

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

**March 8, 2004  
Radisson Hotel  
Alexandria, Virginia**

## **ATTENDANCE**

### **Board Members**

Lew Flagg, Maine DMR, **Chair**  
Pat White, Maine Gov. Apte.  
Dennis Abbott, proxy for Rep. Blanchard (NH)  
David Pierce, Massachusetts DMF  
Bill Adler, Massachusetts Gov. Apte.  
Gil Pope, Rhode Island Gov. Apte.

Jerry Carvalho, proxy for Representative Naughton (RI)  
Eric Smith, Connecticut DMR  
Bruce Freeman, New Jersey DFG&W  
Tom Fote, New Jersey Gov. Apte.  
Ed Goldman, proxy for Asm. Smith (NJ)

### **Ex-Officio Members**

Matt Cieri, Technical Committee Chair

### **ASMFC Staff**

Megan Gamble  
Vince O'Shea

Robert Beal  
Brad Spear

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## MOTIONS

- 1. Move to refer Issues 6 and 7 to a working committee to develop options taking into account the range of public comments for the Section's further consideration.**

Motion made by Mr. R. White, second by Mr. P. White. Motion passes.

- 2. Move to nominate Eric Smith as vice chair.**

Motion made by Mr. P. White, second by Mr. Abbott. Motion passes without objection.

- 3. Move that the Section support the March 1, 2004 letter from Massachusetts Marine Fisheries Advisory Commission to the NEFMC.**

Motion made by Mr. Freeman, second by Mr. Adler. Motion tabled.

- 4. Move to table until the next Section meeting.**

Motion made by Mr. Fote, second by Mr. P. White. Motion carries.

**ATLANTIC STATES MARINE FISHERIES  
COMMISSION**

**ATLANTIC HERRING SECTION**

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The meeting of the Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Presidential Suite of the Radisson Hotel, Alexandria, Virginia, on Monday, March 8, 2004, and was called to order at 10:06 o'clock a.m. by Chairman Lewis Flagg.

**WELCOME & INTRODUCTIONS**

CHAIRMAN LEWIS FLAGG: Okay, could you please take your seats, and we'll convene the meeting of the Atlantic Herring Section. Okay, first of all, I'd like to apologize to you for the size of the room. We worked with the staff. We tried to get a larger room, but there was none available, so we'll have to do the best we can with what we have here.

I would like to note for the record that we have a quorum of Section members here, and that staff is circulating an attendance roster, so please be sure to sign it. In addition, we have Nanette Redmond here today, who is going to be taking the record. Just to help her out a little bit, when you speak if you could give your name, I think that will be helpful to Nanette.

**BOARD CONSENT**

CHAIRMAN LEWIS FLAGG: You have an agenda before you that was mailed to the Section members. Are there any additions to the agenda, any items that members would like to include? Okay, seeing none, we'll go to the next item, which are the proceedings of the December 15, 2003, meeting.

Those were also mailed to you prior to the meeting. Does anybody have any comments on the December 15<sup>th</sup> minutes? Are there any objections to approving the minutes? Seeing no objections, the minutes are approved as written.

**PUBLIC COMMENT**

CHAIRMAN LEWIS FLAGG: At this time, we will offer the public an opportunity for comment, and we will also, through the course of the meeting, if there are those are in attendance that wish to speak, please raise your hand and I will try to accommodate you as we move through the agenda.

Are there any members of the public that would like to make a comment at this time? Yes, Dick Allen. Dick, could you come up to the microphone, please.

MR. DICK ALLEN: Good morning. My name is Dick Allen, and I'm here representing the Environmental Defense. It's a national organization that represents over 400,000 people nationwide. I'm here to talk just briefly about the quota management option in your Amendment 2.

It was noticeably absent, any discussion of potentially allocating the quota among the competing harvesters in the herring fishery, and I have brought with me letters from two of the significant harvesters in the herring fishery.

Glen Robbins is a purse seiner from Maine, and Peter Mullin owns and operates three vessels in the herring fishery. Both of these fellows have been in the herring fishery for a long time, and they are recommending that you consider individual vessel quotas for the herring fishery.

You are probably aware that the federal FMP is an amendment underway at this point in time, and that does include quota management, quota allocation option. On behalf of Environmental Defense and these fellows that have asked me to submit their letters, I would like to ask that you consider adding a quota allocation option to your Amendment 2. Thanks very much.

CHAIRMAN FLAGG: Thank you, Dick. Other comments from the public at this time? Okay, seeing none, we will proceed to the next agenda item, which is review the public comment on the Amendment 2 PID, and I'm going to turn it over to Megan.

**REVIEW OF PUBLIC COMMENT ON THE  
PUBLIC INFORMATION DOCUMENT FOR  
THE DEVELOPMENT OF AMENDMENT 2**

MS. MEGAN GAMBLE: Thank you, Mr. Chairman. Before I start, I wanted to point out a couple of documents that are on the back table, as well as a

couple of documents that were just handed out, and, hopefully, these documents will be helpful in providing the Commission's Plan Development Team with some direction on the development of Amendment 2.

First, there are two documents from the New England Council. One is a copy of the draft DSEIS for their Amendment 1, and that is in development, so that is a very rough draft, as well as there is another document filled with the council's PDT recommendations on options that should be eliminated from that draft DSEIS.

In addition to that, there is a rather thick document that was just handed out to you that is a compilation of the written comments received on the public information document for the development of Amendment 2.

There is another document on the back table that is a summary of the eight public hearings we held during February on the public information document. And then, finally, another document that was just handed out to you -- it's about seven pages long -- is a summary, or I paraphrased a lot of the comments that were made in the public hearings as well as in the written comments.

I'd like to use this document to walk you through some of the comments that we heard during our public comment period. One last document, there are copies of the public information document on the back table.

What I'm going to show to you up on the slide are the issues as we presented them in the public hearings, but as I just stated, I'm going to be reading off of that seven-page document that's a summary of comments.

As I'm reading them, please keep in mind or start thinking about what kind of direction you want to give to the Plan Development Team. The first issue that was presented in the public information document was goals and objectives.

There was a variety of direction or comments provided to the commission on this issue. The first was that we should use the same set of goals as the New England Council for their Amendment 1. The reason for that was to continue coordination for the best utilization of the resource.

But there was an opposing comment that stated it may be necessary for the commission to use a different set of goals and objectives, because the

fisheries may differ in state waters as opposed to federal waters.

The next portion of this section goes into objectives that should be added, there are some that should be eliminated and then some that should be modified. Let me just remind you that in the public information document, we presented two sets of goals and objectives.

The first was the goals and objectives that appear in the current amendment for state waters, as well as the second is the proposed goals and objectives for Amendment 1 to the federal plan.

There was a suggestion that we add an objective that says the lobster and sardine fishery depend upon access to herring throughout the season; another objective stating to facilitate the Americanization of the fishery; and yet another objective that states to maximize the catch of adult herring in order to provide for long-term sustainable yields.

There was a suggestion that we should eliminate Goal Number 3 of the current amendment, or Objective 8 in the proposed amendment, which reads, "to provide controlled opportunities for fishermen and vessels in other Mid-Atlantic and New England fisheries". I provide a number of reasons why that suggestion to eliminate that goal was made.

The next is to eliminate Objective Number 9 for the current amendment, which states, "to maximize the domestic use and encourage value-added product utilization". The justification for that was that it should be up to the industry to determine what is the best market for herring.

There is a suggestion to modify Objective 4 to the proposed Amendment 1. It currently states, "Provide for the orderly development of the herring fishery in inshore and offshore areas, taking into account the viability of current and historical participants in the fishery". The suggestion was to change that so that it reads, "provide long-term fishing rights subject to resource availability to current and historical participants in the fishery".

Yet another suggestion to modify Objective 6 of the proposed amendment, which states, "prevent excess capacity in the harvesting sector", and that would be changed to state, "establish a management system that allows the harvesting sector to match harvesting capacity to the available resource".

Modify Objective Number 9 to the proposed

amendment so that it includes a phrase that reads, "herring industry economics" among the other objectives in that Objective Number 9. Objective Number 5 in the current amendment, the comment was that we need to emphasize the importance of real-time management with Canada.

Then another couple of comments were that we need a goal that emphasizes the importance of herring as a forage species, maybe another goal to address discards. There was a comment that the PID doesn't include any bio-economic principles that would be necessary to meet the goals and objectives.

Some of the goals and objectives may interfere with the herring market by placing emphasis on the importance of the lobster bait market or placing restrictions on the harvesting of juvenile fish.

There were numerous comments to the effect of we need to account for the historical participation of purse seiners and fixed-gear fishermen. If you recall at the last meeting, Dr. Pierce asked that we include a question about juvenile fish. We did receive some comments on that and from both sides of the issue.

One was that there should be no restrictions placed on harvesting juvenile fish. Actually, I'm sorry, that should say "should place restrictions on the harvest of juvenile fish", because it's no longer a priority to canners; and yet in Maine we heard that restrictions on juvenile fish will adversely impact the sardine industry, as juvenile fish are important to the Maine herring industry.

There was another suggestion that we place herring restrictions only on the area on the Schoodic Ridge to Mount Desert area, and as you can see, there are a number of suggestions on what those restrictions should be.

The next issue is Issue Number 2, maximum sustainable yield. The document provides a couple of different estimates for MSY from a couple of different sources. If you will recall, there hasn't been any sort of resolution or agreement on what the best estimate of MSY is, so we presented them to the public and asked for some input.

We heard that the commission should use 200,000 metric tons. It seems to be the middle ground. We also heard that we should eliminate 200,000 metric tons. We should use the estimate of 222,000 metric tons, and that's based on the best available science.

There is some uncertainty associated with the

estimation that should be dealt with by using a precautionary approach when setting OY, as well as using a risk analysis for setting the TACs during the annual specification process.

Yet another suggestion to use an MSY that falls between 222,000 to 226,000 metric tons. Then we have two options for new estimates of MSY. One is 226 and that is based on the historical biomass of 1.13 million metric tons as opposed to the rounded-down estimate of MSY, which is based on 1 million metric tons of historical biomass.

The 200,000 metric tons is the estimate that was provided by the New England Council's PDT. There was another suggestion that we add an option of 125,000 metric tons for MSY. That was in an effort to be more conservative.

Again, we had from two different sides weighing in, one saying that we should use the Canadian VPA estimate in order to be more conservative, and yet another saying that we should eliminate the Canadian VPA because of a couple of problems associated with that stock assessment.

Another member of the public suggested that we use the same MSY value as the New England Council. Then we had yet another suggestion that we don't set a numerical value for MSY at this point, and that numerical value should be set during the annual specification process.

Someone suggested that we should not be posing this question to the public, that it should be based purely on science. Finally under this issue, it states that MSY should not be devised -- or the FMP should not be devised to let capacity grow to the point where it matches maximum sustainable yield.

The next one is an easier one or shorter, I should say. Issue Number 3, management area boundaries; there was support for making the changes proposed in the public information document. Those suggestions came out of the last stock assessment that went through the TRAC.

In addition to making those suggested changes, there was also the suggestion that we remove the Area 1A-1B boundary. There were also numerous people speaking against the management area boundary changes, because we need a lot more information before we go making these changes in order to understand the implications of these changes.

There is concern that this boundary change could

influence sharing with Canada, and there was a suggestion that the managers should sit down with industry to fully understand the unintended consequences of changing the management area boundaries. Again, that has to do with sharing the resource with Canada. That's it for management area boundaries.

The next issue was spawning area restrictions. There was support for maintaining the spawning area restrictions, as they currently exist in the amendment. There is some suggestion that we need more information in order to identify more discrete spawning areas.

There was the suggestion that we modify the provisions for the spawning area restrictions so that there is more flexibility. The spawning events occur outside the windows that are currently set in the amendment, so the Section should think about providing more flexibility to the duration of the spawning closures, having the ability to extend them beyond the period set.

There was also the suggestion that we need to have uniform or consistent spawning restrictions in all the states. There was the suggestion that we have a year-round closure on spawned herring but still allowing that 20 percent tolerance, so we would prohibit the possession of Stage 5 and 6 but allow the 20 percent tolerance all year.

