SMITH: I want to keep us brief. One of the things I have noticed with herring is we tend to preoccupy ourselves for two of our three hours with the objectives and we never get to the rest of the document. Let's not do that.

Now let me just suggest something and see if people agree that maybe this can focus our attention on this issue. There are three of those items that seem to me, to my read, to be embodied in other objectives that we already have on the previous page.

The first one, A, isn't frankly worded as an objective, and it's really covered by Objective 10 to a large degree, maybe not entirely, Number 10. The next one, "facilitate the Americanization of the fishery", Number 9 covers it, "maximizing domestic use and encourage value-added". And, C, "maximize catch of adult herring", it seems like Objective 3 covers that, "avoid patterns of fishing mortality".

Now, if we just focus on whether those -- if we agree with those things, then we don't need to add things to the list that are redundant. What we need to make sure is everything that needs to be on the list should be there without debating the point, please. Pat Augustine and then David Pierce.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. I'm glad you clarified that because I was about ready to do the same thing. I was going to suggest that Number 11 is also redundant because we say we want to "maximize and so on.

In A under Option 2, "The lobster and sardine fishery depend upon access to herring throughout the season", that's a statement rather than an objective. So, with your indulgence, I would suggest that we drop 11. You suggested, I believe it was number -- what was the first one you decided to --

CHAIRMAN SMITH: My point was A on the second page on Option 2A, same point. It was an objective but it was covered I thought by Objective 10.

MR. AUGUSTINE: Exactly. I was going to suggest we drop that, just take that A line out completely. And, B, "to facilitate the Americanization of the fishery," depends upon whether or not it's covered under 9, I think you said.

CHAIRMAN SMITH: Yes.

MR. AUGUSTINE: And I was going to suggest we remove B, and then look at removing Number 11, which does not appear to be an objective but a statement of fact. The rest all seem to cover exactly what we are trying to accomplish.

CHAIRMAN SMITH: Okay, the problem with multi-part thoughts is that you're going to have people that pro and con on each one of the points. Let's just take them one at a time very quickly. Are you saying A of Option 2 you suggest that we just delete that?

MR. AUGUSTINE: Yes.

CHAIRMAN SMITH: Is there any disagreement with that? A is deleted. B, you're suggesting delete because Objective 9 covers it?

MR. AUGUSTINE: Yes.

CHAIRMAN SMITH: Is there any disagreement with that? Seeing none, B is deleted. C, to maximize catch of adult herring, provide for long-term sustainable yield, I had suggested that 3 covered that on the previous page, which is patterns of fishing mortality. Is there any disagreement with deleting C? Okay, C is deleted.

The other one on that list, that's one of the ones that gets the blood pressure up a tad, I know. For having the issue addressed in the document as we go forward, is there objection to leaving 2D, which is on Page 7 in there?

MR. AUGUSTINE: No, leave it in.

CHAIRMAN SMITH: Okay, we have some objection or at least some comment time. I had a list of -- Pat, you had yours. Dave Pierce, did you want to comment on this list or did you want to hold until --

DR. DAVID PIERCE: No, I wanted to make a suggestion that I think is consistent with what you're doing right now, Mr. Chairman, and that is to keep Option 1, the eleven individual objectives for Option 1; get rid of Option 2A, B and C, keep D; and then for Option 3 take that suggested language for Objective 5 and move that into Option 1, substitute that for Number 5 in Option 1. I think if we do that we have a good set of objectives and this simplifies matters, and I think again it is consistent with what you're trying to do.

CHAIRMAN SMITH: Let's take those two points one at a time and see if we get consensus. On 2D, is there objection to leaving that one in? There is. Okay, so let's deal with those first.

MR. POPE: One quick point.

CHAIRMAN SMITH: I had Bruce first and then you, Gil.

MR. POPE: D is 10, I'm sorry.

CHAIRMAN SMITH: Okay, Bruce, please.

MR. BRUCE FREEMAN: Eric, I objected, but I objected also from the standpoint that I believe it is covered under other objectives in the plan.

So far as D is concerned, as mentioned, it would be, in my mind at least, considered under 1 and 2 and 10. I see really no need to repeat what was already in those three. I just would question why we're making a separate statement.

CHAIRMAN SMITH: Okay, let's have a motion for it to be in or out and then dispense with it. Okay, is there a motion? Vito.

MR. CALOMO: **Yes, I'd like to make a motion to eliminate D under Option 2, because I think it is redundant.**

CHAIRMAN SMITH: Okay, a motion made. Is there a second?

MR. TOM FOTE: **Second.**

CHAIRMAN SMITH: Debate on the motion. David Pierce.

DR. PIERCE: I have to disagree with my colleague. I think that we now have a goal that references the maintenance of a biomass that supports predator consumption of herring. This particular objective is a logical extension of that goal.

I don't see in the list of objectives as we have them right now -- that's the eleven objectives under Option 1 -- I don't see in that list anything related specifically to Option 2D, acknowledging the importance of herring as a forage species so I would like to include Option 2D in the list.

CHAIRMAN SMITH: Okay, there is one comment for including it. Do we have a comment in opposition or in favor of the motion so we'll just have some balance. Vito.

MR. CALOMO: Thank you. This is a redundant comment or option. From the day of history to making the fisheries management plan, it has been included. It has been included far and above.

I think it just boils everybody's blood to stick it in there again and revise something that is already included in the master plan. I believe that Bruce Freeman has made comments throughout the plan so I just think it's just too much overkill. Thank you.

CHAIRMAN SMITH: Ritchie and then Pat.

MR. WHITE: I guess I'd like to disagree with my distinguished colleague across the aisle.

CHAIRMAN SMITH: Which one?

MR. WHITE: Vito, of course. At our public hearing, the loudest voice and the most comment we got was on this issue. I think this represents the input that we got at the public hearing. I strongly believe we should leave it in to reflect that. Thank you.

CHAIRMAN SMITH: Another comment in support of the motion so we have two and two? Bruce.

MR. FREEMAN: I just don't understand the need for this. We have plans, for example, covering butterfish, which is a very important forage species. We have plans dealing with squid, several species of squid, which also are important forage species.

The management of those species include the natural history of the species, the biology of the species, the age structure of the species, and they're managed so that natural mortality is considered and taken off, so to speak, the top so far as harvest is concerned.

Then human consumption takes over after natural mortality is accounted for. That seems to be true or is true of all the species. The question I would have is why now do we need to specifically indicate on any species that it is an important forage.

Almost every species we deal with, even the highly predatory species at a young age, are important forage for something. I just don't see the rationale to indicate that this needs to be managed as an important species when, in fact, many of the other species we deal with is accounted for and we don't have to make that statement. It just seems to be redundant.

CHAIRMAN SMITH: Let me just try and explain what I think is the sense of the interchange here, Bruce. I guess what people have said in the comments and some of the people at this table on this issue is the public has brought the focus on this one as an issue, and therefore maybe it deserves to have some light shined on it as we go through development of the plan.

Again, get back to my ground rules, "don't exclude anything too soon" is the concept in favor of having it in there. To the point about the squid plan and the butterfish plan and so forth, those are relatively old plans.

I mean, I've heard people in Connecticut talk about those species as well being managed in a different way so that we ensure that the big things that eat little things in the ocean have enough of those species.

I don't know but it may be a trend in fishery management that we start to say more about that issue. The only reason I think I hear people saying that it's not necessarily redundant is because I think the plan reads very well in the goals that that issue is covered.

But the objective that addresses the goal may be rather thin and that's Number 10, which says, "taking into account the protection of marine ecosystems."

It may be that people want this other one as an objective because they think Number 10 doesn't quite do it in their mind. So, again, we've had a couple of pro and a couple of con. Let's take one comment from the audience. Jeff, you had your hand up.

MR. JEFF KAELIN: Thank you, Mr. Chairman. I'm Jeff Kaelin from Winterport, Maine. I'm representing Stinson Seafood. I've been out of the loop for a couple of years, but as you may know effective April 30th Bumblee Bee Seafood and Connor's Brothers merged, and the Maine plants are being guided now by the Bumblebee Group, and I'm working directly with them on behalf of the sardine canneries again in Maine on the management process.

I have been doing international trade for them for the last couple of years. On this specific issue, I like the direction this it is headed. I do absolutely agree with Mr. Pope that Objective 10 includes the issue of forage.

My memory is that 20 percent of the herring stock, which is somewhere around 2 million metric tons, is set aside for natural mortality right now.

In other words, more fish is set aside in the equations for natural mortality than there is for human consumption, so this issue in my mind is a political one, and I don't think that this document should be used to interject political statements so I would encourage this motion to be approved.

Also, while I have the floor, obviously we would like to see the sardine industry specifically mentioned in the objectives some place, but I understand from Vito's perspective that the shore- side plants are important as well.

I just want to get back to the discussion earlier about whether or not Objective 11, which only focuses on the lobster fishery, is going to be removed. I would encourage that it be done unless we're going to list some of the other important shore-side activities in the region.

So, frankly, in the end, my position would be to eliminate 11 and get rid of A, B, C, and D. So, thank you for the opportunity to say that, Mr. Chairman.

CHAIRMAN SMITH: Pat White.

MR. PATTEN D. WHITE: I just had a suggestion, Eric, because I think the issue of it being of value as a forage species is very important. It has come up at a lot of meetings. I wondered if under Item 10 it could be added into "account for protection of marine ecosystems and its value as a forage species," which would cover both. It is probably the biggest forage species that we have in our resource, and I think it needs to be acknowledged but we don't have to beat it to death.

CHAIRMAN SMITH: Is that something that would bring people to closure on this? Okay, those who would -- okay, any disagreement with doing that and dropping D? Okay, so, Megan, if you would add that concept to Objective 10. Thank you, Pat. Now the other issue on objectives --

Could you withdraw that motion?.

MR. CALOMO: Absolutely.

CHAIRMAN SMITH: Okay, seconder?

MR. FOTE: Yes.

CHAIRMAN SMITH: **All right, the motion is withdrawn.** The other issue on objectives Megan pointed out was Option 3 on Page 7, which was to simply add "and real time" to the language of Objective 5.

Okay, Page 6, Option 3, is a suggestion to add the words "and real time" to Objective 5, which is on the preceding page. Is there any disagreement with that addition? Okay, seeing none, so that concludes objectives. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. Back on Option 1, Number 11, I wanted that left in. I certainly would support the addition of the lobster bait and sardine markets.

The reason I think that it's important to state this is that I think that most of the herring caught goes into those fisheries as opposed to anywhere else at this time, and it's so very important that I think it needs to be stated as such.

I think a lot of times it gets lost that, yes, yes, they use it for some bait. If you look at the figures of how much of the catch is actually going into those two markets, it's so significant.

As a matter of fact, it's so significant we have to import it from Canada sometime, that I think 11 should be just left in there, but I would support adding the sardine because that's a very important sector, too.

CHAIRMAN SMITH: Okay, 11 is in there unless eliminated or amended. Does anyone wish to eliminate or amend it? John Nelson.

MR. NELSON: Mr. Chairman, I do agree with Bill, but I think we probably could accomplish what he is looking at by modifying Number 9, so it's not just a stand alone as far as supply of herring to the lobster bait market because that could change in the future and not be what we want as an objective.

But, we could add it into Number 9 to maximize domestic use including a supply of herring to the lobster bait market if that is something that would accommodate what Bill is looking for.

MR. ADLER: Well, if you were to take Number 11, the words in Number 11, and just add the whole thing to Number 9, fine, or leave it at 11 as long as those words, "to maintain a steady supply of herring for the lobster bait industry and the sardine industry".

If you wanted to just add all those words to eliminate a number, I suppose that's okay, but I think those words in Number 11 need to be there, whether it is separate or added to another.

MR. NELSON: I don't have a problem, Mr. Chairman, if we're using it as an example, so it is "maximize domestic use such as maintain a steady supply of herring to the lobster bait market and encourage value-added product utilization."

MR. ADLER: And mention sardine.

MR. NELSON: Fine.

CHAIRMAN SMITH: We need an amendment, then, to change 9 and 11 if you want to make the

change rather than trying to do it on the fly, so does someone have a motion to amend? Pat Augustine.

MR. AUGUSTINE: I'll make a motion to amend, based on Mr. Nelson and Mr. Adler. We'll play with Number 9 and add in that. Mr. Nelson, would you like to quote those fabulous words again.

MR. NELSON: Let me try it.

MR. AUGUSTINE: The part of supply the lobster bait market and I'll add the other two.

MR. NELSON: All right, **to maximize domestic use such as to maintain a steady supply of herring to the lobster bait market and sardine fishery and encourage value-added product utilization.**

MR. AUGUSTINE: Thank you, Mr. Nelson, that's exactly what I liked, that wording.

CHAIRMAN SMITH: Okay, that's a motion. Is there a second? Is there a second to the motion? Tom Fote. Okay, comment on the motion. David Pierce and Pat White.

DR. PIERCE: I need a clarification. It sounds like with this modification one of our objectives will be to maximize the domestic use of herring as a sardine -- maximize the sardine. That to me is very inconsistent with one of the objectives that we already have.

We don't want to maximize the sardine industry. Yes, we need to be sensitive to it and protect it, but not maximize its use because that means we're promoting a fishery for juveniles, maximize the fishery for juvenile herring. At least that's the way I interpret this particular language and that's not something I can support.

CHAIRMAN SMITH: Could I suggest that one of the things that happens when we try and make our objectives very specific to capture what an individual might feel is very important is other people rise, and that's a problem; or they want to add more to it.

Let me just suggest to you that Number 9, if you read it broadly, includes the concept of herring as bait, because it is used that way. It includes the concept of a sardine fishery because sardine fishing goes on.

If you read Number 9 liberally, as an objective could be read, it covers the details we're talking about. It may be that rather than debating how to word to add every last thing that people want to use herring for,

we simply take out 11 and recognize that 9 is all encompassing. Is there objection to that? Bill Adler.

MR. ADLER: Yes, I'm just objecting under the terms that I think it's important that those uses be actually listed somewhere. Would it perhaps be better to just leave it the way it is and add sardine or - - in other words, I don't know why we're trying to get to 10, just 10 instead of 11. I don't know what's wrong with having -- just have those 11.

Getting back to Dave's concern, is the word "maximize" the problem in the motion as opposed to "encourage" perhaps, or something like that that takes out that maximize that I think Dave was getting at in this motion? I think "maximize" is better, but I'd like it worded that way except for the word "maximize", if that would help.

CHAIRMAN SMITH: Okay, when I suggested something, John, this is your motion and you said --

MR. NELSON: No, it's not mine; it was Pat's.

CHAIRMAN SMITH: Oh, it was Pat's. There are two ways to approach this. We can keep wordsmithing the objectives and not have enough time for the rest of the document, or we can try and consolidate our views in, as I suggested, 9 or some quick modification of words. We need to get off the dime on this. We're 40 minutes in now. What is your pleasure?

MR. AUGUSTINE: Mr. Chairman, I suggest you take a vote on this.

CHAIRMAN SMITH: Okay, is there objection to voting? Okay, I'll read the motion: Move to modify Objectives 9 and 11 of Option 1 to maximize domestic use such as to maintain a steady supply of herring to the lobster bait and sardine market and encourage value-added product utilization.

That's a modification of 9, and then 11 would be eliminated. Yes, caucus.

(Whereupon, a caucus was held.)

CHAIRMAN SMITH: Okay, are you done caucusing? All those in favor of the motion, raise your hand; all those opposed. **Okay, I see it three in favor, four opposed; null votes; abstentions. The motion fails.**

Would you entertain then, simply the elimination of 11 because 9 embodies it? Okay, is there objection to that?

MR. ADLER: Yes.

CHAIRMAN SMITH: Okay, would you like a motion to do that, or is the objection noted sufficient?

MR. ADLER: I'd like a motion to leave this just the way it is, all Number 11.

CHAIRMAN SMITH: Okay, we don't need to do that. If there is no motion to change it, then it's in as worded. Tom Fote and then John Nelson.

MR. FOTE: **I make a motion to eliminate 11.** I'm sitting here thinking about it, and the only time I eat is pickled herring, sardines and things like that, so I'm encouraging all the uses of it.

MR. NELSON: Second.

CHAIRMAN SMITH: Second, John Nelson. Okay, the motion is on the floor, and we just had a debate on the previous discussion so let's caucus quick. Need for a caucus? No need. All those in favor, raise your hand; all those opposed; abstentions; nulls. **Okay, the ayes have it. The motion passes.**

Megan has pointed out to me that on Page 5 there is an issue that needs to be addressed in light of -- and it's the third bullet under goals -- there is a suggestion that we simply eliminate that one, "provide controlled opportunities for fishermen and vessels in other Mid-Atlantic and New England fisheries." I think that's to streamline, and I guess it was a suggestion through the public comment period, so is there any interest? Tom Fote.

MR. FOTE: Could you say that again?

CHAIRMAN SMITH: Let me clarify it, Tom. This is Page 5 under goals, Option 1. There are three bullets, and the recommendation had been to eliminate Bullet 3, which is provide controlled opportunities for fishermen and vessels in other fisheries. Okay, now Tom Fote has the floor.

MR. FOTE: I'm good.

CHAIRMAN SMITH: You're good. Other comments? David Pierce.

DR. PIERCE: Yes, Mr. Chairman, I need to be steered a little bit. When these particular

recommendations are made, I need to know whether these are recommendations that the PDT has said are acceptable to them, and they're the ones who are making these recommendations, or is this a recommendation that came from the floor at some public hearing someplace.

Because, that really changes my perspective as to whether or not I'm going to support it or oppose it. I put a lot more credence on my PDT recommendations. They're more useful than what I get from the grand universe.

MS. GAMBLE: This is not from the PDT. It is from public comment.

CHAIRMAN SMITH: Okay, the only reason I thought that the elimination might actually work again is because the immediately preceding bullet could be read to embody Bullet 3, provide for the orderly development of fisheries, taking into account the viability of current participants.

"Orderly development" includes people in other fisheries. So, if you buy that logic, we don't need that third bullet. Is there objection to removing it? Seeing none, Bullet 3 would be removed from Page 5 under goals. Are there other comments on goals and objectives? Gil Pope.

MR. GIL POPE: One very quick comment. I just was curious as to why the New England Council put that in, in the first place.

CHAIRMAN SMITH: I'm sorry, I didn't hear the whole of it.

MR. POPE: I was wondering why the New England Council put that in as an objective in the first place.

CHAIRMAN SMITH: I recall it as a holdover from years ago in the plan when -- well, it was a different time when people -- the last time they were looking at groundfish restrictions and thinking maybe herring can be an opportunity for other boats or in the Mid-Atlantic area other fisheries that get constrained. I don't know how many years back it goes, but it has kind of been in the council planning discussion for quite some time.

MR. POPE: Because it's extremely nebulous. The word "controlled" could mean a lot of different things. Thank you.

CHAIRMAN SMITH: Okay, if there is no further objection, that bullet will be out of there. Now, are

there other goals and objectives issues? Okay, are there any other comments on goals and objectives before we leave that subject?

MR. PETER MOORE: Okay, thank you, Peter Moore. I'm with the American Pelagic Association representing freezing plants and vessels supplying them. The only comment I wanted to make on this last discussion item, I was in a meeting last week.

Bill Overholtz mentioned that there are three strong year classes coming into the herring fishery, and there is a big offshore fishery that is basically under-utilized.

We as shore plant owners hope that we're going to see the fish, but I guess, in the meantime, if the assessment in a couple of years goes up and there is still a surplus, it wouldn't be for us to tell other fishermen who need opportunities to stay out. That's my only point.

I don't know how you can look into the future, but I think that the third bullet is important to at least have a little more discussion on, see if there is a way to at least make it more explicit in the second bullet if you're going to take it out of the third. Thanks.

CHAIRMAN SMITH: Yes, I think the logic of the suggestion is that the words "to provide for the orderly development of the offshore and inshore fisheries" includes that concept. All right, goals and objectives to Page 6, biological reference points. Megan.

MS. GAMBLE: Okay, well, that was certainly a healthy discussion. I just wanted to let you guys know I have 28 slides prepared for you. We've only gone through two.

Okay, so the next issue we have in here are biological reference points, and specifically these options deal with maximum sustainable yield. We have several options that you guys have already seen in the past.

When this document was created, the options that are darkened were included in the council's draft amendment, but the most recent version has eliminated quite a few of them so that it now only includes Option 1, which is an MSY of 317,000 metric tons; and then Option 5, which is 220,000 metric tons.

Right now we have these all included, and they are described how they were derived. I just need to

know whether or not we want to move forward with all of these, or only a few, or additional ones.

CHAIRMAN SMITH: Yes, this issue, if I could add at the outset, is an attempt to narrow the field, because if you have multiple MSY estimates, it just balloons the staff and the PDT analytical time.

If you think about it, most of the alternatives up there with the exception of the status quo, which is going to be in there anyway, are fairly close to one another. They're off by 20,000, less than 10 percent in some cases.

So, Option 5 was an attempt by the council to just cut through all that and have one alternative to consider plus the status quo. Now if this group agrees with that, you're going to save the PDT and the staff a lot of time. David Borden, then Ritchie.

MR. DAVID V.D. BORDEN: Yes, with that in mind, Eric, I suggest we limit the options to 1, 2 and 4. Then given the flexibility that the board has, as far as I'm concerned it can pick any of those interim options, if that is what the discussion leads to.

CHAIRMAN SMITH: Did you say eliminate or limit?

MR. BORDEN: Limit. In other words, limit it to three options, Option 1, Option 2 and Option 4.

CHAIRMAN SMITH: And that leaves us with MSY estimates that are inconsistent with the one that the council picked.

MR. BORDEN: Yes, but I --

CHAIRMAN SMITH: The council picked Option 5.

MR. BORDEN: But that's why I said what I said. The council may pick Option 5, and there's nothing that stops the Commission, based on the public comments, to lower our MSY yield down to 220,000 metric tons. The fact that it's not specifically in the document, as long as it is bounded by something, that's the important consideration.

CHAIRMAN SMITH: Other thoughts? I hate to disagree with the New England Council chairman on this issue, but I'm a little mystified by having some in our document that are different numbers than those and surrounding them; and, again, having three plus status quo. We had the debate at the council why 200,000 tons probably wasn't necessary, and that's why the council selected 220,000.

MR. BORDEN: Right.

CHAIRMAN SMITH: Two hundred to me was a flawed process of mathematics to begin with. Why we would vote to have that one in there I'd be surprised at.

MR. BORDEN: Well, it wouldn't trouble me -- using that logic, it wouldn't trouble me at all to have 317, 220 and 226 being the numbers. You could do the same thing.

CHAIRMAN SMITH: So Option 1, 4 and 5?

MR. BORDEN: Right.

CHAIRMAN SMITH: Okay, Option 4, by the way, is what the U.S. assessment produced, if I remember correctly.

MS. GAMBLE: No.

CHAIRMAN SMITH: You said 1, 3 and 5, David?

MR. BORDEN: I said 1, 4 and 5.

CHAIRMAN SMITH: One, 4 and 5

MR. BORDEN: That way you have the New England Council alternative. You have Option 4 as the number that came out of the Woods Hole stock assessment that --

CHAIRMAN SMITH: That's Option 3. That was my confusion, too.

MR. BORDEN: That's Option 3. Okay, so --

CHAIRMAN SMITH: I think the two that are in play clearly are status quo -- well, I won't prejudice it that way. The council put status quo and Option 5 in play. If we want to add one to that, we should think about which one reflects what our sentiment is, because we're not disagreeing on Option 5 or Option 1. So the question is, is either 2, 3, or 4 useful to have in our document: Okay, any suggestions? Rule of the chairman. Any suggestions on any of these? David.

MR. BORDEN: Can I suggest that you phrase the question differently? Any objection to 1 and 5? And then we'll debate whether or not there should be another option.

CHAIRMAN SMITH: Good suggestion. Is there any debate to having 1 and 5 on the list? Okay,

seeing none, thank you. Any suggestion to have another one on the list? Gil.

MR. POPE: Excuse me, I'm sorry about that. Option 4 would include that.

CHAIRMAN SMITH: Okay, so the staff has a clear signal of how to write it up, could you explain why you'd like that one in there? We don't need to have another one in there, but if you'd like --

MR. POPE: It just gives you the option of the 1 and then the high and the low.

CHAIRMAN SMITH: Okay, that option, I'm advised, will actually suggest that we're overfishing, which I don't think we need to be there. It makes a bunch more work for the PDT just by adding another option.

So, we can add it at your pleasure. It comes at the expense of a workload issue, and, frankly, at 6,000 tons out of 220, it's a rounding error in terms of the math.

We may be best to limit it to 1 and 5. Is there disagreement with leaving it at 1 and 5? Seeing none, those will be the two in the document. Management areas, Page 9. Megan.

MS. GAMBLE: Okay, hopefully, this one won't require a lot of discussion. We have Option 1, which is status quo. I've thrown the map up on the screen, which is what we have right now. If you flip through the next one, it is Options 2 and 3. Option 2 is to redefine Area 3 so that Area 3 is that shaded area.

Option 3 is to eliminate the 1A-1B line. All of these options are included in the council's document. This is an area where it is pretty critical in order to coordinate the two management plans. So, hopefully, these are the options we have on the table and we can move forward.

CHAIRMAN SMITH: Okay, is there any objection to leaving them as they are? David.

MR. BORDEN: Not an objection but a question, if that's all right. What does the technical committee -- is there a scientific reason to adopt the new boundaries for Area 3? In other words, a scientific reason, not a management reason, is there scientific advice to do this?

MS. GAMBLE: Yes, to redefine Area 3, there are some spawned herring that has been captured in Area

2, which is supposed to be part of the Georges Bank. Area 3 is intended to cover the Georges Bank spawning area, so it's to rectify that issue.

MR. BORDEN: Okay, I may have missed it, Megan, but if that's not in the document, I think that's important to have.

MS. GAMBLE: Yes, all of these options will be fleshed out when we have a draft amendment.

CHAIRMAN SMITH: Okay, is there objection, or will we leave these right the way they are? Okay, seeing no objection, we'll move on to the specification process. Megan.

MS. GAMBLE: Okay, this slide has two related issues on it. The first is the specification process. This was not an issue we included in the public information document, but I've included it here, because the council is considering modifying the specification process.

As you can see, it could be status quo, which is an annual process or a biannual process or a triennial process. The idea with the multi-year specification process is that the technical committee and the plan development team will continue to meet jointly and look at the annual updated information on the stock status; and if there is a problem, we can bring it to the attention of the section or the council in order to take action, if necessary.

The second issue on this slide is to modify how we determine what the area TACs will be on an annual basis. Right now, the Commission's Amendment 1 as well as the Council's FMP specifies how those area TACs are determined.

This Option 2 would leave it a little more open-ended, so that the technical committee and the plan development team would have the ability to modify that methodology to use the best available science. The idea is just to provide a little more flexibility.

Another note associated with Option 2 is that it will require a more lengthy specification process, because we'd have to bring whatever methodology the technical committee and the plan development team plans to use in front of the Section for their approval before we'd move to the next step. So it's a little bit longer process and may require a little bit more money, but in the end we get to use the best available science.

CHAIRMAN SMITH: Okay, any disagreement? George.

MR. GEORGE LAPOINTE: No, no disagreement.

CHAIRMAN SMITH: Okay, is there any disagreement with leaving this issue right as it is in the document? Seeing none, George, a question? Do you want to ask it now?

MR. LAPOINTE: No, I'll ask it later.

CHAIRMAN SMITH: Okay, thank you.

MR. LAPOINTE: I don't want to bog down the — I wanted to ask about the longer process, but I'll ask later.

CHAIRMAN SMITH: Okay, as long as it's in here, it's covered as one alternative and then we also have the existing; right?

MR. LAPOINTE: Exactly.

CHAIRMAN SMITH: Okay, thank you. You've got to remember, I'm racing on, because you still have my heart beating at higher than normal. Research set-asides, Page 14. Megan.