Then on the opposing side, that we should eliminate the 20 percent tolerance during the closures. In Maine we heard that we should reinstate the East Cutler fixed-gear exemption.

Apparently, this was in place prior to Amendment 1 but was eliminated in order to comply with Amendment 1. There were some strong feelings about putting that back into the amendment so that it could occur.

There were comments that we need a spawning closure for Georges Bank; and that we should ban mid-water trawlers from the spawning grounds; and then that we should have observer coverage on all boats operating on the spawning grounds in order to get an idea of what is being caught.

We heard that there should be an exemption to the Eastern Maine fixed-gear fishermen until Canada puts in some regulations that are complementary to our spawning restrictions. There was also the statement that these spawning area restrictions are counter-productive to the Downeast Maine

fishermen, because they can't take any fish, and yet they're being taken by the Canadian fishermen, so where is the conservation occurring?

There is concern about the mortality associated with trawlers towing through an aggregation of herring, and then when they dump the herring, there is the feeling that these spawned herring die. There is concern that the spawning closures do not adequately protect the spawned herring, concern that the managers should discuss -- again, this is very similar to the management area boundaries -- that you should discuss with industry the implications of changing the spawning area boundaries. There may be some unintended consequences, again.

Someone posed a question of should there be a different percent tolerance associated with the spawning area restrictions, and industry commented to that that anything less than 20 percent just would not work. We need a better way to inform the public that these spawning restrictions are taking place and a better way to implement those closures.

The final two comments were that we should convene a panel of experts to provide guidance on the impact of fishing on the behavior of spawned herring, and that this panel of experts should also review the spawning area boundaries on a regular basis, and that review should be based on the hydro-acoustic survey.

Issue Number 5 is internal water processing. Again, we heard both sides of this issue, that, yes, we should keep IWPs as an option, and that was basically because if the domestic herring market is poor, the IWPs could offer another opportunity for the domestic industry to sell, but there should be a priority given to the sardine canneries and the lobster bait market, then the foreign markets, if there is anything left.

The other side of the issue was, no, there shouldn't be any IWPs. Someone stated that this should definitely not occur in Area 1A, which it hasn't for the past several years. Then there was the feeling that it shouldn't occur in any area unless the shore-side processors cannot keep up with the catch rates. Another person stated that IWPs are not necessary to achieve optimum yield.

The next one is a heavy issue, which is limited access, so bear with me as I go through these. The first set of comments were based on implementing a limited access program in Area 1A only, and that that should be based on the 1999 control date and documented history of participation in the fishery in



Area 1A.

One commenter provided a proposal on what that limited access program should look like, that it should be based on longevity in the fishery or participation in the fishery as well as tons landed. He suggested that there would be a Class 1 permit and if, in 1998, they landed at least 1,000 metric tons or greater and also had a history of fishing in Area 1A, they would qualify for that permit.

The Class 2 permit would be based on a fisherman that is not currently fishing but has history prior to 1999. In Areas 2 and 3, you should set a separate control date for the current participants. A limited access program should only occur if it does not push out smaller operators. We heard that comment over and over again during the public comment period.

Also, you should develop a limited access program for Area 2 and 3 that would be based on a trigger to initiate that program, so there would be a separate control date from Area 1A. Another commenter felt that they just can't justify a limited access program in areas other than Area 1A at this time.

There were some qualifiers. If there is a limited access program, that the qualification criteria should go back to the 1980s so that the fixed-gear fishermen and the purse seiners can participate in this fishery.

There are some people who felt that the fixed gears should be exempt from a limited access program. The program should consider all gear types and not be based on landings, rather, "any way a fisherman can prove their intent to remain in the fishery".

Impacts need to be based on a state-by-state, because the landings differ in each state. You should consider using an incidental permit and an open access incidental catch allowance.

On the other side, there should be no limited access program. There is concern about over capacity, that over capacity has been exaggerated for this fishery. There was also the proposal, as you heard earlier in this meeting, for IFQs.

The comment was that a limited access program would not prevent over-capitalization and will conflict with achieving other objectives in the amendment. We should consider managing the fishery with individual fishing quotas instead.

IFQs would eliminate latent effort, which acts as a check-and-balance in the market, increasing prices in

the market when the conditions are right. Qualifying fishermen are given a monopoly without further conserving the stock.

Complete closures would be preferable to a limited access program, because the spawning areas are designed to minimize disruptions to spawning and allow a separate incidental catch -- incidental permit, sorry.

There were some concerns about the limited access program. As I stated earlier, the fishery has different characteristics in each state so a limited access program would need to be tailored to meet the different characteristics of those fisheries.

Again, there was a concern that the small boats need to still be able to operate in this fishery. They didn't want it to be turned over to just a dozen large boats. There is concern about the limited access program interfering with the mackerel fishery.

Finally, if there were no state water limited access program, any federal plan to control capacity would be undermined. Two more comments on this issue, that historical catch levels in some states are significant and could impact the effectiveness of the federal plan. And then, finally, we should work closely with the New England Council to determine if the impacts of a federal limited access program, what that impact would be to the state waters fisheries.

The next issue is Issue Number 7, effort controls. There was some support for effort controls, anywhere from using vessel upgrade restrictions to limiting horsepower, to using effort controls in combination with the limited access program, but those effort controls should be the days out that we currently use, along with the 165-foot maximum vessel restriction and the horsepower restrictions.

Another commenter said we should stay with the 165-foot maximum, but maybe we should consider going down to 110 feet, but grand-fathering in larger vessels. We should consider restricting Area 1A to night fishing only or restricting Area 1 to a purse seine only area.

We could shift to days out to be more complementary with some of the management plans that the New England Council uses or has; should consider using layover days to be more flexible, because layover days will allow an uninterrupted supply to the processors, and days out may exacerbate the race to fish.

There were several comments on how we currently implement days out and suggestions on how that should be changed, that we should shift the start date to 6:00 p.m. on Thursday and it should last through 6:00 p.m. on Saturday.

The justification for that was that the lobster boats don't fish on Sundays, so the herring boats need to go out and fish on Sunday in order to supply the lobster boats on Monday.

Then there was another suggestion that we are not currently implementing days out as it is written into the amendment, so days out should be modified to reflect how it actually works.

There was a suggestion that we should shift the fishing year to January 1<sup>st</sup> and then use two days out all year long. There were several comments that the state should strive for consistency in implementing the days out provision, because it has been causing enforcement difficulties.

There was some support for the current seasonal split in Area 1A plus the days out. They think that seems to be working. There was concern about using days out in other areas, because it may impact the mackerel vessels because herring bycatch is inevitable.

Finally, the commission should continue giving the fixed-gear fishermen an exemption from days out. The last comments on effort controls were that there should not be any additional ones. The vessel upgrade restrictions only compromise safety. Limiting effort creates inefficiencies in the fishery and may conflict with the efficiencies of other fisheries.

The last two comments were that there are way too many variables for effort, and we would not be able to prevent over-capitalization. Finally, there is no scientific evidence to support the development of further temporal and spatial controls. That was something we added at the very end of the meeting, the last meeting the Section had.

Fixed-gear fishermen, a lot of these fixed-gear fisheries, we heard a lot of these already, but I consolidated them under the heading since we had it in the PID. We heard that fixed-gear fishermen should have exemptions for limited access for days out for the VMS and for spawning restrictions.

We also heard that there should be no special exemptions or separate allocations for a fixed-gear

fisherman. Fixed-gear fishermen should not be required to obtain a federal permit. Again, this is a repeat from before, that we should reinstate the East of Cutler spawning exemption and attribute their catch to the 20,000 metric tons that are currently attributed to the New Brunswick weir fishery.

In New Jersey we heard that there are some fixed-gear fishermen down there to consider, and what they really need is a continuous supply year-round. It's a small amount that they require, so they suggested we allow for a daily catch limit of 400 pounds.

There was also the suggestion that we should stop referring to just Downeast fixed-gear fishermen in the amendment. We should be more inclusive of the fixed-gear fishermen that are operating in other areas.

If we wanted to collect some information for a limited access program for fixed-gear fishermen, there was a suggestion that to obtain a license, we would make it a requirement to show gear and landing documentation in order to prove history. Also, that weirs are licensed and bonded in local towns, so that should help establish some sort of history for the fixed-gear fishermen.

The next issue was forage. Again, we heard both sides of the issue that, yes, the FMP adequately addresses forage already and there is no need for any additional considerations, but we also heard that, no, the FMP does not adequately address forage, and that we should consider the potential growth of the predatory populations and their herring forage needs.

We also heard that we should alter the biological targets and the fishing practices. Some suggestions were that we lower the TAC, limit gear, and restrict selling to foreign markets. Also, to deal with forage, consider that the herring removals impact the cod, haddock, tuna, striped bass and marine mammals.

There is a suggestion that we increase the consideration of the herring's importance in the whole ecosystem. Finally, if we were to move to an ITQ or IFQ system, that a forage IFQ could be used in order to account for herring.

The next issue is research set-asides. Again, we heard both sides of the issue. Yes, we should have a research set-aside, and maybe a small percentage of the cap should be set-aside, about 2,000 metric tons or 100 metric tons per trip.

There was a suggestion that research set-asides should only be allowed when the fishery is open.

Then there was another suggestion that research set-asides could be part of an incidental catch allocation.

There was also support of research set-asides, because we need to know more about the mixing rates between the spawning aggregations and the spawning areas. Again, the suggestion for the 2,000 metric tons set-aside for Area 1A only, and then tied to that would be that if they didn't use all of that set-aside by November 1<sup>st</sup> or December 1<sup>st</sup> it would revert back to the Area 1 TAC.

These research set-asides should be as flexible as possible. The allocations could be set during the annual specification process. There should be a priority given to the mixing and the tagging programs. The commission should support the current on-going U.S.-Canadian tagging program.

Finally, no, the other side of this is that research set-asides are not needed at this time, because the cost of administration and implementation is too high for this low-valued species. The industry would prefer to work cooperatively with the state and federal and private entities and don't feel that the commission needs to be involved.

Issue Number 11, bycatch and monitoring. There were a lot of comments about observer coverage. We heard from one group that there should be 20 percent observer coverage at all times. Then if these vessels are operating on the groundfish closed areas, it should be 100 percent observer coverage.

There was a comment that the commission does need a bycatch-monitoring program in order to better understand the kind and the degree of bycatch occurring in state waters. There was also a suggestion for a 75-mile coastal buffer zone that would ban the mid-water trawlers.

And then, finally, that bycatch or a bycatch monitoring program would not be needed, because it's not significant enough in state waters to be addressed. We should just let the federal amendment address that. While we don't need one, the commission should support and endorse Maine DMR's bycatch monitoring in the sardine plants.

There was also the suggestion that we need to better train law enforcement to identify the catch in herring tows. And then finally -- bear with me, we're almost done -- three more issues that were identified that weren't necessarily in the PID, some comments on management.

We heard from several people that we need to manage herring as an entire stock, and that means co-managing with Canada; that this is important in order to ensure a continued supply to the sardine industry and the lobster bait market. Tied to this, was the need for real-time management.

There was a lot of frustration about access to herring meetings. This came out of the Maine public hearings. There was also concern about the lack of consensus at the TRAC. Maybe we need to change the assessment process, and there was also encouragement for another peer review of the stock assessment.

There is a proposal to change the start of the fishing year from January 1<sup>st</sup> to June 1<sup>st</sup>. I'll just note that is being considered in the New England Council's Amendment 1. There is some frustration because of the VMS requirements, because they are not being used or are unavailable to enforcement, so there was a suggestion that we need to change this requirement or eliminate the requirement to have a VMS at all.

There was the suggestion that we incorporate the concept of maximum economic yield. The final comment was some frustration because there was no public hearing in New York. This individual pointed out that there are several New York fishermen without federal permits that are fishing for herring from November to March, because it's the only species available at that time.

This catch information is being gathered through the VTR, but he feels as though no one is looking at it, and they are concerned about losing their right to fish.