MS. GAMBLE: Okay, on the slide up on the screen, I have a couple of issues again combined into one; otherwise, we'd have more than 30 slides. The first one is research set-asides.

We discussed this with the public information document. The plan development team has rolled it over into this document. All of these options are included in the council's document, so the options for research set-asides is to have none, or Option 2 is to set aside a certain percentage of the TAC for the purpose of allocating it to research.

Then the second part of that issue is how to administer that research set-aside. Right now, the intent is not for the draft to specify how that research set-aside would be allocated. Rather, we're going to go out to public comment and get some feedback from the public on how that should be attempted.

Then the last issue on this slide is the fishing year. This was not included in the public information document. It has been included in this document, because it is another one of those critical points for complementary measures between the council's plan and the Commission's plan.

As you can see, Option 1 is status quo. The fishing year is currently January 1st to December 31st. Option 2 is to modify the fishing year so that it begins on June 1st.

CHAIRMAN SMITH: Thank you, Megan. Is there any objection to leaving these three items as they exist in the document? Seeing none, let's move on to delineation of spawning areas. Megan, Page 17.

MS. GAMBLE: Okay, as you all know, the spawning areas are something that is unique to the Commission's plan. They have not been incorporated into the federal plan for herring.

So during the last meeting, the Section asked the plan development team to look into whether or not there is data that shows a need to modify the spawning areas and the closures that we use.

The plan development team looked into that and found that the commercial samples do not show ripe and running fish outside of the current spawning areas, and the available data indicates that the current spawning areas provide the intended protection.

There was a suggestion by one Section member that there is some spawned herring being caught in Area 2 off the back side of Cape Cod, but this has been addressed with the management boundary proposed change in the earlier section, so that that spawned herring will be captured inside of Area 3 as part of the Georges Bank spawned herring.

So, the plan development team does not have any suggestions for modifying the spawning areas, but the question that we do have for the Section is we received several public comments on suggesting that the Commission include options that would prohibit landings from the spawning areas in federal waters. I need some feedback from the Section on whether or not that is an option we want to include in our plan.

I'm sorry, I overlooked that one. There is an Option 3, which would be to get rid of all the spawning areas so we would have no spawning closures.

CHAIRMAN SMITH: Okay, let's take the three options first and then deal with the question that is in yellow. The three options are not on the slide but it's status quo, it's other areas that are as yet undefined, and the third one is at the top of Page 19, to just eliminate spawning closures.

Now when I read this, I thought the argument was well made that it is probably not prudent to not have

spawning closures, so maybe we could consolidate a little and just eliminate Option 3.

Now, that's a suggestion for you to think about. If you agree with it, someone suggest that we do it, or I'll ask is there objection to taking Option 3 out of there. David.

DR. PIERCE: Well, Option 3 was put in there for a reason, and I note the language in Option 3 at the top of Page 19, and it says, "With no spawning closures, the spawning stock biomass may be susceptible to greater mortality". So, there is that logic and other logic in the paragraph. It seems to me that we should just leave it in and bring it out to public hearing and then get further comment.

CHAIRMAN SMITH: Maybe I'm misreading this. This is not to eliminate spawning closures. It's to take an option out of the document that would -- effectively, it's added to the document to add something that, on the basis of the words, doesn't suggest that it's a worthwhile option. Only if we think we want to eliminate spawning closure would we want to have this in there.

DR. PIERCE: I thought you suggested that we should take out Option 3. You were looking for a consensus regarding that, and you don't have it from me, because I would like Option 3 to be in the document.

CHAIRMAN SMITH: So you want to preserve the -
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DR. PIERCE: Well, hold on a second, wait a minute. Option 3, no spawning closures. I guess I am confused with the language here, because it should read "spawning closures", right, instead of no spawning closures?

CHAIRMAN SMITH: But we have spawning closures already as Options 1 and 2. This would take out the opportunity to use spawning closures in herring management. It would eliminate the opportunity to use herring closures if you left it in there, and if we voted for it down the road.

So if we don't think we're ever going to vote for that, we ought to take it out of there. Disagreement with eliminating Option 3? No disagreement so Option 3 would be out. Options 1 and 2, are you comfortable leaving them in?

MS. GAMBLE: The only problem with leaving Option 2 in is that the plan development team has no

suggestions for what that change would be, because we looked at the data, and it appears as though we've captured the spawning areas appropriately.

CHAIRMAN SMITH: Okay, the PDT is comfortable with where we have them now. Will we benefit in a public comment period with some further — are we likely to get further development comment from the public or whatever on better boundaries, which would justify leaving Option 2 in? But if not, then we could just leave it as Option 1.

MR. LAPOINTE: Mr. Chairman, should we put — I don't mind the option to try to dig for public comment, although I don't know if we'll get any, but should we put in a statement that says that the PDT left it in there looking for other options but we don't see one? I mean, just so people don't get some kind of hope that something is out there.

CHAIRMAN SMITH: Okay, so some clarification in the language. Okay, so Options 1 and 2 would be in. Marybeth, comment on this issue?

MS. MARYBETH TOOLEY: Thank you, Mr. Chairman. Marybeth Tooley, East Coast Pelagic Association. I would just suggest that you take spawning closure options out of the document.

I don't see why the staff should have to spend time on it. I think this Commission has worked hard to try to create flexible spawning closures in Maine and Massachusetts waters, New Hampshire as well. I think they work well.

They do encompass spawning closures in federal waters in those closures. They're not just state waters. We don't have additional information for additional closures in other areas, and I think that it should just be taken off the table. Thank you.

CHAIRMAN SMITH: In other words, your suggestion is to leave Option 1 only in there, the status quo?

MS. TOOLEY: I don't know why the staff should have to spend time on a status quo option when you don't have any alternatives.

CHAIRMAN SMITH: To change. Okay, what's the pleasure of the group? I mean, we sort of had decided that Option 1 and 2 would be there. Are you influenced to change your mind based on that comment? Otherwise, we'll move on.

MS. GAMBLE: When we do develop the amendment, it will be more fleshed out. The issue of spawning areas will be in there, because of it's going to be in the final document. Because it appears in the document, the public has the opportunity to comment on it, whether it should happen, whether it shouldn't happen, should it change or not.

It doesn't have to be presented as an option, but they have the ability to comment on anything that appears in the document, because the entire document is going out to the public.

CHAIRMAN SMITH: Tom Fote.

MR. FOTE: Then that makes the point that we really don't need a separate action. Status quo, if they want to comment if it shouldn't be status quo, let them comment, but just leave it that so this way there is less work for the staff and less work at the hearings.

CHAIRMAN SMITH: Tom, are you suggesting a change to leaving Options 1 and 2 in there?

MR. FOTE: No, I'm saying just leave Option 1 in there, status quo, and eliminate Option 2. If the public hearings produce some evidence, but it seems that we don't have the data to do Option 2, anyway so why are we doing a lot of time --

CHAIRMAN SMITH: Okay, is there disagreement with that thought, have some text? There is disagreement. Pat White.

MR. WHITE: Yes, I think the only way we're going to get public comment is to have Option 2 in there, and I would support leaving it in as you suggested, and then we'll make a motion accordingly if you wish.

CHAIRMAN SMITH: Okay, the motion then will clear this up.

MR. WHITE: I would like to move that we go forward with this with Options 1 and 2 available.

CHAIRMAN SMITH: Okay, is there a second to the motion?

MR. CALOMO: Second.

CHAIRMAN SMITH: Vito. Okay, a motion is made and seconded. Limited debate so we keep moving on. Anyone opposed to the motion want to speak? Anyone in favor want to speak? Okay, caucus need?

Okay, all those in favor of the motion, raise your hand, five in favor; all those opposed; abstentions, two; null; two abstentions and no null. Okay, the motion passes so Options 1 and 2 will stay in.

Now to the question at the bottom of 18, and this was the yellow language on the powerpoint presentation. It's at the bottom of Page 18. "Should the amendment include options to prohibit the landing of herring from spawning areas in federal waters". What's your pleasure on this question? Ritchie.

MR. WHITE: I'd like to see it stay in just because we got public comment on it, and I think we ought to allow the public to speak again on it.

CHAIRMAN SMITH: Tom Fote.

MR. FOTE: I would also like to see how the public says how we enforce this, so it would be interesting to see what their comments are.

CHAIRMAN SMITH: Okay, is there objection to leaving that issue in the document? David Borden.

MR. BORDEN: Once again, Mr. Chairman, not an objection, but what does this mean? I understand what the language says, but what does it mean? If somebody comes back into the dock with 600,000 pounds of herring, how many spawning fish trigger this? Somebody has got to --

MS. GAMBLE: The idea is to provide some sort of protection when the Georges Bank herring are spawning. Because the Commission doesn't have any authority in federal waters, the only way the Commission could enforce or prohibit the landing of spawned herring is to have a prohibition on landing. Just as we do with days out, you prohibit landings from a certain area during a specified period.

MR. BORDEN: Okay, so it's the same -- the trigger then is the 20 percent. Tolerance is going to be --

MS. GAMBLE: Tolerance is a separate issue on whether or not you want to allow any of the spawned herring to actually be landed.

MR. BORDEN: Well, can I raise a couple of points, having had considerable history with this issue, particularly with the Canadians. We've had a lot of discussion with the Canadians about the need to protect spawning aggregations of herring.

And the scientific advice for years and years, maybe it has changed -- and Matt can speak to this point, but historically the scientific advice always was don't worry about spawning aggregations of herring as long as you keep the mortality rate low.

That has been the traditional position of the scientists, so I guess the first question that this triggers is has that scientific position changed? If it has, maybe Matt can speak to that.

See, my issue is not whether or not there should be a prohibition on landing spawning herring, it's what triggers it? What are the criteria? Those have got to be spelled out if you're going to put it into a public hearing document; otherwise, the public doesn't know -- how does a member of the industry understand what this means. So, maybe Matt can speak to the first point.

CHAIRMAN SMITH: Matt.

DR. MATTHEW CIERI: Matt Cieri from Maine DMR. One thing you all should probably recognize is the fact that most of the time when herring are taken off the Georges Bank, they're either in spawning condition or very close to spawning condition.

What this, in effect, will do would be to force effort towards the inshore. If you put a spawning restriction on Georges Bank, you will force effort inshore.

CHAIRMAN SMITH: David.

MR. BORDEN: I didn't want to stretch out my point any longer, but that's the impact. You've got a healthy stock on Georges Bank, and you've got what some people allege may be nine inshore overfished stocks in the Gulf of Maine, and the impact of this will be to drive more effort, like what has been going on with groundfish. I think we've got to think through this thing clearly.

CHAIRMAN SMITH: So, your point, David, if I can recap it to see if I understand it, is as long as we're managing the Area 3 stock at an appropriate fishing mortality rate, whether somebody fishes on the spawning herring or not is kind of irrelevant.

And the cost of pushing them off that, to Matt's point, is that they will go and fish in the places we don't happen to want the extra effort to go to. So that would suggest that the amendment should not include

options to further the landing of herring from spawning.

MR. BORDEN: Eric, only ten more seconds. See, what I was struggling with was having Matt — I apologize for missing a whole series of herring meetings, but I'm wearing a lot of hats, other hats these other days.

What I wasn't sure is whether or not there was a scientific basis for this, whether or not something had changed and evidently it hasn't changed.

CHAIRMAN SMITH: Okay, I wanted to get that point on the table. You don't think that we should have this issue in the document.

MR. BORDEN: I would remove it.

CHAIRMAN SMITH: Is there disagreement with that? George.

MR. LAPOINTE: A question more than disagreement, I think. Using that logic, I would then say, well, if our fishing mortality rate is low, why do we have inshore spawning closures? I think the document would need some explanation about why we like them inshore and they aren't relevant offshore.

CHAIRMAN SMITH: I guess the answer is in 1A. We may have a low fishing rate, but we also have a TAC that we bump up against every year, and that may suggest we're fishing it harder than —

MR. LAPOINTE: I think I agree with that, but is that going to be clear in the document? If it is, I'm happy.

MS. GAMBLE: Yes, we will expand on the discussion on that, and I would just want to make the point that the fishing mortality for the stock complex is low; we are uncertain about the inshore component.

MR. LAPOINTE: I agree with that, too, and I'm happy if that explanation is in there.

CHAIRMAN SMITH: Okay, is there any disagreement with taking that issue, bottom of Page 18, out of the document? John Nelson.

MR. NELSON: Mr. Chairman, I guess I would still like to see it in, and maybe the clarification that David had requested as far as if the federal document or the council document has discrete areas that they

want to find temporarily as closed because of spawning, we ought to probably get comment on whether or not it's the states that are going to have some enforcement aspect associated with that.

Now if that's not even in their document, and won't be, then I guess that becomes a moot point. I do see a couple heads shaking over here.

CHAIRMAN SMITH: Megan.

MS. GAMBLE: No, it's definitely not on the table for the federal amendment and actually was disallowed/disapproved by National Marine Fisheries Service for the FMP, which brings me to one point.

Included in the packet you guys got handed out at the beginning of the meeting, there is a table that is supposed to have all of the options the council is currently considering, so it is supposed to be a quick look for you guys if you have any more of those questions.

MR. NELSON: All right, with that clarification, Mr. Chairman, then I would agree that we do not need to have this in there.

CHAIRMAN SMITH: Okay, if there is no disagreement with that, we will take it out of the document and we'll move on. Thank you. Top of Page 19, duration of spawning closures. Megan.

MS. GAMBLE: Okay, again, I've combined related issues on the one slide to expedite this process. The Section asked the plan development team to look into whether or not the closure dates need to be modified.

If you guys would recall in Amendment 1, it specifies the default dates for the closures for the three different spawning areas that are in state waters. Right now, there is the flexibility to move the start and end dates of a spawning closure.

This is coupled with the collection of commercial samples. That has allowed the states to adequately time the closures to provide protection to the spawned herring. So, the PDT has looked into this as the Section has requested. The plan development team does not have any recommendations for modifying the closure dates. That's the first issue.

The second issue deals with the spawning tolerance, which we just briefly mentioned. This is something that has been included through an addendum and actually has been modified a couple of times.

Right now, how it works is that the Commonwealth of Massachusetts and the state of Maine allows a 20 percent tolerance. What that means is that when bringing in a catch, 20 percent of that catch can be spawned herring by weight. New Hampshire has a zero tolerance for spawned herring.

We received comments from the public that we should have consistent regulations between the states. Then we had a separate suggestion that we should have a blanket 20 percent tolerance for spawned herring all year long, which would mean that -- yes, a blanket tolerance.

The last issue on here is other spawning considerations. These were two suggestions we received from the public. So these are not from the plan development team, they are from the public. The first one is to provide an exemption to the East Cutler fixed gear exemption or east fixed gear fishery -- I'm sorry, East Cutler fixed gear fishery.

A map of that area is on Page 25 of the document. Then Option 2 goes back to that discussion that we just had, which was a prohibition on landing the Georges Bank spawned herring, so it's kind of a moot point at this time.

CHAIRMAN SMITH: Okay, since there is a lot on this slide, let's take one item at a time to be sure we don't get tied up in our underwear. Spawning closures, Option 1, Option 2, is there any disagreement with leaving them in the document just as they sit on Page 19? David.

DR. PIERCE: Yes, I would say we stay with Option 1. We don't need Option 2, especially because we don't have any data that would indicate other alternatives, foreclosure dates, the existing process that we use for determining the spawning closures and default dates.

That has worked rather well. I wouldn't want to muddy the waters by going in some different direction. Let's not tinker with what appears to be some success. I would suggest that we just have Option 1.

CHAIRMAN SMITH: Okay, any disagreement with that? Seeing none, it will be Option 1, status quo, only. The next item is the spawning tolerance. This is the bottom of Page 20, and there is the status quo you can read. There is 20 percent tolerance all year or no tolerance, three options. David.

DR. PIERCE: I would recommend doing away with the Option 2 and Option 3, frankly. Once again, status quo works rather well. We discussed this issue time in-time out, year in-year out. There are pros and cons, of course.

But all states, to this point in time, have consistently said Option 1, the status quo, is doable, is workable. It's successful. Option 2 provides nothing but headaches since there is no way I'm going to be in Massachusetts in a position to have my staff monitor the landings to determine if we're within the 20 percent tolerance.

It's a challenge to do it during the spawning season, and we do it because it's worthwhile to do it. But for the whole year, it's just not going to work, so Option 1 is the only one.

CHAIRMAN SMITH: Okay, any disagreement with eliminating Options 2 and 3 under tolerance from the document? Seeing none, the third item, other spawning area considerations. The East Cutler fixed gear fisheries -- I will not say that three times quickly -- or/and the Georges Bank spawned herring landing prohibition, which I think we just dispensed with in that previous discussion. So the question is would you like to leave in this exemption option for getting public comment?

MR. LAPOINTE: Yes.

CHAIRMAN SMITH: Any disagreement with leaving that as it is? You disagree. Vito, comment.

MR. CALOMO: Yes, that's an area that I would think that you've heard from the state of Maine many times and the Commonwealth of Massachusetts about spawning. When they're up in East Cutler in that area, why should there be exemption when you're trying to have fish that go up inside to spawn exempted? I think we should protect them like we have. Why should that be an exemption? I don't feel that's justified.

CHAIRMAN SMITH: Okay, discussion on this subject. George Lapointe.

MR. LAPOINTE: The argument you'll get from the fixed gear fishermen is that -- I mean, they leave their gear out and it's a catch-as-catch-can fishery, and they try to get them when they can, and sometimes that is with spawned herring.

The other thing to keep in mind is that the proportion of the catch that goes into this fishery is very small,

so if you don't leave the option for the exemption through the public hearing process in there, it will just eliminate their chance to prosecute this fishery, which they're already having trouble doing. So, it further endangers that fixed gear fishery.

CHAIRMAN SMITH: Megan.

MS. GAMBLE: Additionally, the comments we received on this was the frustration with the fact that the fish move about 10 miles and end up getting caught in the New Brunswick weir fishery.

CHAIRMAN SMITH: It seems to me if you leave it in, you preserve a way to address it without overshooting or causing a fishery problem. If you take it out, you preclude the opportunity to see if it can be developed into something that is satisfactory. So, again, we're not making final decisions today; it is a question of whether this is a good idea to generate comment. Marybeth.

MS. TOOLEY: Well, I certainly wouldn't argue to take it out. I think that it was something that was raised through the public hearing process. The only thing I would like to point out is that there are other fixed gear fisheries that operate in Maine state waters other than East Cutler and may want to just expand Option 1.

There are things that are just particular to fixed gear that are not occurrences in mobile gear when it comes to spawning fish. We certainly had fixed gear operations in Penobscot Bay and many other places in the state of Maine. So, I would just encourage that you just change the language to expand it slightly.

CHAIRMAN SMITH: Okay, you've heard one in favor of eliminating it, another in favor of leaving it in as is and a third comment to amend it to be fixed gear only. Is there a suggestion, Bruce, on how to reconcile this?

MR. BRUCE FREEMAN: No, I was going to confuse the issue more.

CHAIRMAN SMITH: Oh, thank you, the chairman appreciates that, you have no idea.

MR. FREEMAN: The only question I have, Eric, is wherever you draw that boundary line, what happens on the other side of the line? I guess Marybeth addressed it by restricting it or having a gear included wherever that gear may be.

But, when I looked at the map on Page 25, it had two different areas, and every time you expand that area, when you reach that boundary line, what happens on the other side? Why is that different? Perhaps at public hearing that will be made clear.

CHAIRMAN SMITH: I believe that is the same map at different scales.

MR. FREEMAN: Oh, all right, you're right, that's what it is. But, nevertheless, my comment would be -

CHAIRMAN SMITH: Yes, of the line, sure.

MR. FREEMAN: It may well be, Eric, to seek to public comments specifically on that issue as to -

CHAIRMAN SMITH: Yes, the text could be amended to say should it apply to fixed gear regardless of area; and also, if you're going to apply it just to a specific area, where is the right boundary? You could get both of those comments through the comment period. George.

MR. LAPOINTE: The other thing, if you look at this map, what the gray area should be is a tiny little gray strip along the shore, because fixed gear is on the shoreward side. This looks like a big area. If you look at the amount of gear there, it's on a pretty tiny area.

CHAIRMAN SMITH: Okay, difference of opinion. Let's have a motion to try and clarify it. Vito.

MR. CALOMO: I want to make a comment, Mr. Chairman. I'm in favor of anybody making a living, especially the smaller fishermen. But, Mr. Chairman, there are times that the fixed gear fishery in history has abundant catches, not like they're doing today.

They haven't had much of a fishery in the past 20 years, I would say, but there was a time when I fished that there was an abundance of fixed gear fishery so you have to look at it both ways. You know, the comment was made that it's a small portion.

Yes, today it is a small portion, but in the past the history has shown it was a tremendous portion, so the loophole, I'm a little scared of. Thank you, Mr. Chairman.

CHAIRMAN SMITH: I think from a conservation of resource point of view, you're right on, and I think maybe that's another issue that needs to be developed further as we go through the development process.

If we take it out entirely, we can't develop that at all. We lose the opportunity for a small-scale fishery and never get the chance to address a very legitimate concern that that not become a fishery in a given year that upsets everybody else's fishery. I think the point is well taken that it should be developed as we go through the options. George.

MR. LAPOINTE: It's a legitimate concern, but I think, in response, if you look at the number of fixed gear licenses and the trends through time, the number of licenses has diminished vastly. Is there a chance it could land a very significant proportion, yes, but not a great chance. So, I think we have to reflect current conditions. If you look in Downeast Maine in the spots where they used to have weir licenses, they're hard to get.

They're hard to develop. They're expensive to maintain. I don't see it as being something -- we have to watch everything, but we don't have to watch this one as closely as other issues.

CHAIRMAN SMITH: Okay, it's in the document now. Is there a recommendation to take it out? Seeing none, we will leave it and move to internal waters processing, bottom of Page 21, Megan.

MS. GAMBLE: This is an issue that was in the public information document, and I've just incorporated comments that we received from the public. It's everything from status quo to prohibiting IWPs from processing herring that is caught in Area 1.

Option 3 is to prohibit IWPs from processing herring caught in all state waters. Then Option 4 is to only allocate enough of the IWP TAC so that an IWP operation could process herring that is caught as bycatch when directing effort upon menhaden or mackerel. So, it would be a bycatch allocation, which is why the IWP operation in Rhode Island keeps requesting an allocation.

CHAIRMAN SMITH: Okay, comments on this issue. It seems like a pretty good range of alternatives, covers everybody's issues. I'm sorry, hold on a second, Bill. Board members, comment on this? Okay, seeing none, audience. Bill Quimby.

MR. BILL QUINBY: Thank you, Mr. Chairman, Bill Quimby. We've been a facilitator of this type of operation, actually, for 20 years. We see some positive results and reason to maintain it. The one situation that came up really last year, which I'd like some guidance from, if possible, is that ASMFC likes

to see a majority of the states vote for an IWP request.

And what we've seen is that Maine and Massachusetts vote against it because of their shore-based thing. New York usually abstains. New Jersey has some philosophical reason not to be positive, and you don't have a majority.

So you have this IWP in the fishery management plan, but you have ASMFC basically telling a governor that he shouldn't take advantage of this law and provide benefits to fishermen and shore-based operations and support operations in his state. So, I would just like to put this on the table to see if there is another way to say that there can be some herring sold over the side. It does not compete with shore-based operations.

It almost always goes to a market like in East Europe and Russia, the Baltics or something for further processing where the U.S. shore-based industry cannot sell into because of duties or whatever.

It has to be combined really with the mackerel, so it is almost, in fact, a bycatch in the mackerel fishery. You're not going to have always a bycatch issue, but I just -- please either take the whole option away, which I think is not the right thing, or make it so that it can be utilized realistically. Thank you.

CHAIRMAN SMITH: Okay, thanks. I'll ask board members just to keep that in mind as the discussion develops. It's a little off point to what we want to do here which is make sure we have the right range of options in this document.

I think at another time -- I'm not sure exactly where -- we can talk about how to make the process work better for people that want it to work. Okay, changes to this list. Vito.

MR. CALOMO: Yes, Mr. Chairman, I'd like to make a motion to eliminate Option 2, 3 and 4 -- to eliminate. How come? I can justify it.

CHAIRMAN SMITH: Yes, please do. Is that a motion? I'm sorry, was that a motion?

MS. GAMBLE: Yes.

CHAIRMAN SMITH: Okay, is there a second to the motion? Gil Pope. Motion made and seconded to eliminate Options 2, 3 and 4. Now, I need to hear justification. David Borden.

MR. BORDEN: Well, if I understand this correctly, if this motion passes, it is status quo, which means it doesn't even need to be in the document; is that correct?

CHAIRMAN SMITH: Yes, status quo and -- well, you say what you want to say, and then I can decide if I disagree.

MS. GAMBLE: It will be in the document. It won't have options associated with it. Like I was trying to say before, you don't have to have options for something that you want to remain status quo. That doesn't preclude the public from commenting on it. They will still have the --

MR. BORDEN: I'm a little confused by that, because normally we don't take status quo proposals out to public hearing unless there is another alternative. That's what we do in a scoping document.

In other words, we take ideas out, and we say to the public we want you to comment on this, and so if we're going to -- I'm not arguing against the motion, I'm just trying to understand the motion. If we take - - if all of these options come out, then it is simply status quo and the issue disappears.

CHAIRMAN SMITH: Yes, I think I agree with you that if there is no need to change something, then a planned provision just stays in effect, you don't have to go out to comment on it. He wants to revise the motion. Okay, Megan, let's just clear this issue up on what needs to be in the document so we're clear.

MS. GAMBLE: This is an amendment, not an addendum so an amendment completely replaces any other previous herring document that the Commission has, so it will include all of the issues.

We are referring to the draft amendment. The Commission's draft amendment is merely an earlier version of the final document, so it will include all of the issues in it. Not all of the issues in it will have options, because the Section has decided to move forward with status quo.

CHAIRMAN SMITH: Does that mean if we forget to have something in the amendment that is in the main plan that we want to retain, then we lose it, because the amendment erases that issue?

MS. GAMBLE: That is correct.

CHAIRMAN SMITH: Oh, that's different from the council process. I only make that point, that's where the confusion is coming.

MS. GAMBLE: Yes, that is correct. I have made a concerted effort to make sure that we have included everything. As we move forward with this presentation, you will see that I have done that.

CHAIRMAN SMITH: Changes to the motion.

MR. CALOMO: Thank you, Mr. Chairman. I would like to withdraw my motion, Mr. Chairman, if possible.

CHAIRMAN SMITH: Okay, the motion is withdrawn if the seconder agrees. Okay, the motion is withdrawn. The issue stands as four options on Pages 22-23. Any other suggestion? Any further discussion? Gil Pope.

MR. POPE: Yes, my quick question is in Option 1, status quo, so nothing is changed from what is already in another document then, so everything that is in Option 1 is exactly what reads in a previous amendment?

MS. GAMBLE: That's correct.

CHAIRMAN SMITH: Okay, the next page, Page 23, bycatch information and monitoring. Before we do that, let me just point out we're just slightly over halfway through our allotted time.

We're slightly over halfway through the document, and we have other business. If you want a break, we'll take a limited five-minute break; otherwise, we'll charge ahead. Charge ahead? Okay, Megan.

MS. GAMBLE: Okay, bycatch was an issue that we included in our public information document and received many comments on. The plan development team has developed a suite of options for your consideration.

Option 1 is status quo, which means that the Commission will not implement any measures to deal with bycatch or the collection of bycatch information.

Option 2 is merely an endorsement of what the council would be including in their amendment. It would also endorse any of the states' individual efforts. An example of that is that Maine has been sampling some of the sardine plants.

Option 3 is to recommend measures that are complementary to the measures that will be included in the council's amendment.

Then Option 4 is to implement mandatory complementary measures that mirror the federal measures on bycatch.