Gear conflicts. We heard a lot of this at public hearings as well as through the public written comments. To prohibit trawlers -- and there are several different suggestions of where those trawlers should be prohibited from, such as Jeffrey's Ledge, such as state waters all year around, Area 1A in order to complement Canada in New Brunswick and Nova Scotia.

Trawlers should be prohibited from closed groundfish areas. They should be prohibited from operating during April to November; therefore, they would have a winter fishery instead. We should create a purse seine-only area east of 69 degrees and north of 43 degrees.

The last comment on this was that we should not prohibit trawlers. It's not necessary for the interstate plan, because many of the states already ban trawlers

from their waters.

There is a need for a clear definition of mid-water trawlers in order to help enforcement. Finally on this issue, the pearlescent plants commented that they couldn't get scales from trawlers. They need a viable raw material supply from the purse seiners and the fixed gears.

Last issue, the mackerel fishery. There is concern about giving consideration to the mackerel industry, because they don't want us to increase the number of vessels operating in Area 1A. There was a comment that we need to improve the coordination with mackerel management.

Finally, any allowances given to the mackerel fishery should be limited to Areas 2 and 3. That concludes my summary of the public comments.

CHAIRMAN FLAGG: Okay, thank you, Megan, for that very comprehensive review of the PID comments. Are there questions? Yes, David Pierce.

#### **DIRECTION ON THE DEVELOPMENT OF AMENDMENT 2**

DR. DAVID PIERCE: Well, Mr. Chairman, this is more of a question for you. Before I ask the question, I'm going to comment regarding Megan's presentation. I was appreciative of Megan coming to Massachusetts to handle the public hearing for us. I mean, she did a fine job. This certainly is a lot of material to go through.

We have now an hour and fifteen minutes, Mr. Chairman, so we need to get some guidance from you as to how we should proceed. This is obviously an important meeting to give the staff some guidance as to where to go with this particular initiative.

I'll comment that it's interesting that we have two hours for this particular meeting to deal with state fisheries management issues as it relates to the herring fishery; and just recently, last week, the New England Council devoted two full days to sea herring management. So there is a contrast, a stark contrast, and it's of concern to me.

However, we are now working with an hour and fifteen minutes, and I would suggest, Mr. Chairman, that it would make sense for us to focus on a few things in order to give Megan and the rest of the staff some indication as to what needs to be the focus. After being at the public hearing, listening to

everything that was said and after reading this material, I think it's important for us to -- and knowing what is happening with the New England Council -- it's important for us, I think, as a section to ask some very specific questions and then see if the staff can put together some concise answers for us.

The first one would be what are we doing? What are the states doing or might we do that will hinder the effectiveness of the amendment to the Council's plan, Amendment Number -- it's 2 isn't it? I lose track already.

Anyway, what are we doing now, and what might we do to hinder the Council plan? We need to avoid that, obviously, so let's focus on that. In addition, in order to make sure that the individual state concerns are adequately addressed by the Council, we need to determine are there any unique state concerns that the federal plan must not ignore.

We don't want federal measures to interfere with any very legitimate state initiatives that we may want to undertake. So, to my way of thinking, those are two of the principal questions that we should focus on.

I'll readily admit that I'm suffering a little bit from information overload, and I'm biased to some extent, maybe to a great extent, by what is happening with the New England Council that has already made very significant progress with the development of Amendment Number 1 to its plan, from effort controls to looking at the biological reference points. I mean, you name it, this particular document covers a lot of ground.

But what we need to do, I suppose, in addition to being sensitive to those Council concerns, is to focus on a number of other issues that were raised at the public hearing. Those issues I think relate to specific fixed-gear concerns.

What are those concerns of fixed-gear fishermen in the Mid-Atlantic and elsewhere, certainly the state of Maine? What are they? Let's make sure we know what they are, and in doing so we'll prevent the New England Council from taking action that might prevent us from dealing with those specific fixed-gear concerns that are for state waters' fisheries.

The bait demand, clearly, there is a big demand for bait. That was emphasized at the public hearing for lobster fishery in particular, tuna, of course, as well. Let's make sure that whatever the Council does, that those actions don't interfere with the need for us to meet that bait demand.

Protect spawning fish. We have been, the states in particular, this Section, certainly, has been first and foremost with regard to initiatives to protect spawning fish. The federal government doesn't deal with spawning fish. They abandoned that concept a while ago.

Maybe they'll get into it now, but I suspect not, so how can we better improve measures for the protection of spawning fish? Are there some allocation concerns certainly that are specific to the states?

We've heard them and quite a number of them at the public hearings, so we need to make sure that the Council is aware of those specific allocation concerns, and once again, through Amendment 1, does not preempt our ability to deal with those concerns.

Mid-water trawling in state waters, trawling in state waters, that's another specific concern we can address. The staff needs to look into that as well as the gear conflict issue. So those are some of the issues, I think, that are very specific to us, the states, and that dovetail to some extent with what is happening in federal waters.

So those are the questions, and those are some of the issues, Mr. Chairman, and I hope we can do what we need to do in an hour and, well, an hour and five minutes now, I guess.

CHAIRMAN FLAGG: Thank you, David, you make some good points. I think one of the points that you brought up, which I think is particularly relevant for the Section, is how can the Section influence the federal process so that states' concerns in the EEZ fisheries are also addressed.

I think that's a really important issue that we need to address, but our primary purpose is to provide direction to the staff in the development of this Draft Amendment 2, and I'm going to ask Megan if she wants to make any comments relative to what the staff needs.

MS. GAMBLE: Well, I just want to state that I wholeheartedly sympathize with David's comments that this is information overload. Our public comment period ended on Friday, so this was my weekend.

I tried the best I could to pull out the directions that we actually received from the public comments in order to, hopefully, focus the direction of the Section.

But what I did want to tell you is I realize that our time is short today.

My hope would be that you guys give me as much direction as possible, so that I can take this back to the Plan Development Team to work with them on starting a draft. We do have quite a bit of time because we're trying to walk in step with the Council's development of their Amendment 1.

Right now it looks as though they are not going to approve that amendment until sometime this fall, so we have quite a bit of time to work with. So, if you guys give me something to go with today, the Plan Development Team will go and get started on the draft amendment.

I would expect that it would be feasible for the Section to meet between now and the fall in order to take a look at a draft before we go ahead and approve it. At that point, you guys can look at what we started, provide further direction, provide modifications, and we can go from there.

CHAIRMAN FLAGG: Yes, one of the thoughts that I had been thinking about in terms of last week's Herring Committee meeting, and that is that it appears now that the committee is moving more toward a process-oriented amendment to basically set up a system whereby through the annual specification process, many of the issues in terms of allocating TACs, in terms of monitoring bycatch and all of these other issues would be dealt with, and the accommodation for the mackerel fishery and so forth would be dealt with in the annual specification process, which would be fairly lengthy because of the need to get all the Council members up to speed on what is being proposed for annual specifications for the following year.

It seems to me, one of the things that we need to do at this level, if, in fact, that is how that comes out, is to make sure that the section and that the Technical Committee are fully integrated into the process, so that there is a coordinated process between the Council and the Section in terms of establishing the annual specifications, if, in fact, that's the way the Council goes.

So, I see that as a real need in terms of trying to establish a coordinated process that will mesh the activities of the Section with those of the Council in terms of the annual specification- setting process. Other comments? Yes, Tom and Bruce.

MR. THOMAS FOTE: I'm at a slight disadvantage

with David, because I didn't sit through the New England Council, having to sit through all these meetings, so I don't have the overload yet of information that I need to look at.

One of the things I was curious about is why we're getting into limited access? When we deal with limited access at the Commission, it basically is handled by the state or a council basically looking at limited access.

I mean, the state makes the decision. When we do it on striped bass, there is an IFQ in place, but that's done by the state of Virginia independently of the commission plan.

I really think that should be left to the states or the council to basically decide, and we shouldn't put a lot of time and effort into that. That's not really our goal here. It's really to let the states direct how their fisheries are run.

If the federal government wants to put an IFQ in federal waters, let them do that, but we shouldn't be spending a lot of time on this controversial subject. I can see us getting in a boondoggle on it, so I'd like to just basically table that part of it and let the council and the individual states take care of it.

CHAIRMAN FLAGG: Thanks, Tom, those are good points. Considering the fact that these area fisheries now are controlled by hard TACs, there is a mechanism to conserve the resource; and in terms of the state waters program, as long as they're constrained by whatever the area TACs are, obviously, it takes care of the resource issue. Bruce Freeman.

MR. BRUCE FREEMAN: Thank you, Mr. Chairman. I was going to call it a "privilege", I'm not sure that's the word, of being a member of the Herring Committee, which comprises both the New England Council and the Mid-Atlantic Council -- and, Lew, you're certainly on that committee as well, representing New England and the Mid-Atlantic.

The fact that we've had that two-day meeting in Portland, it seems to me, in June the council process will repeat the same process that Megan just summarized and will address or at least comment on these issues. That will take place in June, at least as I understand the schedule.

Then by early July, those comments will be given back to the committee and then to the council. So, it appears to me that by July of this year, the council process will be in the same situation as we are at the

present time.

I'm somewhat perplexed as to how we can move forward and not waste time until New England at least has its public hearings, and we review their comments as well. In my opinion, Lew, if we essentially indicate to staff to move forward, they're going to spend time, which may be negated by something the Council does.

The problem I see is having two plans that are very different, for example, limited entry. If, one, the Commission determines there's no need for it and the Council determines there is, obviously, that's going to create a tremendous problem.

Some of these very issues that we essentially summarized here will be discussed by the Council, but depending on their position, I don't see how we can productively move forward, unless someone sees much more in this than I do.

It seems until those public hearings are completed, and we have some feeling for how we move forward, the Plan Development Team, I don't really see spending much time at this stage.

One other point, Lew, relative to the committee meeting. As you indicate, the committee wants to look at some of these issues during the specification period. Now if the Council determines that is something they don't agree with and they want to put it in the plan, then that will have different repercussions than if they deal with it in the annual specifications. So, I'm just perplexed as to how we move forward, because there are so many unknowns here.

CHAIRMAN FLAGG: Eric Smith.

MR. ERIC SMITH: Thank you. I agree with all of what has been said about the overload and things, but I think we need to charge ahead the best we can now, or in June we'll just get behind the curve instead of being in front of it.

I kind of agree with David Pierce that things that we can do as a commission as opposed to trying to substitute our judgment or decide something that might be more of an EEZ-type fishery, maybe that's the best place to focus in the near term.

I also want to rise to the point that I actually think we should develop a module on IFQs for this fishery. I mean, I can't think -- there are very few fisheries I can think of that have better attributes to do it that

way.

Now having said that, if there's industry guys in the room that just saw visions of sugarplums dance in front of their face, I would also add quickly that my view of an IFQ system would have sidebars on it that would prevent the accumulation of shares in a few units, not radically change the fishery, but start out in managing it in a way that was better for the herring fishery long term.

I say that with the sinking feeling that there may be Connecticut boats that would never be in there then unless they had the wherewithal to buy shares, because a lot of them haven't been involved in the fishery.

I think that something that we usually -- I know what Tom said, it's very controversial. He's right, but that doesn't mean it wouldn't be a good fit for this kind of resource and the kind of fishery that this is.

That's something, I think, we ought to give more than just a quick nod to and move on. Maybe that's something that could be developed through the course of the spring to see -- not just as a state waters thing but also as a herring fishery. Could we define the parameters of an IFQ system that might be attractive enough that maybe the council would pick up on it?

CHAIRMAN FLAGG: Thanks, Eric, for those comments. I can relate to you what happened last week relative to the Herring Committee's view of IFQs, and there was a lot of very strong sentiment toward not including it in this amendment.

The feeling was that it was such a weighty issue that it would take a very long time to come up with a workable plan. There was very great concern about slowing the process of implementing this amendment.

The folks on the committee did leave the door open to future consideration. They felt that it did have some merit, and that it should be considered in the future. Some people thought that if, in fact, IFQs were to be considered, that it ought to be a focused amendment process that only dealt with that issue, because they felt it was a very, very contentious and a very difficult issue to come to grips with. Gil Pope.