What we've tried to do is to develop a suite of options that would address the potential concerns about state budgets. I realize that some of these -- I know that the states have a lot of concern about money and being able to increase their monitoring efforts, so the plan development team tried to provide a range.

CHAIRMAN SMITH: Okay, you've heard the alternatives there, the options. They're up on the board. Do you see a need to change them? David Pierce.

DR. PIERCE: I would suggest we delete Option 4, the mandatory bycatch information. It is just not feasible, especially if the council decides to go in a direction where a high percentage of observer coverage is required. The funds aren't there. It won't happen.

CHAIRMAN SMITH: Okay, any disagreement with eliminating Option 4? Okay, it's deleted. Any other discussion on Options 1, 2, 3? Seeing none, let's move on. Downeast Maine fixed gear fisheries, Megan.

MS. GAMBLE: Okay, most, if not all, fixed gear fishermen operate in state waters and hold state permits rather than federal permits to fish for Atlantic herring. The fixed gear fishermen are concerned about their ability to qualify for a federal limited access permit as well as having the opportunity to access the resource as it moves to the inshore area.

So, we have included options that complement those that are on the table for consideration for the council's amendment. Option 1 is status quo. All fixed gears must have a state permit and report daily landings on a weekly basis.

Option 2 would be to include the Downeast Maine fixed gear catch into the New Brunswick weir catch. That's basically an exemption from the Area 1A TAC. Then Option 3 is to allocate a set aside, so a portion of the annual TAC would be set aside for the fixed gear fisheries in Area 1A.

I do want to mention the section that comes right after this in the document on Page 26, the smaller-scale fixed gear fisheries, we heard some comments from New Jersey that there are other fixed gear fisheries other than those in Maine, and these fixed gear fisheries depend on a small consistent supply of herring throughout the fishing year, so they're concerned about their ability to continue to fish if a limited access program was to be implemented.

The plan development team determined that as long as Amendment 2 continues to allow for a 2,000 pound bycatch, this should cover the amount of herring they require.

CHAIRMAN SMITH: Okay, you see the options on the screen. Any need to change the options? Okay, the screen has the three options under Downeast Maine fixed gear fisheries. Let's take those.

Any disagreement with leaving them as they are? Okay, seeing no disagreement, the other issue that Megan pointed out, which is not on the screen -- David.

DR. PIERCE: Just a clarification regarding Number 2. Is that workable, include the Downeast Maine fixed gear catch in the New Brunswick weir catch. Right now, we assume 20,000 metric tons would be the New Brunswick weir catch, so that means, theoretically, if there is no catch in the New Brunswick weirs, then the Downeast Maine fixed gear catch would be 20,000.

Obviously, that's not going to happen, but can that be monitored effectively? When do most of the fish in Downeast Maine in the fixed gear fishery, when are they caught? It can be monitored?

MR. CIERI: Sure, David. It's mostly during the fall from September onwards. It cannot be monitored in season. It would have to be at the end of the year. I usually get my reports from the New Brunswick weir fishery, from DFO usually about April from the following year.

CHAIRMAN SMITH: Lori.

MS. LORI STEELE: The way this would essentially work is that the Downeast Maine fixed gear fishery would be exempt from the Area 1A TAC. That's pretty much what this would mean. They would have to report through IVR, which they don't now.

Their catch, as reported through IVR, would not count against the Area 1A TAC, but it would count

towards the assumption that is made about the catch in the New Brunswick weir fishery.

The alternative in the document that allows the PDT to consider other analytical approaches when determining the specifications would allow the PDT to look at the New Brunswick weir catch, along with what is reported in the Downeast Maine fixed gear fishery and either make some adjustments to that 20,000 metric ton assumption or not.

The adjustments could be made either way. The adjustments could be -- there was no catch in either fishery, and we would maybe crank the assumption down or up if the catch in this fishery or the New Brunswick weir fishery were to increase significantly.

DR. PIERCE: If I may, Mr. Chairman, Lori spoke to that so well, I assume, therefore, it is in the council plan.

MS. STEELE: Yes.

CHAIRMAN SMITH: David Borden.

MR. BORDEN: Thank you, Mr. Chairman, a couple points. One, the Canadians have daily reporting of landings in the weir fishery. I, personally, don't understand why we can't get access to the data.

We went up, a bunch of us -- I think Vito was there -- and had a tour of the Blacks Harbor facility, and they basically regaled us with all the details of their herring reporting system. That's one point.

The other point is just to put this in perspective, the historic landings -- although the reference on Page 26, the historic landings may have averaged 19,000 pounds from this fishery, but everyone should be aware of the fact that they've been as high as 45,000 pounds in this, and the Canadians have not agreed to limit their catches to this amount, which has very significant implications for the Area 1 TAC in the event that Canadians fish over the 20,000, so everybody should just be aware of that. We've got to get on with negotiating some kind of sharing arrangement with the Canadians.

CHAIRMAN SMITH: Thank you, good advice. Any recommendation to change these three options? Pat.

MR. WHITE: Just a point of clarification to George's point on the Gear Option 2. The gray area shows it out to the Hague line. Having been a trap

fisherman in years past, it would be very, very difficult to set a fish weir out on the Hague line. For the point of credibility, I think if we could move that line in to a more reasonable explanation of what we're intending, it would be better.

CHAIRMAN SMITH: Cross from Eastern Maine to, what is that, Grand Manan? Ten miles? So, it's like five or six miles. I'm just thinking the map drawing came up twice now, and maybe if you draw that as a ribbon along the shore instead of --

MS. GAMBLE: The maps that are included in this document came from the council's amendment, and the council's plan development team got this from the state of Maine. At one time there was an exemption for this fishery, so the PDT went to the state of Maine to have that area defined, and this was the area provided.

MR. LAPOINTE: I think what I said and what Pat said is not why they did it. It was easy to draw a line, but just recognizing that the channel is about 200 feet deep, and they've got wicked tides.

There are not trees tall enough to set a pole if you could leave them in there, so it's just -- we would be happy to revise that to be more accurate.

CHAIRMAN SMITH: Let's just do that, the staffs, draw the right line. Okay, if there is no objection, we'll leave Options 1, 2, 3 and they sit. No objection. Page 26, smaller scale fixed gear fisheries, Megan already explained that.

It wasn't on the slide, so it's a point that is just in the document with no options. So, next issue we're up to.

MS. GAMBLE: Okay, the next issue is --

MR. FREEMAN: Before we move on, Mr. Chairman.

CHAIRMAN SMITH: Bruce.

MR. FREEMAN: As indicated, our fishermen, New Jersey fishermen, essentially raised this issue, and it works well -- 2,000 pounds. My only concern is if, for some reason, we change the 2,000 pound criteria for a bycatch provision, then we may need to come back for an allocation system. At the present time, I see no problem.

CHAIRMAN SMITH: Okay, right now, there is no proposal to do that, so it would stand as 2,000. Peter Moore.

MR. MOORE: Thank you, Mr. Chairman. Just for consistency, do we have a definition of fixed gear in this plan, because I know we've been through the whole definition of a mid-water trawl at least in the federal plan and a definition of a seine. I think it might not be a bad idea. I like fixed gear, I just --

CHAIRMAN SMITH: We'll just add that, nothing wrong with a definition that clarifies things. Thank you. Okay, mid-water trawl closed areas, bottom of Page 26, Megan.

MS. GAMBLE: Okay, mid-water trawls. All of these options come from public comments. Again, they are not from the plan development team, public comments. They are to prohibit mid-water trawls from all state waters.

Right now, mid-water trawls are prohibited from Maine, New Hampshire and Massachusetts, but we're talking about all the states in this management unit. Option 2 is to prohibit mid-water trawls landing. Again, this is a landing prohibition on herring caught in the federal waters, Jeffrey's Ledge.

Number 3, there is a map in the document on Page 27 that defines this area. These, again, are federal waters so it would be a landing prohibition on herring caught from this area. Option 4 is, again, federal waters, and it is to prohibit herring caught in the closed groundfish areas.

This may have some enforcement issues in order to determine where the herring were actually caught, but I've included them, because we're including the kitchen sink.

CHAIRMAN SMITH: Let me suggest this, Megan. Shouldn't this include an Option 1, status quo, as all the other alternatives are, because if we don't do that, then it sounds to me like we have to pick one of these four and that would make for -- well, yes, but status quo is as it is, and we've done that with the others.

MS. GAMBLE: Actually, no, I didn't include a status quo, because our amendment doesn't address mid-water trawls at all. What I probably should have done is to include an option that says it's up to the states. I guess I was thinking to not include it at all means that it is up to the states so if we eliminated the issue altogether, that's status quo.

CHAIRMAN SMITH: Okay, then the document as you read it is okay, Options 1, 2, 3, 4. Do you have suggestions on changes? Ritchie White.

MR. WHITE: Thank you, Mr. Chairman. At our public hearing, the majority of people attending -- this was the issue why they attended, and this was what they talked to. I'd like to see a change to reflect their comments, and that would be to change mid-water trawl to mobile gear.

Their concern was all mobile gear, not just mid-water trawl, so I would support leaving these options in to let the public comment again, but to change it instead of mid-water trawl to be all-encompassing and be mobile gear.

CHAIRMAN SMITH: So the effect of this is to include purse seines?

MS. GAMBLE: And bottom trawls.

CHAIRMAN SMITH: And bottom trawls to the extent they -- yes, okay. Comments. I had David Borden and then David Pierce.

MR. BORDEN: Just for my own edification, Mr. Chairman, Option 2 and 3, so that the fishing community can comment on this, how are these going to be implemented? In other words, the only way we're going to know whether or not a boat fishes in these areas is if they have an IVR.

Only the big boats have IVRs, so is the way we're going to implement this is that, eventually, a boat with an IVR can't enter these areas if we were to utilize one of these? I just want to be clear on what is being proposed, so that the industry can comment on it.

CHAIRMAN SMITH: VMS would be required in all herring boats.

MR. BORDEN: I mean VMS. I kept saying IVR, VMS. On boats without a VMS, there is no way to figure out whether or not they're fishing in the area, so it really is just going to apply to the big boats, then, right?

CHAIRMAN SMITH: I think that's a good point. Another point is, I guess, I'm wondering why the ASMFC plan has issues that are only EEZ oriented. It seems like the battleground on that issue is going to be in the council process.

MR. BORDEN: The other comment, while I have the mike, is I know this is a very emotional issue, and there are a lot of constituents that are very cranked up about it, but this portion of the document, I think, has to be very carefully worded to lay out in a very objective fashion what reality is.

In other words, we've gone through this at the council level, looked at the observer coverage and the bycatch. There is very little scientific information that supports these actions.

There is very little scientific information to support a prohibition on closing the groundfish areas. That has got to be laid out; and in addition to that, the National Marine Fisheries Service -- and this should be added into the document -- came out with that announcement that they're going to significantly increase observer coverage on these boats. So, all of that has to be incorporated if these options are going to be --

CHAIRMAN SMITH: Thank you. Let me get Lori to comment from the council staff and then go back to the list.

MS. STEELE: Yes, I have to raise some concerns about consistency on this issue relative to what is in the council amendment and what is being proposed to be in this amendment. These options, the way they're worded, say, "prohibit mid-water trawls from fishing in this area and that area", and what it really means is "prohibit mid-water trawls from landing fish that are caught in those areas", which I'm not sure how those would be enforced at all.

There are options in the council document to prohibit mid-water trawls from fishing in certain areas. I just would recommend that you consider maybe making these options consistent with the options that are in the council document, so that in the end there might be something that is actually enforceable in both plans.

In the council document, there is an option to make all of Area 1A a purse seine and fixed gear-only area, either seasonally or year-round. There is an option to make that area that you see in Option 3 there, east of 69 degrees fixed gear and purse seine only, either seasonal or year-round.

There is another option to make all of Area 1A plus a block of area that is due east of Chatham fixed gear and purse seine- only, either seasonally or year-round. Then, of course, there is the no action option to not pick any of those options.

Maybe some of the enforcement issues and some of the other issues would be resolved if the options in the ASMFC document were at least consistent with those options so that when the final options are selected, the ASMFC plan could include a prohibition on landing that is consistent with the areas that the council plan would prohibit fishing, if they do at all.

CHAIRMAN SMITH: Could I suggest this, before I go back to the list, that from an ASMFC plan point of view, the issues for our plan really ought to be what is on Option 1, whatever gear we talk about.

But, do you want to do this or not in state waters, and then do you want to have a landing restriction that conforms to what the council plan does in the EEZ; in effect, those two options, and if you pick one of them, fine.

If you finally don't do anything, then, as Megan pointed out earlier, our plan is silent on gear restrictions of that type now, and it would remain silent. Does that resonate with people?

So the suggestion would be that we leave Option 1 in, we take out Options 2, 3 and 4 and replace it with an option that says prohibition of mid-water trawls landing fish taken from areas in which they are prohibited under the council plan, enforcement difficulties notwithstanding.

Somebody is going to have to figure that out. At least, that makes this plan reflect where it has jurisdiction, and it is silent on the gear question. We have to come back to that. Is that agreeable to people? Any disagreement with that? Okay, Gil, you've got another issue, or do you want to disagree?

MR. POPE: I think this really -- when it was first brought up, it just really troubled me that it is just mentioning mid-water trawls, period. It doesn't mention possession of a particular type of fish. It mentions just the three states of Maine, New Hampshire and Massachusetts.

I guess I'm trying to get at the purpose of this and not only mid-water trawls, but now he's also bringing up all mobile gear. This is just like it's some big, giant nebulous thing here. It's very confusing to me exactly what the purpose of this is. Thank you.

CHAIRMAN SMITH: I appreciate that comment. I had a suggestion. There didn't seem like anyone was disagreeing except with the point of the gear and the

point that you just made, which was -- your view is maybe we shouldn't have any of this in here. Of course, New Hampshire feels it really needs to be there because of the comment they received.

So, if we go with the structure that I suggested, we need two motions now. We need a motion on whether you want to change the gear that is in there, and that's actually the second motion. The first motion would be do you want any of this in the plan? Vito.

MR. CALOMO: Yes, I'd like to make a motion that we eliminate Options 2, 3 and 4, Mr. Chairman.

CHAIRMAN SMITH: And by implication, eliminate the second option I had talked about, which was prohibit landings from --

MR. CALOMO: I think that's a good suggestion, and I'd like to mull over that suggestion, but I'd like to do this first, Mr. Chairman, as a separate motion and then go to the second part of what you've said.

CHAIRMAN SMITH: Okay, a motion on the floor. **Is there a second? Pat Augustine.** So the motion would be to eliminate Options 2, 3, 4 which are on Page 27 of the document. Debate on the motion, John Nelson.

MR. NELSON: Thank you, Mr. Chairman. I'm not sure I can support the motion, because it may preclude the ability to address the Jeffrey's Ledge issue. I agree with your approach, Mr. Chairman, as far as trying to put in things that are reflective of what is in the council plan.

However, the council plan, in the minds of many of our constituents, is still not complete, because it might be too far reaching just dealing with Area 1A as far as a type of prohibition when a focal point might be Jeffrey's Ledge only.

I think, as long as we have the opportunity, in spite of this motion, to address the Jeffrey's Ledge issue after this is all settled, Mr. Chairman, I'll be happy to do that.

CHAIRMAN SMITH: That's why I asked that question. Vito agrees that passing this motion doesn't prejudice us for a new Option 2 that addresses the landing of fish from other areas. In other words, we're not going to get into a reconsideration issue, and he was agreeable to that.

The question is whether Options 2, 3 and 4, as written, should stay or go. John.

MR. NELSON: Well, and perhaps to speed this along, Mr. Chairman, if it is options, as the motion is listed, but also then the verbiage of substituting your concept for what the council might have in there, if that is part of it, then that would probably move this along a lot faster.

CHAIRMAN SMITH: Let me add the words and see if everyone agrees to them. Do you want to do that or do you want to do it step-by-step?

MR. CALOMO: Mr. Chairman, I'll say it again, step-by-step. I want to eliminate these three --

CHAIRMAN SMITH: It's your motion.

MR. CALOMO: Yes, sir.

CHAIRMAN SMITH: Okay, the motion is on the floor to eliminate Option 2, 3, 4. Do you need more time to debate or caucus? Seeing none, all those in favor, raise your hand; those opposed; two; abstentions; nulls. **Okay, the motion passes, Options 2, 3, 4 are eliminated.** I'm in the awkward position of having written that language down and can't make my own motion.

MR. CALOMO: Mr. Chairman.

CHAIRMAN SMITH: Yes.

MR. CALOMO: Who opposed, I didn't see.

CHAIRMAN SMITH: It was Connecticut and New Hampshire, right?

MR. CALOMO: Oh, okay, thank you.

CHAIRMAN SMITH: The motion to eliminate Options 2, 3 and 4 of the mid-water trawl closed area section.

MR. CALOMO: I just asked for a clarification. Who opposed, that's all. Thank you, Mr. Chairman.

CHAIRMAN SMITH: Right, it was Connecticut and New Hampshire.

MR. LAPOINTE: Mr. Chairman, can you read your proposed language?

CHAIRMAN SMITH: Yes, this would be for your consideration as a motion to add a new Option 2

which would say, **“prohibit landing of herring taken by mid-water trawl from areas in which they are prohibited by the council plan”**.

MR. LAPOINTE: So moved.

CHAIRMAN SMITH: That’s a motion?

MR. LAPOINTE: That is a motion.

CHAIRMAN SMITH: That’s a motion. Is there a second?

MR. AUGUSTINE: I’ll second it.

CHAIRMAN SMITH: Seconded, Pat Augustine. Okay, staff has suggested that we add some words to cover what might happen in the council plan to say, “prohibit landings from areas -- the landing of herring taken by mid-water trawl from areas and during times in which the activity is prohibited by the council plan”. Okay, motion is made and seconded.

MR. LAPOINTE: Can I make a comment?

CHAIRMAN SMITH: George Lapointe.

MR. LAPOINTE: The whole issue of mid-water trawls has been and remains incredibly controversial, and I need staff to talk -- what are our options for moving forward outside of this amendment if new information comes up?

Again, I’m not presupposing anything, but we aren’t locked in stone if new information comes up about specific areas or gear types. Again, it has been and remains a controversial issue. We want to give ourselves some options here, but we also have some flexibility in incorporating new information, I would think, through the addendum process, do we not?

CHAIRMAN SMITH: Bob.

MR. BEAL: George, if the amendment is written so that in the adaptive management section of the plan, the issue of closed areas for mid-water trawls or prohibition of landings from closed areas and times when mid-water trawls are prohibited in certain areas, then it can be definitely addressed during an addendum, but the board just needs to make sure that it is included in the adaptive management section.

MR. LAPOINTE: Are we going to discuss that later this morning?

MR. BEAL: Yes.

MR. LAPOINTE: Good. From the state of Maine’s perspective, we get darts thrown at us from one side if it is discussed one way and the other side, but we simply don’t have the information that we need to move forward, so the addendum process in adaptive management strikes me as the way to keep this in play without either under-reacting or overreacting.

CHAIRMAN SMITH: Okay, a motion is on the floor to prohibit landing of herring taken by mid-water trawls from areas and during times in which the activity is prohibited by the council plan. Okay, comments on the motion. Ritchie White, Gil Pope, Vito Calomo.

MR. WHITE: I would think this is the place where we need the mobile gear, because if the council closes an area to mobile gear and we pass this mid-water trawl, I think this needs to be more all-encompassing to reflect what the council might do.

CHAIRMAN SMITH: I wanted to deal with them point-by-point. If we agree with the timing and the structure of the options, then we have to decide the question of what gears do you want in. I just thought it would be easier than bogging it down with two contentious issues. Gil Pope.

MR. POPE: Thank you, Mr. Chairman. I can’t go along with this. Number 1, it’s too nebulous. Number 2, I have no idea what is meant by “prohibited by the New England Council plan”. Number 3, now this is really stretching the authority of what we feel we can do and can’t do and what we can tell a state to do and not do at this particular point. That’s my opinion.

I think that if you’re just going to say no mid-water trawling, and now we want to include bottom trawling, so that means that every bit of the herring that we get, whether it is one piece or whether it’s 100 pounds or whatever, has to go back over the side. It’s absolutely meaningless.

So, if one state feels very strongly about doing this, then I’ll be in support of having that one state have the freedom to do it, but I don’t want the one state to control the others. That’s all. That’s what I see as a problem with this. Thank you.

CHAIRMAN SMITH: I understand your frustration over it. Again, this is a landing restriction to conform with a measure that finally gets adopted for federal waters. It’s a conformity issue rather than ASMFC extending its management authority into the EEZ.

We'd simply be saying this is to effectively enforce what the council plan has already adopted, only by way of justifying the basis for the motion.

MR. POPE: But, again, I think I have to agree with Vito. We have to be very careful as to what we agree to as to what they're doing. There may be some things that they're doing that absolutely do not apply to state waters. Thank you.

CHAIRMAN SMITH: Yes, good point. Let's not debate the points; let's decide if this makes us happy. I had Vito and then David Pierce.

MR. CALOMO: To use your words, it doesn't make me happy, Mr. Chairman. I agree with Gil. I won't repeat that to cut time, but I'm just saying who has got the funds or the personnel in the states to monitor or enforce this? I think this is unenforceable.

Also, I just can't figure out why we target mid-water trawls all of a sudden when no justification has been alluded that they cause any other problems or more than a purse seine or anything else. Did the PDT, our PDT, suggest that this is applicable action, Mr. Chairman?

CHAIRMAN SMITH: Did the PDT suggest this?

MS. GAMBLE: No, as I stated emphatically in the beginning, these are all from public comment. This is not the PDT.

MR. CALOMO: I just wanted to hear that again. I appreciate it, thank you.

MS. GAMBLE: I have one other point that Lori just made to me, which is that if the council goes ahead and puts in some sort of prohibition on fishing in federal waters, I don't think there are any mid-water trawls that hold only a state water permit, so all of those people are going to be prohibited from landing, anyways, if it is included in the federal plan.

CHAIRMAN SMITH: Yes, we're bogging down on something that probably isn't real important. We've had two strong comments in opposition. Let's hear a comment in favor, and then let's vote so we stay on time. Would anybody like to speak in favor of the motion? Okay, seeing none, do you like to caucus? Seeing none, all those in favor raise your hands --

MR. CALOMO: Hold it.

CHAIRMAN SMITH: Oh, slow down. We're going to take a minute caucus break.

(Whereupon, caucus was held.)

CHAIRMAN SMITH: George Lapointe.

MR. LAPOINTE: I don't know, with what Lori just said and our ability to enforce and it's being covered with federal permit holders, and the importance of including gear changes under adaptive management, it strikes me that we don't need this. I agree that it was a better -- so I want to withdraw my motion.

CHAIRMAN SMITH: Thank you, does the seconder agree?

MR. AUGUSTINE: Agreed.

CHAIRMAN SMITH: Okay, the motion is withdrawn. David Pierce on this issue.

DR. PIERCE: Yes, before you go on to the next issue, let me clarify Option 1, prohibition of mid-water trawls from fishing in all state waters. It is not prohibited in Massachusetts, okay, so that needs to be corrected. It is basically status quo, Option 1. It's prohibited in Maine and New Hampshire but not in Massachusetts waters.

CHAIRMAN SMITH: Do you want to deal with the gear? Okay, John Nelson.

MR. NELSON: So, Mr. Chairman, we're left with -- I understood staff is going to put in status quo.

CHAIRMAN SMITH: No, status quo is -- there is nothing in the plan now, so there is no need for a status quo. There does need to be a description that says there is nothing in our plan that regulates gear.

MR. NELSON: Okay, thank you for that. The status quo is that there is nothing happening as far as a change in state waters, because the states do have different regulations in place already.

MS. GAMBLE: But that is not something the Commission is requiring the states to do. That is something the states are doing on their own. It is not a Commission requirement.

MR. NELSON: Okay, I've got it.

CHAIRMAN SMITH: Yes, okay.

MR. NELSON: And so we're left with Option 1, which is prohibition of mid-water trawls fishing in all state waters. Yes, that's still in there. Yes, it is.

CHAIRMAN SMITH: It's in there.

MR. NELSON: That's still in there.

CHAIRMAN SMITH: So far.

MR. NELSON: Option 1 --

CHAIRMAN SMITH: Hold it. The last motion that passed was to eliminate Options 2, 3, 4 with no comment on Option 1. Option 1 is still up there. Well, it's not up there, but Option 1 is as you see it at the top of Page 27. Now we're entertaining comments on what do you want to do to that, or do you just want to leave it.

MR. NELSON: Well, Mr. Chairman, my suggestion would be that rather than -- I think it is a little discriminatory to just focus on mid-water trawls. I think that we probably ought to change this to mobile gear instead of saying mid-water trawls.

That's what I would suggest -- it's more universal -- then we can get public comment on it and be able to then modify as appropriate, based on the public comment. I don't know if you need a motion. Maybe I should make the motion to clarify.

CHAIRMAN SMITH: Yes, you do.

MR. NELSON: I would move, Mr. Chairman, that this Section strike mid-water trawl and use mobile gear in place of mid-water trawl. Thank you.

CHAIRMAN SMITH: Okay, motion made. Is there a second? Okay, motion made, is there a second? No second? The motion dies.

MR. AUGUSTINE: Mr. Chairman, I'd like to do it for discussion purposes. It's got to be a valid point. Let's talk about it.

CHAIRMAN SMITH: Okay, a motion has been made and seconded to replace the words "mid-water trawl" in Option 1 with "mobile gear". Discussion on the motion. David Borden.

MR. BORDEN: For my own edification, what does this mean? I know what "prohibit mobile gear from state waters" means, but does this mean no flounder fishery? Does this mean no monkfish fishery, no fluke fishery? You're going to have a bycatch.

CHAIRMAN SMITH: Well, it depends on whether it's a prohibit directed fishing with mobile gear for herring, or whether it's all fishing with the gear for any species. We may as well clarify it since it has come up.

MR. BORDEN: That's what I'm asking for. The motion has to be revised, because right now I can't support it.

CHAIRMAN SMITH: What's the intent of the motion?

MR. NELSON: Well, the intent, Mr. Chairman, or maybe it's going to be easier to do it -- if we have to specify gear, maybe that's a better thing to do, and that would be that you would prohibit mid-water trawl and purse seine, which are focused on a directed fishery.

CHAIRMAN SMITH: Okay, the motion is perfected to add "purse seine" to the words "mid-water trawls", so it would read prohibition of mid-water trawls and purse seines from fishing in all state waters. That's a new motion. Let's see a show of hands of people who want to talk on this. It's 10:16; we have a ways to go. I have David, Bill, Gil, George.

DR. PIERCE: I don't understand the logic behind this particular motion. Why would we want to prohibit purse seining and mid-water trawling for sea herring inside state waters? It makes no sense to me.

In addition, I think that the motion is based on the premise that Option 1 has, as its foundation, the belief that right now Maine, Massachusetts and New Hampshire prohibit mid-water trawling in their waters and we don't. Okay, we don't.

So, we need to make sure we all understand this particular point. There is no prohibition in Massachusetts waters right now. Option 1, if it were to move forward, would be to prohibit mid-water trawling.

I don't think that was the intent of the PDT or whoever put this option together, because this is basically a status quo option in the minds of the individuals who brought it forward, put it in this document. So, the premise is wrong to begin with.

CHAIRMAN SMITH: Okay, you're opposed, and my meeting management skills are wearing down as the hour goes on. I'm going to go back to what I did earlier. We've just had one opposed to the motion. Let's have one in favor, see if that frames the

reference and deal with this issue and move on. Someone to speak in favor of the motion. John.

MR. NELSON: Thank you, Mr. Chairman. Again, I just want to make sure that it's clear that this is -- prohibition of a mid-water trawl and purse seine that are in a directed herring fishery -- to make sure there is no misunderstanding associated with this.