MR. GIL POPE: Thank you, Mr. Chairman. I have to agree with Tom Fote. It's one of these things where if a particular state feels that it's necessary for them to do this and it's that important an issue, or

that in Connecticut that it would be a perfect thing to do, then I welcome that for each state, to pursue that on their own and to bring that forward to the board maybe at another time.

But for this particular amendment, with the little time that we have, I looked at one through five as something that we should maybe concentrate on at this particular point. Six is controversial, seven is effort controls, which is very nebulous to me in a lot of ways and another thing we could spend a lot of time on.

Nine is controversial, ten is the research set-asides. It seems like those are the kind of things that we could work on at a later time and that we don't necessarily have to decide on everything here at once.

Even though it's already been out to public comment, it seems like those three or four issues are things that maybe we could talk about over a different time period. Definitely include eleven and one through five for sure. I'd even go so far as to, in my mind, want to eliminate six and make a motion to that effect later on. Thank you.

CHAIRMAN FLAGG: Okay, thanks, Gil. Yes, Bill Adler and then David Pierce and then Dennis.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. I agree there is not enough time here to come up with a document, per se, but I still am confused as to who is leading whom here. I don't know whether we're supposed to wait for the council or, God forbid, maybe the council wait for us.

I think somewhat what Gil was pointing at, is I wonder if we should at least identify issues which should be the prerogative of the states and therefore under our amendments; and those which should be the prerogative of the federal government and which issues are a combination that both entities must concentrate on.

Otherwise, we end up with the states wanting to do one thing and the feds saying, well, you can't do it, or you can only do it in your little pool because we're against that in our plan. I don't know if there is a way to sort of separate them out like we should control this, not them; they should control this, not us; and then some issues which we both should have a say in.

As far as who is leading who, I'm wondering if we work on this between now and July if -- does the council perhaps maybe take a lead from us maybe instead of us taking a lead from them?

CHAIRMAN FLAGG: David Pierce.

DR. PIERCE: All right, Mr. Chairman, I've got a couple of suggestions for guidance to the Plan Development Team. It relates to our proposed objectives we brought to public hearing and a couple of other initiatives that I think would warrant further exploration by the Plan Development Team. They can come back to us and then advise us appropriately.

The first issue that I would like the Plan Development Team to focus on would be consistent with Objective 4 in our own ASMFC list of proposed objectives. That's on Page 10 of the public information document. Specifically, it's to provide adequate protection for spawning herring and prevent damage to herring egg beds.

As I said before, the state does this. The federal government is not involved in protecting spawning fish, we are. I would appreciate if the Plan Development Team could provide us with its own assessment of whether what we have in our plan right now does indeed provide adequate protection for spawning herring and prevent damage to herring egg beds. If not, then what sorts of measures might be useful for us to accomplish that particular objective, which I continue to feel is quite an important one.

CHAIRMAN FLAGG: Okay, David, just a moment. Does anybody object to David's suggestion relative to that issue? Thank you, okay.

DR. PIERCE: Okay, another direction for the Plan Development Team would relate to one of the questions -- actually it's on Page 11 of the information document, towards the bottom.

After Number 11 in the long list, there is a statement that reads, "In addition to these two sets of goals and objectives, the Atlantic Herring Section acknowledges the vital role Atlantic herring plays as bait for the lobster fishery. The Section may consider incorporating an objective that identifies the lobster industry's dependence on herring as a bait source".

I would suggest that we entertain another objective for our amendment and then charge the Plan Development Team to assist us with identification of specific strategies that would enable us to achieve that objective.

That objective would be -- well, I would suggest perhaps providing a steady supply of herring as a bait source for the lobster fishery. That would seem to be

an appropriate objective. It's a natural follow-up to what we brought to public hearing.

It's critical for us to make sure that the council is aware of this objective that we have so that we don't end up with a council plan that in some way prevents us from maintaining a steady supply of herring as a bait source for the lobster fishery. That would be my suggestion for another charge tied to an adoption of that objective. Then I have one other suggestion, Mr. Chairman.

CHAIRMAN FLAGG: Okay, any objection to that suggestion from David? Seeing none, okay, David, the third one.

DR. PIERCE: Okay, and this is one you're going to love, Mr. Chairman. It relates to juvenile fish. I'm not rubbing salt in old wounds. The wounds have healed. The scars have actually faded and are almost gone. I can't help but reflect back on my many years of immersion in sea herring management and the juvenile fishery, the catch of juvenile fish.

I understand that the juvenile fishery has waned dramatically; however, I keep hearing from sources in the industry that the catch of juvenile fish is escalating. I don't know to what extent.

Maybe it won't go beyond a certain number, and there is no need to be concerned. I would appreciate and I think other would appreciate it if we have the Plan Development Team explore this issue. The issue, I can frame it in the form of a question.

If the absence of adults in the Gulf of Maine promotes a fishery on juvenile fish, should any measures be implemented to control or restrain that fishery on juveniles?

That's what I'm proposing that we look into, and I only say that because from what I heard at the public hearings, from what I've read, there is concern that the abundance of sea herring in the Gulf of Maine may either be down, and we're not assessing it appropriately, or there has been a distributional change; and for whatever reason -- temperature, who knows -- they are not in the Gulf of Maine for as long as they used to be.

If that indeed is a correct description of what is happening in the Gulf of Maine now, and my understanding of the increased interest of juvenile fish to be used as bait, for example, if my perception is correct, then we do need to have additional information regarding those issues, and we do need to



pursue, at least explore the possibility of or having some restraint on the fishery on juvenile fish.

That is my final suggestion for a charge to the committee, but before I let the microphone go, I'll also suggest that we delete from the list of ASMFC objectives, Number 11. I can't recall why 11 was put in there to begin with.

I don't recall any support for Number 11 from the public hearing process. I stand to be corrected if indeed there was support for it, or if indeed there is some good rationale for us having that in there still.

I don't know what that means, and I don't want to have it as an objective when it may be something we can't achieve because we don't know what we're trying to address. Maybe somebody else does, but I don't, so those are my suggestions, Mr. Chairman.

CHAIRMAN FLAGG: Just a clarification, David, are you talking about Issue Number 11?

DR. PIERCE: Objective Number 11, ASMFC Amendment 1, Objective 11, Page 10, to facilitate the development of biologically and environmentally sound aquaculture projects in the EEZ that are comparable with traditional fisheries in the New England Region, given that some projects may not occur in federal waters without modifying one or more council fishery management plans.

CHAIRMAN FLAGG: Okay, thanks, David. Megan, you had a question. Megan had a question for clarification.

MS. GAMBLE: I just wanted to get some clarification. I appreciate all that direction that we just got from Dr. Pierce. Does that mean that you are in support of maintaining the current goals and objectives as opposed to using the goals and objectives proposed for Amendment 1 to the federal plan?

DR. PIERCE: I favor the Amendment 1 objectives that we have on Page 10 with the addition of the objective that I noted and the deletion of Number 11.

CHAIRMAN FLAGG: Does anybody else have any? Yes, Eric, to that issue.

MR. SMITH: Yes, it is. It seems like the longer we can go and maintain consistency with what the council plan does, the better off we are. Then at those places we have to diverge because the fixed-gear fishery, for example, is a state waters issue and

so forth, then we diverge because there is a reason to.

I'm a little chagrined that we would not try and marry our additional goals and objective needs to the council's one; and where we need to recommend against or delete from that list anything that we don't think is a good idea for our particular plan.

I haven't put them up and mapped them side-by-side to see where they fit and where they don't, so I can't really speak maybe as well as David can on this. He must have a reason for supporting the ASMFC Amendment 1 list as opposed to the New England Council list, but it just seems to me we're on thin ice to proceed that way. I was angling for him to say here's why.

CHAIRMAN FLAGG: To that point, David.

DR. PIERCE: Well, I think ASMFC's goals and objectives are more carefully crafted and — no. For example, I mean, we could blend these two sets because there is a lot of overlap, as you've already indicated. I think one of the reasons why I like our list is that we have in our list Number 10, which is not in the council list, at least I don't think it is.

Number 4 on the council's list, provide for the orderly development of the herring fishery in inshore and offshore areas, taking into account the reliability of current and historical participants in the fishery, that is not in our list.

We did have some comments, I think, at the public hearing that Objective Number 4 would not be appropriate for the ASMFC. I didn't pick Number 4 primarily because it talks about the offshore areas, and I'm thinking state waters, the inshore areas.

Now, clearly, Number 4 could be modified and inserted into the ASMFC list if we choose to do so, but then — this is a tough one — provide for the orderly development of the herring fishery in inshore areas, taking into account the viability of current and historical participants in the fishery -- I suppose we could be that specific, but I don't know if it complicates matters relative to our gelling with the New England Council initiatives.

I certainly wouldn't mind, mixing and matching the two lists. Maybe that would be worth the time this morning, although we are getting, I think, a little bit along on the agenda. So, Number 10, that was the first bit of rationale for me going with the ASMFC list of objectives.

CHAIRMAN FLAGG: Yes, looking over the comments in terms of Objective Number 4, it seems to me that the comment was that it should be modified to read, "provide secure long-term fishing rights subject to resource availability to current and historical participants in the fishery". Megan, did you want to clarify anything further?

MS. GAMBLE: The modification was attached to the proposal that we moved to IFQs, so it's long-term fishing rights, and so it's tied to that.

CHAIRMAN FLAGG: Dennis Abbott.

MR. DENNIS ABBOTT: Yes, thank you, Mr. Chairman. As Megan went over these comments and concerns, I couldn't help but note that there are so many good ones in here, I won't say it makes her task or our task impossible to keep everyone happy, because I'm sure that everyone that submitted a thought to this thinks that they probably have an idea that should be incorporated into the plan,

But, to me, as I've been contemplating this, I find that our major concerns should be the management of Area 1A at this time.

I think that our focus should be on Area 1A. That seems to be the most important area to the fishermen in its relationship to the bait industry.

I think that what we do right now should be to have an objective of protecting and utilizing the resource in Area 1A for the herring fishery and also to protect the lobster fishery, so I think that the comments that applied to 1A should be looked at very carefully, because although we have always a TAC of a couple hundred thousand tons, we are quickly taking out our quota out of Area 1A, which leads me -- I think we have some false security there in that area.

I think that we should be concentrating on Area 1A, which I think we probably are, but I think that we have to emphasize that to the max. Thanks.

CHAIRMAN FLAGG: Thank you, Dennis. I have Pat White and Eric Smith and Ritchie. Yes, Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Yes, thank you, Mr. Chairman. I apologize for sort of jumping in here, but maybe it would be helpful if I stated sort of my understanding of where we are right now.

We took a document out to public hearing. You have objectives in the document, and you have a series of comments, pro and con relative to each one of those

objectives.

Now in the absence of guidance from this board, where you stand right now is the Plan Development Team is to write an amendment that incorporates all of the comments and all of the options that are listed here.

Obviously, some are opposed, so you'll have an option to -- if someone says we want this, you'll have an option to do that. If they say we don't want this, you'll have an option to do that. Quite frankly, there is a lot of work in here.

At the end of the day, my understanding is that what would be helpful to staff is that if this Section objective by objective went down and said, well, here is a total non-starter, we don't want this, eliminate this, or they missed something here; we want to add it.

It has already been brought out a couple times about the time element, but it seems to me we're sort of skipping around here. At the end of the day if you don't give this type of guidance, where you stand right now is write a plan based on these comments. If my understanding is not correct, maybe Megan or Bob Beal could jump in and correct me. Thank you, Mr. Chairman.

CHAIRMAN FLAGG: Thank you, Vince, for getting us back on course here. My sense is that what we really should be doing, we've gone over these goals and objectives on a number of occasions, and we've really hashed them out.

We've got the public comment, and I think at this point in time we need to fairly quickly run through those comments, and unless somebody wants to include a particular comment, the goals and objectives stand as they are unless somebody makes a motion, or that we have consensus that certain public comments that are in here should be included in those various objectives. I think that's how we should proceed. I have Pat White and Eric Smith and Ritchie White.