Otherwise, I think that this is what we -- this is the broadening of Option 1, which right now is in there for strictly for mid-water trawls. And that came from public comment, so I don't think we ought to involve the PDT on this. The public feels strongly about having this issue addressed in a public hearing document. That's why I'm suggesting that you don't want to just limit it to a particular gear type.

Have the gear type that's going to be directed on the herring fishery, as mobile gear out there for public comment. If you don't do that, I think you're going to have a lot of folks that feel that they were denied the opportunity to provide their input. Thank you, Mr. Chairman.

CHAIRMAN SMITH: Okay, we've had a passionate opposition, a passionate support. It's a motion that barely got a second. Do you need more debate? David, one more comment.

MR. BORDEN: Just very briefly, Mr. Chairman. I can't support the motion. We have a directed mackerel fishery in Rhode Island waters I can't prohibit. That has a bycatch of herring. All of that would have to be clarified before I could support the motion. My suggestion to the maker of the motion is if you want this north of the Cape, limit it to Area 1.

CHAIRMAN SMITH: Okay, the motion is on the floor. Do you need time to caucus?

MR. POPE: Very quickly.

CHAIRMAN SMITH: No, we're running out of time. Any time for a caucus? Seeing none, all those in favor of the motion, which is to add the words "purse seine" to the words "mid-water trawl" for directed herring fisheries, and that's in Option 1 of Page 27. Okay, that's the motion. All those in favor, raise your hand; all those opposed; abstentions; nulls. Okay, the motion fails. Thank you. Megan, forage, which has no options under it, by the way. David.

DR. PIERCE: Yes, Mr. Chairman, before we leave this issue, I need to make sure I understand where we stand. Is Option 1 the only one we have so if this

stands, we're going to go to public hearing with an understanding that we're proposing to prohibit mid-water trawls in Massachusetts waters because it is already prohibited in the other two states?

All right, again, when this issue was discussed a little while ago, I thought there was just a misunderstanding and that was basically the status quo, and I wanted to correct the record, but now it goes far beyond.

CHAIRMAN SMITH: Let me explain where the confusion arose, and maybe this will clarify it. Staff was unaware it was not prohibited in your waters. If they had had your compliance report, maybe they would have.

Unfortunately, there was some confusion that went into the document from a lack of information. Now, let's have a motion to change if you want to change something in the document. Otherwise, we should move on. Megan.

MS. GAMBLE: Let me just try to provide some clarification. Right now, the only option the Section has left in is Option 1, which says a prohibition of mid-water trawls fishing in all state waters.

Those are all state waters, so it's Maine down to New Jersey, which is the management unit for Atlantic herring. I will include another option that says the status quo, which is that the plan will not include any measures on prohibitions for mid-water trawls.

DR. PIERCE: The status quo is appropriate; however, **I would move that Option 1 be deleted**, because it's an option that specifically targets Massachusetts, because there really is no fishery as far as I know -- there is no concern about mid-water trawling in any other state's waters outside of the New England area.

I think this is basically a targeting of Massachusetts, and for that reason, I would be adamantly opposed to it being in there. So my motion is to delete Option 1, and we continue with the status quo, which is Maine and New Hampshire can do as they will, and they have for a long time. They have prohibited mid-water trawling in their waters, but Massachusetts does not.

CHAIRMAN SMITH: So your motion is to eliminate Option 1 from the document.

DR. PIERCE: Option 1 which forces Massachusetts to prohibit --

CHAIRMAN SMITH: Just let me have the motion; I don't need the justification.

DR. PIERCE: Well, I want to make sure it's on --

CHAIRMAN SMITH: Is there a second to the motion? Is there a second to the motion?

MR. POPE: Second.

CHAIRMAN SMITH: Second to the motion by Gil Pope. Okay, the motion is to eliminate Option 1. Limited debate on this. One in favor, Bill Adler.

MR. ADLER: Yes, I'm in favor of this particular motion. A state can do it on its own. It doesn't need that, plus anything that would be detrimental to the bait situation would cause an uproar, and I don't support any possible thing like this.

CHAIRMAN SMITH: Okay, any comment in favor of the motion. Pat.

MR. WHITE: Yes, am I clear that we do have, whatever it is, an alternate option that the status quo is there that it's up to the states, so that we have that as a fall-back, and it will be in this document? But the public needs to understand that, that's all.

CHAIRMAN SMITH: Yes, there might be some benefit, because it's a contentious issue, to have the discussion that the board considered various options, decided to leave gear regulations in state waters to the purview of the states. Okay, you had a point of clarification, Pat?

MR. AUGUSTINE: That was my point of clarification, Mr. Chairman.

CHAIRMAN SMITH: Okay, thank you. Okay, we have a motion on the floor. Comment in favor of or opposed to the motion. John Nelson.

MR. NELSON: Thank you, Mr. Chairman, just to be consistent, which I'm sure we all want to do, two things. One is a clarification.

The poor state of Massachusetts obviously was not being targeted by the public in this particular instance, because if you read Sentence 2, it also included that the state south of Area 1A would need to implement a prohibition on mid-water trawls.

I just wanted to point that out for their clarification so they didn't feel like they were being ganged up by

the public. It certainly wasn't the states that put it in, but it's their constituents, too, and they can deal with it, accordingly.

I think we ought to leave it in, Mr. Chairman, from the standpoint of consistency and having something for the public to provide that type of input. I realize that you've suggested if we don't have this in, to have some type of language in there that talks about how we discussed this, but again, this one came from the public.

It was fleshed out into four options. We've whittled those down to one, and now we're going to do away with that. I'm not sure the public process looks good by totally eliminating all four options that came out of a public process. Thank you, Mr. Chairman.

CHAIRMAN SMITH: Thank you. Okay, do you need more debate? The motion is to eliminate Option 1 and implicit in that is to have text in the document reflecting that we considered and decided to leave it to the purview of the states.

Okay, time to caucus? No. All those in favor of the motion, raise your hand; those opposed; abstentions, one; null. Okay, **the motion carries**, so we'll act that way. The four options are eliminated. The text will be changed. Next issue, Page 28, forage.

MS. GAMBLE: Forage was an issue that was included in the public information document and was discussed at length at many of the public hearings on the public information document. What we've done in this document is to describe the ways in which the plan currently does account for herring's role as a forage species.

I just wanted to inform the board the PDT's plan right now is to describe herring's role. We're going to use the information that the council has collected. They have developed a lengthy paper.

We're going to incorporate all of that information, and we will also discuss how the stock assessment accounts for herring biomass that is removed as forage. That's our current plan, unless we get different direction from the board.

CHAIRMAN SMITH: Okay, comment. David Borden.

MR. BORDEN: I've asked this question before, what level of forage removals would eventually trigger management response so that we would have to reduce the directed fishery?

I know I'm asking a difficult question, but if you look at that figure on Page 28, there has been a very substantial increase in forage removals, so how long can those go on before they trigger some kind of response? Do we know that, Matt?

CHAIRMAN SMITH: Matt.

DR. CIERI: That's just an assumed mortality rate; that's not calculated. We don't step through and go, okay, how many herring do bluefin tuna eat versus cod. We don't add that up.

That's simply an assumption in the model of an F of 0.2. When you apply that 0.2 to the spawning stock biomass or to the actual population as a whole, that's what you get as far as what is removed from the system in terms of M. But it's not a calculated value; it's an assumed value.

CHAIRMAN SMITH: The assumption is all natural mortality on herring is going to feed for other things that eat herring.

DR. CIERI: No, it's not.

CHAIRMAN SMITH: Oh, I'm sorry.

DR. CIERI: No, it's not. That is a natural mortality term. You can assume in some instances that most of what goes toward natural mortality is being eaten, but that's not a guaranteed assumption.

MR. LAPOINTE: Mr. Chairman, it strikes me that's a valid question to ask, but until we advance our science into multi-species interactions, it shouldn't take a lot of our time. By that time, I suspect, again, under adaptive management, if we figure out what the Purina herring chow value for whales is, we can work that in, but I don't think we need to spend a lot of time today.

CHAIRMAN SMITH: Any changes needed to the document? Seeing none, move on. Page 29, de minimis fishery guidelines. Megan.

MS. GAMBLE: Well, this is in my attempt to cover all the issues that the current amendment deals with. Right now, de minimis is written if for the last two years a state's combined average commercial landings by weight constitutes less than 1 percent of the coast-wide commercial landings for the same two-year period, they are granted de minimis.

The only state that has consistently requested de minimis status is the state of New York. I will also want to point out that there are no exemptions if you are granted de minimis status. It's merely a label at this point.

So, my question is does the Commission want to provide any sort of exemption to a de minimis state? Right now, we don't have any monitoring requirements for herring. We decided not to do any mandatory bycatch monitoring, so that's not an issue.

The only other possibility that I could think of is if we move forward with limited access, but we haven't even gotten there so I don't want to talk about it yet. So this is what is in the document. The plan right now is to carry it over.

CHAIRMAN SMITH: George Lapointe.

MR. LAPOINTE: I am in favor of leaving it in. I think, having been de minimis on a couple other plans or remaining actually still de minimis, it's important that we don't burden states who have a minor part in a fishery. I advocate leaving it right the way it is.

CHAIRMAN SMITH: Okay, any objection to leaving it as is? David Borden.

MR. BORDEN: I don't object. I agree with George's point, but having gone through this with weakfish, I would suggest a longer averaging period, three years as opposed to just two years. You'll cut out other states doing what we've had to do. We cycle into de minimis, may go out of de minimis and then you go back into de minimis.

CHAIRMAN SMITH: Okay, is there any objection to making the average period three years instead of two?

MR. LAPOINTE: A question of staff; is that consistent? We did some background work on de minimis a couple years ago. Is that consistent with that advice? I think it probably is.

MR. BEAL: Yes, it is.

CHAIRMAN SMITH: Okay, thank you. So, no objection, we'll change that to three years. Page 30, measures subject to change. This is the frameworkable list or the adaptive management list. George Lapointe.

MR. LAPOINTE: Given the discussion we just had on mid-water trawl and to advance things, I would make a motion that under 9, gear restrictions, we add gear restrictions, including gear type, the words “including gear type” under adaptive management.

CHAIRMAN SMITH: In the parenthetical, gear type, mesh size, et cetera? Under Number 9, are you suggesting that you say gear restrictions (such as gear type, mesh size, et cetera)?

MR. LAPOINTE: I think that’s fine, again, just to highlight as we move forward that --

CHAIRMAN SMITH: Okay, any objection to that? Seeing none, we’ll do that. Anything else on this list on Page 30? Okay, seeing none, next Page 31, interstate amendment requirements. Megan has got slides on that.

MS. GAMBLE: Again, this is my attempt to capture all the measures that were included in Amendment 1. We had two use restrictions. One was for the roe fishery, and then the second was a prohibition of directed mealing. Unless I hear from the Section, the plan is to incorporate those into Amendment 2, as well.

CHAIRMAN SMITH: Any objection to that? Okay, Jeff Kaelin, audience.

MR. JEFF KAELIN: Thank you, Mr. Chairman. I know you’re in a hurry, but on the directed mealing prohibition, I don’t have the language in the existing plan, but I believe it contained language that allowed directed mealing if it was rejected from processing.

I would just hope that language would be carried forward in the amendment. I think that’s the status quo, so I just wanted to footnote that, that that not get lost. Thank you.

CHAIRMAN SMITH: Okay, to the mealing issue, you suggest we leave it as it is in the current plan, which has a caveat for rejected fish?

MR. KAELIN: I suspect that is in there. We did that several years ago.

CHAIRMAN SMITH: We’ll check that.

MR. KAELIN: Thank you, that’s all I was asking.

CHAIRMAN SMITH: If there is no disagreement, we’ll make sure that conforms to what the plan is now.

MR. KAELIN: Thank you, Mr. Chairman.

CHAIRMAN SMITH: Okay, thank you. We do have to race on. We have limited access to talk about; we have 25 minutes left. Federal amendment issues, Megan.

MS. GAMBLE: These are the issues that appear in the draft amendment for the council that the plan development team has not developed options for. If the Section wants them included in this amendment, the plan development team needs some guidance on them.

CHAIRMAN SMITH: Okay, my suggestion is all four of those are maybes. Because of previous actions that we’ve taken, they’re maybes that we probably ought to leave in there for discussion purposes. Do you need more clarification today or just to have these --

MS. GAMBLE: Yes, we do. These options weren’t developed any further, because the plan development team felt like they were federal issues, and if there is something that needs to be put in place in state waters, we need some guidance.

CHAIRMAN SMITH: Okay, has anybody got a hope of providing guidance on these now? I think that’s beyond our ability to do in the time remaining.

I guess if they’re federal issues, they ought to be written up to conform as much as possible to what the council plan has. We’ll see the issue framed that way and then decide whether we like the idea after the comments are in. Anybody disagree with that? Okay, no disagreement so we’ll move on then.

MS. GAMBLE: Okay, the next slide has to do with several questions that were brought up during the last meeting. The first was to deal with Objective 11, which I think we eliminated so it’s probably moot.

The next one, is there a need to provide greater protection to the herring egg beds? The plan development team has come back with a response on that. Basically, there isn’t a need. The New England Council’s habitat tech team has looked into this issue and determined that there is no adverse impact on EFH from the herring fishery.

Then the final question we had lingering from the last meeting was whether or not there is a need to implement measures to restrict the juvenile harvest of Atlantic herring.

The response from the plan development team is that while there is a large increase in juvenile harvest, that's probably attributed to the strong recruitment that's occurred over the last five years. At this time, additional measures are not necessary.

CHAIRMAN SMITH: Okay, so then an approach would be those questions have been asked and answered. If you're satisfied with the answer, we could take those things out of the document.

MR. LAPOINTE: Take them out.

CHAIRMAN SMITH: Okay, David.

DR. PIERCE: By take them out of the document, you mean just don't reference the issue at all; is that what you're saying?

CHAIRMAN SMITH: Well, if you're satisfied with the answers to the three questions: Number 1 is moot; Number 2, the habitat team said it is not an issue; and, Number 3 is juvenile abundance in the fishery is probably a reflection of recruitment rather than targeting. If you're satisfied with those three answers, then they don't need to be in the document and clutter it up with questions that have already been answered.