MR. PATTEN D. WHITE: I'll take up mine later, Mr. Chairman, in the interest of time.

CHAIRMAN FLAGG: Okay, Eric.

MR. SMITH: Well, I just wanted to move along in the direction you're poking us, Mr. Chairman. I've just skimmed through -- tried to do what I said I hadn't done, which is read these side-by-side.

Having heard what David Pierce said, I tend to agree that the ASMFC Amendment 1 objectives probably are a pretty good starting place, and I would move the two suggestions that he made as one package, add an objective to maintain a steady supply of herring as bait and to delete Objective 11 from that list.

MR. ADLER: Second.

CHAIRMAN FLAGG: I'd like to do it if we can without taking votes. Does anybody object to that? Okay, hearing no objections, then that's -- yes, Bruce.

MR. FREEMAN: Well, I'm not comfortable with the way we're proceeding in that we have a problem in Area 1, and many people refer to 1A. There have been efforts made, particularly from Maine fishermen and New Hampshire fishermen and some Massachusetts fishermen, to try to resolve this issue.

The existing system has days out of the fishery. Some people believe that is working well; others, not. The rest of the fishery, the resource is such that there could be an expansion of the fishery.

We're not catching the existing TAC. However, some people in the industry indicate there is more than sufficient capacity to catch it; it's simply one of market. As soon as those markets develop, the capacity is going to be there.

So there is a suggestion, as I see it from the council standpoint, is go out to public hearing and ask specifically the question as to whether in fact limited entry ought to be in Area 1; and as you recognized, Mr. Chairman, relative to the action taken by the committee, they wanted to add or put 1A and 1B into a specific area, not just divide those.

So the issue is should there be a limited entry system in Area 1? Then should there be one in Area 2 and 3? That issue is still unsettled, and Areas 2 and 3 certainly provide some of their catch for lobster bait, some of it for sardine production, and some for food for other parts of the world.

I'm somewhat uncomfortable of indicating that one of the objectives would simply be to provide lobster bait. I'm sympathetic to the issue, but I'm not certain that specific objective should be one that we have for the entire area of 1, 2 and 3. I'd certainly support it for Area 1.

CHAIRMAN FLAGG: Thank you. Okay, Eric.

MR. SMITH: Mr. Chairman, I take Bruce's point. I would also note, though, that under ASMFC Amendment 1, Objectives 8, 9 and 10 all address the other aspects of the utilization of herring.

The bait one is deficient, so the reason I agree with that suggestion is that it provides that in there as the other principal use of the resource. It's not that it's the preeminent one. That's something that is going to have to be balanced through the management program. I don't think by adding that objective, it takes away from what already exists as 8, 9 and 10.

CHAIRMAN FLAGG: Thank you, Eric. Gerry.

MR. GERALD CARVAHLO: Thank you, Mr. Chairman. It seems to me that the commission's business should be primarily focused on what happens and how it affects individual states and states' waters.

The councils have the ability to establish limited access programs. Limited access programs within state, I think, are state prerogative issues. I think the commission is wasting its time if it's going to deal in something that is the prerogative of the councils.

If the state of Maine, for an example, wanted a limited access program in Maine state waters, then they could adopt one, but I don't think the commission should take on that additional responsibility. I think we're wasting our time if we're doing it. It's a bad road to go down. I think Issue 6 should be eliminated.

CHAIRMAN FLAGG: Thank you, Gerry, and we will get to that. I'd like to get back to Eric's suggestion again. He had a specific suggestion. I think staff has that information. Are there any objections? I know Bruce had some concerns. I'm asking if any of the committee members have objections to Eric's suggestion.

MR. FREEMAN: Would Dave Pierce read that objective, the lobster objective.

CHAIRMAN FLAGG: I'll have Megan do that; she has it right here.

MS. GAMBLE: What I heard and wrote down was to maintain a steady supply of herring to the lobster bait market and eliminate Objective 11.

CHAIRMAN FLAGG: Which has to do with the aquaculture issue.

MS. GAMBLE: Yes. Do you need me to read it again?

MR. FREEMAN: Yes.

MS. GAMBLE: To maintain a steady supply of herring to the lobster bait market, and then the other comment from David was to delete Objective 11.

MR. FREEMAN: All right, fine, thank you.

CHAIRMAN FLAGG: Pat.

MR. WHITE: Well, I guess I go back to where I was, then. While I appreciate that, I have concerns with it, because if we're already achieving reaching our TAC early into the season in Area 1A, I think how you accomplish that goal is very complex, because as Dennis was saying, we have very different problems between Area 1A and Area 2, for instance.

To say that we're going to maintain a steady supply of bait is sort of like, I don't know what, an unfunded mandate, because I think it's a very complex issue, and I think it's a hard thing to state. I'd like to hear how you're going to do it. Thank you.

CHAIRMAN FLAGG: Any comments to that point? Yes, David.

DR. PIERCE: Well, that's the question, how would we do it? We don't have time to get into it today, but this is guidance to the Plan Development Team to explore options, see if there are any options in light of what may happen with federal management of sea herring.

In other words, with the federal management of sea herring going forth as proposed, if certain management measures are eventually implemented, that then might result in, let's say, prolonged closures of the herring fishery which would mean, therefore, a lack of bait.

In the absence of the landings -- well, we need to be aware of these possibilities and to have a set of strategies designed for state waters that would be a response, that we would air with the council as well.

It may not be possible to achieve this objective, but I would at least like it to be an objective and then to see what the Plan Development Team can give us for ideas, and once again, to make sure that the New England Council is aware of this as a very legitimate concern of ASMFC, so it doesn't get lost in the

shuffle. There will be a lot of shuffling as the New England Council moves forward with this comprehensive amendment.

CHAIRMAN FLAGG: Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. All of these objectives are to some extent this type of a goal. Whether any of these can be achieved and how we achieve any of these things, including the bait one, is part of the plan and part of the management scenario.

But, you could read any one of these things and say, well, how are we going to do that? I mean, they're all objectives, and this is all the state thing is, it's an objective to try to achieve, just like any of the other ones.

CHAIRMAN FLAGG: Thank you, Bill. Ritchie.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman. Are you taking input just on Issue 1 now?

CHAIRMAN FLAGG: I'm trying to do that so we can move on from that, and we will get to other things, hopefully. In order to try to expedite this a little bit, does anybody have any objection to deleting Objective 11, which makes reference to aquaculture?

Does anybody have any objection to that? Okay, that's done. Now we can get back to the lobster issue; stable supply of bait. How do you want to deal with this? Leave it in; take it out? What's the committee's pleasure? Tom Fote.

MR. FOTE: Since it's going to go to public hearing, leave it in. Let's move on.

CHAIRMAN FLAGG: Okay, we have a suggestion to leave it in. Other comments? Do I hear any objection to leaving it in? Okay, we're moving on. Ritchie, you had another item?

MR. WHITE: Are you going to go down this in order?

CHAIRMAN FLAGG: I would like to do that so we can keep track, and I think it will be helpful to staff if we can move on. Are there other issues associated with the goals and objectives, or are we moving on from that? Okay, Eric.

MR. SMITH: Thank you. I have a point on Issue Number 2, but I need to ask Megan and you, Mr. Chairman, where we exactly are. If we're going to go to public hearing, are we better off leaving in the

range of alternatives that were in the public information document or for some reason -- in other words, expediting the analysis, are we better off picking one approach for setting MSY?

I have a view on that, having read the record and thought about the pros and cons of them, but if we don't need to make that decision, then I don't need to offer my comment.

It's just sometimes when you have four different MSYs and you start to analyze what the spill-out of your management program is and you're looking at it in the context of four, it just magnifies things. I don't know if that's one of those cases here, where we would benefit from picking one.

MS. GAMBLE: Well, there's definitely a benefit to picking one, but I don't know that's the best way to go right now, because there is a lot of uncertainty as to what the federal FMP will use.

Since we do try to make a concerted effort to set our annual specifications in coordination with the New England Council, I think it's really important that we end up with the same value for MSY.

I can tell you that they have eliminated some of the MSY values, and they are considering eliminating more of them, but they haven't gotten down to just one value, so I don't know that it's prudent to take that step right now.

MR. SMITH: Okay, I don't need to have one in there to satisfy me. I need to know that if we can pare the list down to help in the analysis and the development of the plan, we do that. Could you tell us which ones the council is considering retaining and which ones they're considering rejecting?

MR. MATTHEW CIERI: Matthew Cieri from Maine DMR. Yes, I believe the council is considering the 226,000 metric tons and the 200,000 metric ton MSY values. All the other options are pretty much off the table, except for the status quo, which is 317.

MR. SMITH: Okay, thank you. Mr. Chairman, if I can follow up.

CHAIRMAN FLAGG: Yes, go ahead, Eric.

MR. SMITH: Fortunately, the one I think is a good idea based on all things considered is in that short list, so I would suggest, unless there is objection, if we retain the 226 and the 200, as well as status quo,

then we might be able to pare this thing down some and be consistent with the council.

CHAIRMAN FLAGG: Yes, Matt.

MR. CIERI: Yes, just a clarification. I forgot yet another estimate of MSY. Basically, pretty much what we did was from Page 12 -- there is a table. We pretty much just eliminated the Canadian ADAPT VPA projections and added 226.

So, actually there is a recommendation from the committee to the council to remove 226, but that will be voted on at the end of March.

MR. SMITH: The committee has recommended eliminating 226 --

MR. CIERI: Eliminating 226,000 metric tons as an option for MSY.

CHAIRMAN FLAGG: Tom Fote.

MR. FOTE: Then I would go with status quo and 220 and just leave it at those two. We can always add later. If the council decides to add it on, we can always put it back in our document later on.

CHAIRMAN FLAGG: Are you making a suggestion that we do what?

MR. FOTE: Leave in status quo as an option and go to the 220 as another option -- 222, excuse me.

CHAIRMAN FLAGG: Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I'm not sure I understand taking it out, because you can always put it back in. It seems to me when you go out to public comment, you're in much better shape having a range of options than picking one.

CHAIRMAN FLAGG: Yes, it seems to me that one of the considerations for the Section is that in terms of the MSY value, whatever it is, my sense is that the thing that we really need to try to agree on is that it ought to be consistent with the Council's, whatever that is, whatever that is.

If, in fact, we deviate from that, we should have a very substantive reason for doing so, because it's just going to throw things into a very, very difficult situation. I would implore all of you to move toward that concept that we, in fact, are going to -- whatever that number is that comes out, we're going to work very hard with the council to make sure that number

is consistent with the council's, unless we can find some substantial justification for deviating from that number, whatever it should turn out to be. Does everybody have agreement with that? Does anybody have any problem with that? Gil.

MR. POPE: I agree with that. So, in other words, you go with the 222 to 226, which is what New England recommends, correct, Lew? Is that what you mean?

CHAIRMAN FLAGG: Which may change at the end of March based on committee recommendations but, yes, that's correct.

MR. POPE: So it would be that one and the status quo, just those two? I would have no objection to that.

CHAIRMAN FLAGG: No, it would be -- go ahead, Megan.

MS. GAMBLE: Okay, the values for MSY are 317, which is status quo; there's 226, which are not in the PID but is based on the 1.13 million metric tons of historical biomass. There's 222, which come from the U.S. forward projection model.

There's are 200,000, which is recommended by the New England Council PDT. Then what is thrown out, the only thing eliminated is the Canadian ADAPT VPA estimate or projection.

CHAIRMAN FLAGG: Gil.

MR. POPE: I'm reading here, it says, "226 should be added as an option to be consistent with New England Fisheries Council".

MS. GAMBLE: Right, that was the second one I mentioned.

CHAIRMAN FLAGG: Bruce.

MR. FREEMAN: Just for the commission's information, the committee had taken that out of the council's plan, that 226, with the idea being that the range that was given here includes that, but that specific number was dropped at least at the committee meeting.

CHAIRMAN FLAGG: Yes, that's true, Bruce, that is a committee recommendation that the council has not yet acted on. They will on the 23<sup>rd</sup>. Okay, David.

DR. PIERCE: I would suggest, Mr. Chairman, that

we, for now, go with the 317,000 as a status quo option. I assume the council will approve that as a status quo as well to go out to public hearing.

Then I would suggest we go with either 226 or 222,000, depending upon what the council does. I mean, we're talking about nickels and dimes now -- 226, 225, 223, 222. There is such a little difference between those two numbers that it's kind of embarrassing to bring it out to public hearing as two separate options, because it actually suggests that we know it's either one or the other.

I would say, depending on what the council does, 222 or 226, and the other one would be 200,000. I mean, there is enough of a difference between 200,000 and 222,000 for me to feel comfortable with that. There's a difference there. I can make statements with regard to that. I'm very glad to see that the council has dropped the Canadian low-ball numbers that I've never supported, and, of course, our scientific community hasn't supported either, at least that's my understanding.

So, you've got three options with the middle one being either 222 or 226, depending on which way the council goes, because I agree we have to follow the council's lead on this. It makes no sense to do otherwise.

CHAIRMAN FLAGG: Thank you, David. Other comments? Let's move along, then, if we can to Issue Number 3. Comments on the management area boundaries? Nothing? Does staff need any particular guidance from the Section relative to management area boundaries?

MS. GAMBLE: No, it's laid out pretty well. We have a map indicating the difference between the two, and that issue has been developed through the Council's PDT so we can adapt from there.

CHAIRMAN FLAGG: Okay, thank you, Megan. Issue 4, spawning area restrictions. Any comments from the Section? David.

DR. PIERCE: Megan, did anybody comment at the public hearing regarding Number 13 in particular, do the current spawning area boundaries adequately protect the spawning aggregations? You did a good job framing a lot of these issues in the form of questions so did anybody respond to that question?

MS. GAMBLE: Were you speaking about one in particular? I missed that.

DR. PIERCE: Right, do the current spawning area boundaries adequately protect the spawning aggregations?

MS. GAMBLE: There was some sentiment that they don't and that we need more information from the hydro-acoustic surveys in order to determine what they really should be.

DR. PIERCE: All right, so in other words, we've got that input from the public hearing, questions about the appropriateness of the boundaries, so I would assume, therefore, that the PDT would put some time into this and provide us with some advice as to whether or not these spawning area boundaries do indeed adequately protect the spawning aggregations.

That would seem to be a legitimate course of action for the group to pursue. We do need to know. We're not going to get that information from the New England Council, I don't think, because they don't focus on this issue; we do. So this is really our -- we own this one, so we'd better make it as good as we can possibly make it.

CHAIRMAN FLAGG: David, if I could respond to that a little bit, I recall that at the meeting we had in Perry, Maine, one of the issues that did come up had to do with the adjustment of the spawning area boundaries around Schoodic Ridge, which was done through an addendum.

We did have a jog in the line there, which put a spawning aggregation outside of the protection area, and we did straighten that line out. People seem to be generally pretty satisfied with that.

Some of the comments that I did hear were that some folks wanted to have spawning protection for stocks outside the Gulf of Maine, that they wanted to go with a spawning area protection strategy for the Nantucket Shoals and Georges Bank complex, so that's what I've been hearing. Okay, any other comments on spawning area restrictions? Yes, Bruce.

MR. FREEMAN: In the council plan, there was talk about a boundary shift and did that boundary shift actually include more of the spawning areas? I don't have the document with me, but I thought the line between 1 and 2 changed somewhat and would include spawning areas; is that correct?

CHAIRMAN FLAGG: I'll let Matt answer that because he's been very involved with that.

MR. CIERI: Yes, basically, what we were doing was changing the Area 3 boundary, moving the line between Area 3 and 1B closer in to shore to take on Franklin Swell and then moving the Area 2-Area 3 boundary west to 69.

Those were actually to incorporate the spawning components in Area 3, basically to make sure the Area 3, Georges Bank, that spawning component was actually all encompassed by Area 3. It doesn't have much to do with the spawning aggregations.

MR. FREEMAN: Well, my suggestion would be I think it would be wise to have a similar alternative in our plan. I mean, it would absolutely be chaotic if we had a different boundary than New England. I don't know how you're going to manage.

MR. CIERI: Yes, I think part of the plan was to simply go through and incorporate all those options that the council did, or that the council has as options into the ASMFC document, same options.

CHAIRMAN FLAGG: Okay, anything else on spawning area restrictions? Okay, let's move along to Issue 5, internal water processing. Comments from the Section? Gil and then I have Eric Smith.

MR. POPE: Thank you, Mr. Chairman, very quickly, I think it should be left in there and left sort of at the status quo and let the states decide if they need some if they don't happen to have shore-side processing. It also keeps competition in the mix and it also is there in case of uncertainty on prices and supply and demand and so on, so I think it should be left in. Thank you.

CHAIRMAN FLAGG: Thank you, Gil. Eric.

MR. SMITH: For the management plan for an addendum to go to public hearing, this is framed as an either/or or a yes or no, and I think we ought to have both in there. In other words, we ought to have a module that says here is what happens if you keep IWPs and then here is what happens if you don't have them.

That's the best way to frame this thing out, get the public hearing comment, and then we'll decide later. I would recommend we leave it with both approaches in there.

CHAIRMAN FLAGG: Two options, one with, one without. Okay, any objections from any of the members? Okay, let's move to the next item, and here is where we get to Issue 6, which is one of those that I know Rhode Island is interested in, limited

access. Any comments? Gil.

MR. POPE: Again, I don't know if it would take a motion or anything, but there again, I think I'd like to eliminate it and just leave it up to the states as to how they control who gets access the fishery within state. Thank you.

CHAIRMAN FLAGG: Okay, thank you. Other comments. Yes, Eric.

MR. SMITH: Yes, just that I disagree. I mean, the whole point of proceeding on with an amendment has been the concern we have that if somebody starts offering a dollar a pound for herring, it won't look anything like the fishery that we see right now. It's vulnerable without limited access.

I'll grant you, most of that will come from the council's plan, but I think it's worthwhile for us to look at it in the context of the ASMFC plan, if for no other reason than to make sure we co-align our actions with whatever comes out of the council plan.

CHAIRMAN FLAGG: Okay, yes, David.

DR. PIERCE: I suggest we leave it in. We've, in Massachusetts, anyway, learned the hard way the consequences of having different ways of dealing with effort control inside state waters versus federal waters.

We've had to deal with and we still have to deal with effort shifts from federal to state waters in response to federal waters restrictions, and that has necessitated us to respond in kind, and it has been incredibly difficult and complicated.

We're doing it, of course, but it's taking up a lot of time, my time and staff time, so I would suggest that we leave it in there, and that will at least give the Plan Development Team the charge to explore the consequences of our having no limited entry inside state waters and then the likely shift to state waters as a response to tightening federal restrictions that we suspect we'll eventually be faced with.

CHAIRMAN FLAGG: Pat White.

MR. WHITE: I respectfully disagree with Gil, too. I am concerned, because this is a state compact and it isn't a state stock. It is an Atlantic stock, and it has to be dealt with as a group.

CHAIRMAN FLAGG: Okay, in terms of this issue, whatever is decided with respect to limited access, it will be incumbent upon the states to develop that

program if it becomes part of the plan, and it's going to require a lot of work.

I think we need to give the staff a little more direction in terms of what types of scenarios we might want to look at in terms of a limited access program. Bruce.

MR. FREEMAN: I, too, agree it should be left in because it's an issue that certainly needs to be discussed and taken out to the public. I think, as alternatives, one could be no limited access, one could be essentially a system such as we have in place today in Area 1A, where it would be days out of the fishery, and then another system would be controlled access by each of the states, similar to what Gil is indicating, based upon what the state wants or sees necessary.

CHAIRMAN FLAGG: Okay, I'm just trying to get clear in my mind so that the staff has some direction here, Bruce. Could you just briefly go over your comments again?

MR. FREEMAN: Well, one would be no limited access. That's one alternative. Another would be a system similar to what we have -- simply days out of the fishery -- as you reach percent of the quotas being taken, similar to what we have. Some people advocate that's working well, and it should be continued.

Another system would be states determine if a limited entry system is necessary. Now, let me just explain that. In most instances, vessels will probably have a state and federal permit.

But particularly, in Maine, there are a lot of people who are only going to have a state permit, particularly the weir fishery. So it may be best, if there is a need to control access, that the state determine how that is done.

The state of Maine could have a system different than the state of New Hampshire, for example. I'm reluctant to indicate what everybody should be compelled to have, because I'm not certain that's -- that may be considered but I don't think it's going to be supported by many people.

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: I'm not really sure what Number 3 does, because that is the state's prerogative, so if the plan just says it's the state's prerogative to control access, well, couldn't they do that under 1 or 2 also? You know, it's simply just stating the obvious, I



guess.

MR. FREEMAN: Yes.

MS. GAMBLE: Yes, okay.

MR. FREEMAN: The other point, too, Megan, realize that, depending how these public hearings go, there may be a determination that limited entry only applies to Area 1. It doesn't apply to 2 and 3; or, limited entry applies to all areas, all 1, 2 and 3; or any combination of the above.

Then depending on the outcome of that, these issues may be raised. It may well be that Area 1 is limited entry, and the other two areas, 2 and 3, essentially don't have limited entry. Then there may not be a need for the states to take any action in those two areas.

If limited entry occurs in Area 1, it will probably be restricted to vessels that either are based in that area, have some history in that area. Even though those vessels may be from some other state, they'll be controlled by that system in Area 1 or 1A.

CHAIRMAN FLAGG: Bob.

MR. ROBERT E. BEAL: Thank you, Mr. Chairman. Just in the interest of time, I think Issue Number 6 is a big part of this document and potentially a big part of the management program down the road; so if the Section gave the chair the authority to put together sort of a working group to deal with effort controls and limited access, it is probably an efficient use of the time, given that the Section is going to have another meeting at a later date to review the document, and everybody on the Section will have a chance to comment.

I think this working group will also be able to react to the changes that the New England Council is putting together, which, as has been stated earlier, is a dynamic situation as well as to what they're looking for as far as limited access and effort controls and those sorts of things.

So, if this group was empowered to put together a full suite of options, probably things beyond the scope of what people are actually interested in seeing, go out the public hearing and then have this suite of options come forward at your next meeting, and then the Section can pare it down if that's the way they want to go. It may be an efficient use of Plan Development Team and Section members' time.

CHAIRMAN FLAGG: I was just thinking, I suppose

one other option, in terms of the limited access issue, if in fact there is a limited access program in the EEZ, there could be an option to apply that to state waters, too, as a potential. Yes, Tom Fote and Gerry.

MR. FOTE: I'm sorry; I just think that we can be very simple about this and not expand it. I mean, what Bob just proposed is expanding to include more options, and really I just think that the states should be deciding what should go on here, and we should keep this as simple as possible.

I don't want the public hearing process to become -- if we should go out to public hearing, it will wind up that most of the focused attention will be on IFQs, limited access, and what goes down, and we don't need that in my area. That's the problem I'm looking at.

Also, until the federal government decides how they're going to handle and put some controls on IFQs and some conservation measures and things like that, we have real problems with IFQs.

CHAIRMAN FLAGG: Thanks, Tom. Gerry.

MR. CARVAHLO: I don't believe that the commission should be in the business of developing plans that dictate how a state should allocate its resources to its people or who should get it. I don't think we have to go in that direction.

It complicates the issue. The councils are more than capable of creating limited access plans for the federal waters. I think we should stay out of that, because it doesn't involve just herring. It extends to other management plans.

We get in real trouble when we start, through the plan, telling a state who is going to get the resource or how many people within that state are going to be allowed access to that resource. We're opening up a can of worms.

If individuals challenge the state on that matter, then the state will just throw it back on the commission to be challenged. If it stays as a state prerogative, where I think it belongs, then the states have to argue the justification for either limited access, limited entry or whatever scheme they come up with. I think we should leave it at that state level and not drag it into the commission level.