DR. PIERCE: Okay, the last question, was that a PDT conclusion regarding --

CHAIRMAN SMITH: Yes.

DR. PIERCE: It was, okay.

CHAIRMAN SMITH: Okay, without objection then, we'll just take those out of the document. That brings us to jumping past the application form to the issue of the limited access work group recommendations.

LIMITED ACCESS WORKGROUP REPORT

MS. GAMBLE: Okay, at the last meeting the Section decided to create a work group to come up with some recommendations on how the Commission should address limited access in state waters for Atlantic herring, so this group was created.

It consisted of Lew Flag, Eric Smith, Vito Calomo - - excuse me, it should say Kohl Kanwit on there from Maine DMR and myself. This group was charged

with developing recommendations for consideration today.

The group worked off of a strawman document that was developed by the input provided by many of the state directors. They reviewed the document and then developed recommendations via a conference call.

The recommendation from this group is development of a state waters limited access program for Atlantic herring should not be considered in Amendment 2. Specifically, the work group recommends postponing consideration of Options 3, 4 and 5, which are listed in the document.

There is not enough effort in state waters by non-federally permitted state waters permit holders to warrant the administrative burden that may be created by a limited access program.

Effectively, state waters only permit holders cannot bring enough effort to bear to substantially affect the magnitude of landings.

The Commission should continue to monitor the development of the federal limited access program proposed for the federal Amendment 1 to be certain it does not undermine the goals and objectives of the interstate management program as well as to ensure the ISFMP plan does not undermine the council's amendment. That is the recommendation from the work group.

They also discussed effort controls, and basically they talked about all the options that could go into the plan. They are presented. They cover everything from days out to layover days to vessel size limits and seasonal allocations, and these all reflect the options that are included in the council's plan.

CHAIRMAN SMITH: Okay, so the recommendation is that we not pursue limited access in this amendment to the herring plan. Is there agreement, disagreement? Discussion on that point? David Pierce.

DR. PIERCE: I agree with the recommendation of the working group. I think it's a good one, and that we should move forward.

CHAIRMAN SMITH: Louder, please.

DR. PIERCE: I agree with the recommendation of the working group, and I think we should move

forward with it. If you want a motion, Mr. Chairman, but I don't think you do.

CHAIRMAN SMITH: No motion. Is there any disagreement with that recommendation? Okay, seeing none, we'll just proceed that way. Amendment coordination between ASMFC and New England Council.

AMENDMENT COORDINATION BETWEEN ASMFC AND NEFMC

MS. GAMBLE: At the last meeting the Section had a letter that was submitted by the Commonwealth of Massachusetts Marine Fisheries Advisory Commission, and it was a letter written to the New England Fishery Management Council requesting better coordination in the development of the two amendments.

The Section asked staff to go back and develop a range of options that would fit with the budget that we have for Atlantic herring. I will say that in between the last Section meeting and this meeting, the council did respond to that letter.

The letter said that we are working together, and things are working fine the way we're proceeding was the basic gist of it. I've included it. You guys have the letter. I'm obviously summarizing.

But, anyways, the options that I have created here in front of you are status quo, which is to continue to meet as we have. We do have, however, some overlap between membership of the two groups.

In addition, Lori and I have attended each group's meetings, so there is overlap between the two of us. Option 2 is to have one meeting that would be the council and the section together to talk about all the issues that overlap between state and federal waters to try and come to some agreement. After that meeting, we'd go our separate ways and continue to develop our amendments on our own.

DR. PIERCE: Excuse me, where is that document?

MS. GAMBLE: It was handed out to you.

CHAIRMAN SMITH: It says coordination between ASMFC and NEFMC at the top of the page.

MS. GAMBLE: Option 3 would be to have two meetings with the New England Council. One of those would be prior to approving the document for

public comment. Then the second would be when the section and the oversight committee sit down to select final measures.

The stipulation with that is that the oversight committee is not the final decision-making body for the council. That is the council itself. So while the section may have made some final decisions, there may be a modification of the council's decisions, and then the section would have to come back and review and maybe revise some of their decisions they made.

Option 4 is that the section and the herring oversight committee would meet jointly for every single meeting, and I have to be honest, I don't think we have the budget for that one.

CHAIRMAN SMITH: Okay, you've got four options, one of which staff feels is a non-starter, which is Option 4 because of budget considerations. Is there a suggestion that we take 4 out and leave the other three options in there?

MS. GAMBLE: The point of this little exercise today is to decide how you want to proceed in developing our amendment. We're trying to decide right here, right now, when are we meeting next.

Are we meeting next of our own accord? Are we meeting next in conjunction with the council's oversight committee when we make our final decisions for the document to go forward for public comment?

CHAIRMAN SMITH: Okay, what's your pleasure on this? Now that I understand it, I know what my pleasure is. John Nelson, Gil, David.

MR. NELSON: Mr. Chairman, I guess I'd like to hear does the staff have a preferred option?

MS. GAMBLE: My preference is to do whatever is the pleasure of the Section.

MR. NELSON: Vince, watch out for your job, pal.

CHAIRMAN SMITH: Thrust and parry; thrust and parry. Okay, David Pierce. Looking for a preference here.

DR. PIERCE: My preference is Option 3. I don't like meeting separately since I'm a council member, as are you, Eric, and this becomes a bit embarrassing when I forget what happened at the council meeting because I haven't read the documents because -- you know the story. So let's have as little duplication as

possible, as little aggravation -- minimize the aggravation. So, Option 3 is my preference.

CHAIRMAN SMITH: Okay, Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. Yes, eliminate Option 4. I agree with David. You're right, let's go for Option 3.

CHAIRMAN SMITH: Okay, any disagreement with using Option 3? No disagreement? Vito.

MR. CALOMO: Mr. Chairman, I heard what Megan said and please help me. On the financial problem under Option 4, is that for our travel? Is that the financial problem?

MS. GAMBLE: That is part of it; it's meeting space.

MR. CALOMO: Well, if the New England Council is going to have a meeting, why couldn't they accommodate us? If people like Rhode Island and Massachusetts and Maine -- usually it's held along the borders of Massachusetts, Rhode Island and Maine because we do have a pretty good fishery.

I'd forego my travel pay to be in every meeting that was held by the New England Fisheries Management Council Committee on Herring. I don't have a problem with doing that.

MS. GAMBLE: I guess it's up to the Section, but there is nothing precluding all the members of the Section from attending every council meeting. The question is whether or not it's an official joint meeting. That's up to the Section, if that's what they want.

MR. CALOMO: Well, the burdened one would be New Jersey to travel to some place in even Rhode Island. I think it's very important. I think it's one of the last fisheries that is beneficial to the New England coastline, and I think that I don't have a problem meeting without pay or without travel expenses. Thank you.

CHAIRMAN SMITH: Okay, we're on the verge where everyone thought that Option 3 was the way to go. Vito has a slightly different view. Does it change your thinking, or do you want to stay with Option 3? Okay, I'm seeing Option 3. In the interest of time, if there is no objection?

MS. GAMBLE: I just wanted to comment, since that's the general consensus of the Section, what will happen next is we will send a letter to the New

England Council requesting that this is how we proceed. We don't have their consent on this. We need to ask them if this is acceptable to them, so staff will develop a letter for the chair's signature.

CHAIRMAN SMITH: Okay, thank you. John.

MR. NELSON: Just one last point there. Vince, I think I have to turn to you. The budget plan was for two meetings outside of the Commission meeting, as this notes. If Option 3 is selected, there are four section meetings outside of the meeting week. How are we going to take care of covering that? Was it coming out of somebody's salary or what?

CHAIRMAN SMITH: Vince or Bob.

MR. BEAL: It's coming out of Megan's salary, John.

MR. NELSON: That's fine, I just wanted to make sure, Mr. Chairman.

MR. BEAL: Actually, the meetings for this section, kind of as Vito alluded to, have been coming in relatively inexpensive due to the fact that most of the folks that are traveling are driving.

There is no overnight travel, so we're on track so far to be able to afford the four meetings that are proposed here. So we should be okay, given the budget that we currently have.

MR. NELSON: All right, just a follow up, Mr. Chairman. I would, again, point out that the Commission has adopted an action plan, and meetings are contingent upon the amount of funds available. If the Commission sees that they can do the four meetings within budget, then that's fine.

If they cannot, then I think that they need to just make sure that they make everyone aware that that fourth meeting or third meeting, or whatever it is going to be, would be problematic as far as cost, and that we were going to have to deal with it some other way. So I think you'd need advance notice on that, because we are not changing the action plan at this time.

MR. BEAL: Yes, we will definitely track the budget and see where we are. The one thing that can kind of mess up this potential for affording the four meetings is a couple real expensive plane tickets from the fringes of the Atlantic Herring Section. That could kind of burn through our budget pretty quickly.

CHAIRMAN SMITH: Okay, let's try and conclude our business and stay on time. We've got ten minutes left. We're at other business, and I will note that I've had an addition to other business. I'm going to take it at the end, because it's an issue that we addressed earlier in the document, but if we have the time, we'll talk about it.

OTHER BUSINESS

CHAIRMAN SMITH: The first issue, let me dispense with very briefly. There is no way to sugarcoat this, but let's try and be brief. Massachusetts is under a huge workload. They have been unable to get their compliance report to us, still.

We do need that for the sanctity of the process. I don't believe we ought to go through a compliance finding with all the other stuff we did yesterday on compliance. I would simply urge Massachusetts get that thing done and get it in so we can have the information. Thank you. David.

DR. PIERCE: Yes, thank you, Mr. Chairman. I appreciate the group's understanding. I've been waiting for some information. I finally have that information that I need for the report.

I'll have the report to the Commission's office by the middle of next week. I apologize for the delay. The report will also have the regulations that relate to mid-water trawling so that the chair will feel comforted.

CHAIRMAN SMITH: Thank you. Second item I mentioned briefly before, we have a meeting scheduled for June 15th in Portland to deal with specifications. It's a joint meeting of the council and the section. The agenda is on the back table. Gil Pope had sent an e-mail with questions really relating to limited access and whether we should and how we should —

MR. POPE: Mr. Chairman, a lot of those are moot now because of what we've done. There are only a couple there that relate to a larger issue that need to really be decided at the Policy Board level. The only other thing is I heard Vito is building a big meetinghouse next to his house where they're going to have all the herring meetings now.

MR. CALOMO: I don't have to build it; I have it already. Come on down.

CHAIRMAN SMITH: Okay, and we'll move on. Fourth item then was Pat White had suggested, if you will go back to the document that we just went through, there was a suggestion. We wrestled with this — this is Page 5, the bottom of the objectives.

We tried to find words for the Numbers 9 and 11. Pat has suggested words that maybe would resonate better with people, and I will read them. If you think you like the sound of the words in the context of those two objectives, we could take them as a substitute.

Nine would read, "To maximize domestic use such as lobster bait, sardines and other products for human consumption and encourage value-added product utilization". That would be a substitute for 9 and it would eliminate 11.

MR. AUGUSTINE: We already eliminated 11.

CHAIRMAN SMITH: We eliminated 11 and left 9 as is. Okay, so this is just to modify 9 then. Okay, do you like the addition of "such as lobster bait, sardines and other products for human consumption" added into that objective? Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, just a clarification. The word that we were concerned with was the word "maximize", and is it still inferred that you would maximize herring availability for the three purposes we are talking about other than to develop further utilization of? I think that was the only hangup anybody had in it originally, so if I can get clarification on that we could support this motion.

CHAIRMAN SMITH: Okay, do you want to make it into a motion?

MR. WHITE: Yes, I'll make that as a motion.

MR. CALOMO: I'll second the motion, Mr. Chairman.

CHAIRMAN SMITH: Okay, the motion will be up on the screen in a minute. You just heard it, though. Let's get some debate. Is there any opposition to the motion? Gil.

MR. POPE: No, just so long as it includes not only consumption but all the current uses of herring now, that it doesn't eliminate any.

CHAIRMAN SMITH: Well, it says, "such as".

MR. POPE: Okay, thank you.

CHAIRMAN SMITH: Which is not exclusive. Peter Moore.

MR. MOORE: Thank you, Mr. Chairman. I guess we're all here to watch out for our various interests. If we're going to do this, I think we ought to just say what the majority existing uses are. We've got bait, lobster bait, sardines, whole frozen. I mean, the list could go on and on.

I don't have any problem at all with this, but I guess, yes, we are micromanaging, and I guess it would make us happy if you would put in whole frozen because that's what we're all about. There are three plants doing whole frozen. They're doing a lot of it and more and more.

CHAIRMAN SMITH: It seems to me, "products for human consumption" covers every possible way a human might want to eat the little devils. Thank you. We are five minutes ahead of time. Do you have other business of herring? David Pierce. Oh, we have a motion.

DR. PIERCE: You have a motion. In the interests of my being consistent and not disappointing people regarding my position on sardines, I'm not going to support the motion, because it, again, relates to maximizing the use on sardines, which is a maximizing use of juvenile fish. I'm not going to go over all the old arguments I've made in the past. I just want to be consistent.

CHAIRMAN SMITH: Thank you. Other comments on the motion. Caucus. No need for a caucus. All those in favor, raise your hand; all those opposed; all those opposed; abstentions; nulls. The motion carried. Any other business for herring?

MR. CALOMO: I'd like to make one comment, Mr. Chairman.

CHAIRMAN SMITH: Yes.

MR. CALOMO: I commend the staff and yourself for doing a great job on a very difficult program here. I commend all of you.

CHAIRMAN SMITH: Thank you on behalf of three staff members. Then we are four minutes ahead of time, and striped bass can start on time. Tom Fote. Tom, spoke too soon.

MR. FOTE: I'd like to compliment Eric on running this meeting in a fast and good manner. Thank you, that's what we should be doing.

MR. AUGUSTINE: A real diplomat dictator.

(Whereupon, the meeting was adjourned at 10:43 o'clock a.m. May 25, 2004.)

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