CHAIRMAN FLAGG: Thank you, Gerry. Ritchie and Dennis.

MR. WHITE: Thank you, Mr. Chairman. I think Bob's idea is good, and I think we ought to give it to a committee and move on. That would be my recommendation.

CHAIRMAN FLAGG: I sense there is some difference of opinion here. I would like to take a vote on this particular issue because I know there are differences. I'd like to -- well, I want to get the sense of the committee, and that is I'd like to get an idea of how many are in favor of having the staff further develop a limited access proposal for this amendment.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, would that be in the context to include the range of comments received to the public hearing document?

CHAIRMAN FLAGG: Yes.

EXECUTIVE DIRECTOR O'SHEA: Thank you.

CHAIRMAN FLAGG: Eric.

MR. SMITH: Would you like a show of hands?

CHAIRMAN FLAGG: Yes, I would. I'd like a show of hands on those that are in favor of having staff develop that. All those in favor; opposed. I should ask. We'll caucus. Take a moment to caucus. Bill Adler.

(Whereupon, a caucus was held.)

MR. ADLER: This motion is to set up a working group to work out the idea of --

CHAIRMAN FLAGG: Just some options to bring back to the Section.

MR. ADLER: Yes, including, the option that it shouldn't be anything.

CHAIRMAN FLAGG: Yes. Ritchie.

MR. WHITE: This would include Issues 6 and 7; is that correct?

CHAIRMAN FLAGG: Yes.

MR. WHITE: Do you want a motion to that -- do we have a motion to that effect?

CHAIRMAN FLAGG: Do we need a motion? Okay, yes we do.

**MR. WHITE: I would make a motion that we refer Issues 6 and 7 to a working committee to come back with recommendations.**

**MR. ADLER: Second.**

CHAIRMAN FLAGG: All right, we've got a second from Bill Adler, a motion by Ritchie White. The motion is to have the staff develop some working documents related to Issues 6 and 7 and bring those back to the Section for further consideration.

MR. BEAL: Lew.

CHAIRMAN FLAGG: Yes, Bob.

MR. BEAL: You just mentioned staff developing the options. Staff, working with this committee, would develop those options.

CHAIRMAN FLAGG: Working with the committee and taking into consideration the public comments relative to that issue. Okay, are we all set? Everybody caucused? Everybody had a chance? One vote per state. Vince.

EXECUTIVE DIRECTOR O'SHEA: Again, a clarification, Mr. Chairman, this working group would be appointed by you after this meeting?

CHAIRMAN FLAGG: Sure. Okay, are we ready? Are we all set? **Okay, all those in favor of the motion, signify by raising your right hand; six. Okay, it's unanimous.** We will now move on. Any comments on Issue 8, fixed gear fisheries? Eric.

MR. SMITH: I just suggest that the staff take these comments that they received and incorporate them into further development.

CHAIRMAN FLAGG: Okay, does staff need further guidance? We have a suggestion to have staff further develop this issue, based on the comments received from the public. Megan.

MS. GAMBLE: We'll give it a try.

CHAIRMAN FLAGG: Okay, staff sounds comfortable. David.

DR. PIERCE: Yes, I support that, Mr. Chairman. Plus, I would like the Plan Development Team to put a little bit of special emphasis on exploring the implications of the point made in the last sentence in Issue 8, second paragraph, about the Downeast fixed gear fishermen being closed out of the fishery while

the New Brunswick weir fishermen reap the benefits of the fish moving inshore with no harvest restrictions in Canadian waters.

That “no harvest restrictions” has always plagued me, and certainly it has plagued other people as we try to manage the Gulf of Maine fisheries, since that is a fishery, I believe, that tends to focus more on juvenile fish.

CHAIRMAN FLAGG: Thank you, David. Yes, Megan.

MS. GAMBLE: David, are you just asking for more information on that issue, or are you asking for some particular type of options?

DR. PIERCE: No, not necessarily options, just more information. I’d appreciate the Plan Development Team to do a little bit of brainstorming on this one and to give us what you’ve got relative to the nature of that fishery, the implications of there being no harvest restrictions in Canadian waters and how does that then lead us to perhaps some conclusion that would be preordained.

MR. CIERI: Yes, that’s easy enough to do. It’s going to be done for the DIEIS for the council, anyway, so I’ll just cut it and paste it into the document for you guys.

CHAIRMAN FLAGG: Okay, Gil.

MR. POPE: Very quickly, thank you, Mr. Chairman. I’d like to move this also as a state issue into this working group. It’s the last sentence there, “collection of fixed gear into a limited access program.” So there, again, we’re getting into that; or, if that should be taken in a different context, Megan. Is that what you’re --

MS. GAMBLE: There are a lot of elements to the fixed gear issue, and there are several I think we can do outside of that working group so as not to use up too much of their time. But anything related to a limited access program I think is appropriate for the working group to address.

CHAIRMAN FLAGG: Thank you for that clarification, Gil. Other comments? Are there objections to the suggestion about the fixed gear fisheries? Seeing none, then we will move on. Issue 9 relates to forage. Any comments? Gil.

MR. POPE: Thank you. I commented on this at the last meeting about forage, and how far along are we

in actually knowing what kind of numbers? Do we have any kind of hard numbers to work with? How far along are we where this can actually become something that really has meaning?

CHAIRMAN FLAGG: There are some numbers that have been developed, and I’ll ask Matt to very briefly, if he would like, to make a comment on that.

MR. CIERI: Well, there is something in the PID document, as I recall, a graph -- right?

MS. GAMBLE: Yes.

MR. CIERI: Okay, I know Bill Overholtz and I and other people have been working on the forage issue. Bill gave a slew of presentations about consumption of Atlantic herring by everything from mammals to birds to your warm and fuzzy seals to pretty much everything.

Some of that information will be included in the PID. A lot of it will be included in the DIEIS for the council. There is also, in the council process, a huge document that is going to be incorporated that was written by the council, which goes over the role of forage for herring as well as for cod and other species. So that’s available off the council’s web site, but we’ll probably include it here as well.

CHAIRMAN FLAGG: Okay, any other comments on forage? Yes, Gerry.

MR. CARVALHO: In the absence of my good friend, Vito, I think that this issue is going to wind up being more political than biological. It opens up a can of worms, because I know of my experience in Rhode Island, we have those concerned about the forage fishing moving the political wheels in that name of “forage.” That’s what it is; it’s a political wheel. It had nothing to do with their access to the fish that feed on them, only the perceptions in their minds.

CHAIRMAN FLAGG: Thanks, Gerry. David Pierce.

DR. PIERCE: I think this issue is much bigger than we realize. Of course, there will be more discussion about this as time goes on. But I would like Matt to be able to -- well, Matt, considering your knowledge of what has been going on in the scientific community with the technical end of all of this, with the assessments, discussions about the importance of herring as a forage, would you have an opinion regarding the first question; does the amount of

herring accounted for as forage seem reasonable? Do you think that's true? Do you think -- and if you don't have an answer, do you think that we'll be in a position, you and those who work with you on these assessment issues, do you think they will be able to come up with some advice relative to that question?

MR. CIERI: We definitely should be able to come up with some advice. I believe that we have -- there is quite a lot that is allocated for forage. It's not really the case with the model, but it's assumed to be natural mortality, most of which, as you know for Atlantic herring is probably predation mortality. I think it's about 350,000 metric tons compared to the fishery, assuming a 0.2 natural mortality rate.

There are some things that we can do to go through and take a look at forage, the availability of forage and consumption by different important predators. We'll include that in the DIEIS for the council, and like I said, with a lot of this process, it's sort of a dual thing. We can simply edit and paste it right into any document that ASMFC wishes to produce.

DR. PIERCE: I appreciate that. This is a dual process, and you've been involved in this for a long time now. I would only encourage you and your colleagues to also consider the implications of what the ASMFC has attempted to do with dogfish, rebuilding goals for dogfish, knowledge of the significant predator that dogfish happens to be with regard to herring as well as other species, but certainly herring.

As we continue to build the biomass of dogfish, and as we continue to create dogfish of larger size -- and they're definitely big fish eaters when they get to bigger size -- I'd like to know and other people would like to know what the potential consumption would be from spiny dogfish alone.

Right now I understand there is an estimate of 64,000 metric tons of annual consumption, and that's with the current size structure, so as we get bigger dogs, I think that 64,000 metric ton figure might be moved upwards.

Then that has tremendous implications for what we do with management of sea herring, ASMFC and the council especially, as we struggle to deal with the second question that's on Page 17 that we might have to alter fishing practices to account for herring's role as a forage species.

I can just see the nightmare scenario of our eventually meeting our objectives for dogfish in

terms of rebuilding the biomass and getting the very large females out there, and suddenly we'll be faced with having to take a rather large chunk of sea herring out of the mix, so to speak, to give it to those dogfish to the exclusion of the sea herring fishery itself.

CHAIRMAN FLAGG: Thank you. I have Ritchie and Bill Adler.

MR. WHITE: Thank you, Mr. Chair. I'd like to see the herring removals impact cod, haddock, tuna, striped bass, to make sure that is included, because we've got a very loud and clear voice at the New Hampshire public hearing about that. Added to that, also, should be the timing of those removals, because we also got a clear message about that.

CHAIRMAN FLAGG: Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. I think it would be helpful for the public in this amendment to have, for instance, this chart that you've got on Page 17, but also the statistics that show how many herring are estimated to be out there versus how much herring is the number of herring that is basically left there for forage versus the number of herring that is listed as being caught for catching.

So, in other words, I think that would be very helpful for the public to see those numbers somehow in that section of the document that says this is how much herring is out there, and this is how much we usually allow to be caught, and this is what is basically out there for natural mortality, which includes the forage thing, so they can see the comparison. Thank you.

CHAIRMAN FLAGG: Yes, Matt, to that point.

MR. CIERI: Yes, again, that's easy enough to do. It's just a graphical representation. Yes, it's very easy to do.

CHAIRMAN FLAGG: Yes, to that point, Ritchie.

MR. WHITE: To follow up on that, could you also do that by area? Could you show that Area 1A?

MR. CIERI: No, it's a coast-wide stock assessment.

CHAIRMAN FLAGG: Vince.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman. Just a friendly reminder, you've passed 12:00 now, and 1:00 is winter flounder. Of course, behind that is lobster, which are both

important issues to folks. This is a great discussion, but I just want to remind you of where you are on the time, sir.

CHAIRMAN FLAGG: Thanks, Vince. We need to move along. It seems to me that what I'm hearing is there is a lot of interest in addressing this issue. I think we do need to include this and have staff address this particular issue, because it's out there.

The public is interested. I think to the extent that we can get information, accurate data or as good a data as we can on this issue, I think it's going to help this process in the long run.

Anybody have any serious objections to the staff developing this issue based on the comments from the public? Okay, seeing no objections, let's move on to research set-asides. Yes, Tom.

MR. FOTE: The Mid-Atlantic Council and the New England Council have been using research set-asides on a bunch of species. What I found happening, though, some of those research set-asides were being directed, using fish basically to do research on other species than they were really being caught out of.

I want to make sure we put research set-asides in. Basically, they are to help the fishery they're looking at, because those are the people that are giving up that quota to do the research on it.

I've seen some situations where it was given up for summer flounder and used in a whole other fishery, the money generator. That's what I want to make sure that we keep it where it's supposed to be used, because that's what the people are giving up the quota in that fishery for. That's my only concern there. I've seen that happen with the council.

CHAIRMAN FLAGG: Thanks, Tom. Bruce.

MR. FREEMAN: To move this along, I would suggest we use the range from 0 to 5 percent. In other words, there could be no set-aside up to 5 percent. Then have it specific to each area. In other words, have the set-aside specific to annual allocation or if we do a three-year allocation.

CHAIRMAN FLAGG: Okay, Megan.

MS. GAMBLE: I guess I would like to also put another idea out there, which is that the council is considering not specifying a certain percentage or amount, but rather saying that it is something that could be done during the annual specification

process.

MR. FREEMAN: That was my point. In other words, it could be nothing this year to up to 5 percent, and each area would make that, because, for example, if it were 5 percent coastwide and that was taken out of Area 1, it could be a significant amount.

It could be 10,000 additional tons, so each area. Yet, it's

identified that specific work needs to be done in certain areas.

I would leave it to area-specific and then leave a range

from nothing, from 0 to up to 5 percent. That would be done

annually or again, if we do it multi-year, whatever that period

would be.

CHAIRMAN FLAGG: Eric.

MR. SMITH: Thank you. Mr. Chairman, to take the Executive Director's point and what you've been trying to get us to do, I've looked ahead in this, and all of the rest of the items, Issue 10 through the end of the things described as "other issues," management, gear conflict, mackerel fishery, are far more important for us to birdog as the council process develops, than I think is important for us to try and do as a commission.

I would suggest that the staff, on all the rest of the issues, simply take the advice we got at the hearings, keep the issue in our plan but watch how the council develops it to see if it's going to jangle us at a later date, and then we don't have to take each one of these issue by issue.

CHAIRMAN FLAGG: Okay, any other comments regarding the rest of those issues? Gil.

MR. POPE: Just a quick question as to how the 200 or the 2,000 metric ton figure came about. Thank you.

MS. GAMBLE: For research set-asides? The public offered it as a suggestion, thought it was a good number. The person who suggested it didn't provide a basis in his letter.

MR. POPE: Do you think it's on value? I don't know if anybody around here has a better idea on that. Is it on the value of the herring, or is it that you need that much for accurate figures? I'm just unsure about that number. Thank you.

MS. GAMBLE: I don't know the answer, because I'm not inside his head, but I can look into it.

CHAIRMAN FLAGG: I don't either. Vince.

EXECUTIVE DIRECTOR O'SHEA: Well, Mr. Chairman, you had a suggestion to change that to 0 to 5 percent, which would include 2000.

CHAIRMAN FLAGG: That's right, yes. Okay, and Eric has had a suggestion that perhaps on these other issues, that the staff continue to follow what the council is doing in developing their amendment and possibly incorporate some of those suggestions and ideas into the document. Do I hear any objection to that?

### **PRT COMPLIANCE REPORT FOR 2003**

CHAIRMAN FLAGG: Okay, it's quarter after twelve, and I do want to finish up, but we do have a couple of other items on the agenda that I want to get to very quickly. The first one is to review the PRT's compliance report.

MS. GAMBLE: This will take two seconds. You guys got a memo in the mail, and there are copies on the back table. The Plan Review Team took a look at all the state compliance reports and found that everything is in order. New York continues to meet the requirements for de minimis in this management program.

The only comment or recommendation from the Plan Review Team is that we did not receive a state compliance report from the Commonwealth of Massachusetts, so we recommend a two-week grace period for the Commonwealth to submit that report and take it up at the end of that two-week grace period.

CHAIRMAN FLAGG: Is that an adequate amount of time for Massachusetts to provide that report?

DR. PIERCE: It's more than enough time, Mr. Chairman.

CHAIRMAN FLAGG: Okay, thank you. I don't think we need a motion to that effect. David.

DR. PIERCE: I thought you were done, Mr. Chairman. I wanted to briefly return to one other issue, very briefly, after you're through with this issue.

CHAIRMAN FLAGG: Okay. All right, that concludes the PRT report, compliance report.

### **ELECTION OF A VICE CHAIR**

CHAIRMAN FLAGG: The next item on the agenda is selection of a vice chair. Pat White.

MR. WHITE: I'd like to make a motion that we nominate Eric Smith as the vice chair.

CHAIRMAN FLAGG: Okay, is there a second? We need a second.

MR. ADLER: Second.

CHAIRMAN FLAGG: Okay, are there other nominations? Pat.

MR. WHITE: Nominations be closed and that the chairman cast one vote.

CHAIRMAN FLAGG: All right, done. Thank you, Eric.

### **OTHER BUSINESS – PLAN DEVELOPMENT TEAM MEMBERSHIP**

CHAIRMAN FLAGG: Okay, on other business, Megan has something she wants to bring before the Section, and then we'll get to you, David.

MS. GAMBLE: Based on the guidance the Plan Development Team has gotten today from the Section, we will be working very hard over the next couple of months, but I wanted to run by you the list of people that are currently on our Plan Development Team.

These are the people that I will be contacting to ask for help unless I hear from you otherwise, so please listen carefully; and if there is anybody else that should be on this list, please let me know.

We have Matt Cieri. We have myself. We have Madeline Hall-Arber; Clair McBane?; William Overholtz; Myles Raizin; David Simpson and Lori Steele. Is there anybody else or should someone be removed? Please provide some guidance.

CHAIRMAN FLAGG: Might I suggest within the next week, if folks would like to have representatives on this committee or would like to delete representatives to be in contact with staff

within the next week. David.

DR. PIERCE: Yes, that's a fine suggestion, Mr. Chairman. Steve Correia will probably be on that group as well, Megan, since he's working with the council now.

If I could very briefly go back to the document that we were using to determine the issues to be as part of this amendment, to other issues, gear conflicts. Your charge, I believe, Mr. Chairman, to the Plan Development Team was to move forward with the document and to, I think, be guided by the public hearing comments.

I'm not exactly sure how you worded that, but I wanted to make it clear that in no way does the Section agree with Page Number 7 with the other issues gear conflict description where it says, "prohibit trawlers".

CHAIRMAN FLAGG: I think, David, to clarify that, the intent was that they would address the public comments. It's not to say that they concur with them or anything, but that in the context of developing these issues that they would address these comments.

DR. PIERCE: That clarifies it, Mr. Chairman. I just wanted to make sure that no one got the impression that we, as a Section, were saying that that's a sensible approach.

#### **OTHER BUSINESS – COORDINATION BETWEEN ASMFC AND NEFMC**

DR. PIERCE: If I may, Mr. Chairman, since we're under other business.

CHAIRMAN FLAGG: Yes.

DR. PIERCE: Okay, I just wanted to call the Section's attention to a letter that was just distributed, a February 9<sup>th</sup> letter to Paul Howard, the New England Fishery Management Council Executive Director.

This is from Mark Amorello, the chairman of our Marine Fisheries Advisory Commission in Massachusetts. Our marine fisheries commission is watching this process for improved management of sea herring, the council as well as interstate.

They have noted right now with fluke, scup and sea bass, there is a different way of doing business with the councils, in particular the Mid-Atlantic where

both groups meet at the same time and votes are concurrent.

That way the state's interests are definitely listened to. Those interests perhaps have greater weight, because we're at the same table, not at a different meeting, following up perhaps of being the tail of the dog that's wagging that tail.

So this is just his specific letter to Paul, and, of course, it's germane to this particular Section and how the ASMFC does business with sea herring management, that there seem to have to been some — basically, they desire to have an improved approach for how ASMFC and the councils move forward with the sea herring management.

That gets to the issue of having us all at the same meeting as opposed to being at separate meetings. So that's something I hope that can be corrected in the near future so that ASMFC can be in lock-step with the council and the council also being very receptive to ASMFC's objectives.

CHAIRMAN FLAGG: I would add that during the annual specification-setting process, we do have a joint meeting with the Section, and that has worked out very well. Staff has already been in touch with council staff concerning a joint meeting to discuss the annual specifications for 2005.

When Dave Borden and I co-chaired those meetings, we did work in the context of having both bodies make motions that were consistent with one another so that we could move on in a more coordinated way. We will intend to continue to do so. Other comments? Staff, any other issues that we need to bring before the — Tom Fote and then Bob Beal.

MR. FOTE: It's always interesting when I sit in a Section meeting. There were only two sections when I first came on the commission in 1990. It was the Herring Section and the Shrimp Section.

It was the only opportunity where the governor's appointees and the legislative appointees basically had a vote, because at that time the Section was always a caucus vote, and none of the other boards were, so it's always an interesting situation to sit here and remember a little of the history behind the sections, because I always liked the sections back in 1990 when I first got appointed.

CHAIRMAN FLAGG: Thanks, Tom. Bruce.

MR. FREEMAN: Relative to the letter

Massachusetts sent, I would certainly support that. I think it's an excellent idea. Would it be useful, Lew, to have a motion by this group to the New England Council asking for such a procedure?

CHAIRMAN FLAGG: Whatever the council's pleasure is -- I mean, the Section's pleasure; wrong venue. Yes, if you wish to make such a motion.

MR. FREEMAN: I'd like to make a motion. I just want to get the wording. I think it does work well. There are a lot of people at the table, but I could see this becoming very confused with the commission meeting independently of the council. It would be much easier to meet together and have both groups discuss these issues and then vote upon them.

I think it will make the plans a lot easier. **I would move that the Section support the March 1<sup>st</sup>, 2004, letter from the Massachusetts Marine Advisory Commission to the New England Council.**

CHAIRMAN FLAGG: Okay, is there a second?

**MR. ADLER: Second.**

CHAIRMAN FLAGG: Yes, Bill, okay. Discussion. Yes, Vince.

EXECUTIVE DIRECTOR O'SHEA: Clarification. Prior to making the motion, there was a discussion, or at least I got the impression there was a letter or something, and then this says "support". Is there a specific action that the maker of the motion wants on this, or this is just to support the concept?

MR. FREEMAN: Well, no, it's specifically to have both groups meet at the same time to vote on issues.

CHAIRMAN FLAGG: Vince.

EXECUTIVE DIRECTOR O'SHEA: Yes, I got that, Mr. Chairman. I'm just wondering, do you want us to write a letter to Paul Howard requesting that; is that your intent? I'm not trying to put words in your mouth, Bruce.

MR. FREEMAN: Yes, the process we have for summer flounder --

EXECUTIVE DIRECTOR O'SHEA: If I can just interrupt. I'm just trying to find out, do you want us to just -- is this motion just to support Mr. Amorello's letter, or do you want the commission staff to do something with this letter?

MR. FREEMAN: Well, I would like to see a letter from the Commission staff to the New England Council supporting the concept of joint meetings.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman.

CHAIRMAN FLAGG: Okay, so you're not talking -- are you talking about it in the context that the Section, in terms of developing its amendment, would meet jointly with the council in the development? That's not what you're talking about, is it, necessarily?

MR. FREEMAN: No, it's on the final vote, Lew, on what we do. In other words, the council is going out with their document; we're going out with ours. We need to get together, when we finally make decisions, that we're both doing the same thing.

CHAIRMAN FLAGG: Yes, so basically the intent is that we need to closely coordinate the activities of the two groups in terms of developing and implementing the amendments.

MR. FREEMAN: Yes, I think we're doing that as I understand from staff, but my concern is when we actually come to vote, then both groups should meet simultaneously.

DR. PIERCE: Mr. Chairman.

CHAIRMAN FLAGG: David.

DR. PIERCE: Bruce is reflecting the language in the first paragraph of the letter to Paul Howard where the request is that the voting procedure during the Council Herring Management meetings be the same as that used by the Mid-Atlantic Council for fluke, scup and sea bass, so I believe that Bruce is requesting that we do indeed follow that procedure in the future regarding how we move forward jointly with sea herring management.

I assume that will just lead us in discussions about -- that will help identify problems in that happening or maybe there would be no problems.

CHAIRMAN FLAGG: Okay, Megan.

MS. GAMBLE: I just have some concerns logistically, because I'm staff and we deal with logistics. First, I just want to make the point that summer flounder, scup, black sea bass is a different system, because they have a joint management plan, and that is why they do vote together.



Herring is different because we have two separate management plans. So, my concern is that when we do sit down, I'm concerned about time and the Section having enough time to deal with their issues.

As we talked about today, there are going to be some things that are very different from the council's plan. I understand the value of sitting down at the table together to make decisions. I'm just concerned about the Section getting the time needed in order to deal with their issues as well. I just wanted to put that out there. I'm not saying one way or another.

CHAIRMAN FLAGG: Gil then Bruce.

MR. POPE: Thank you, Mr. Chairman. Very briefly, it's a nice letter and everything and I've been reading it, but I have serious problems with the last part of the letter, especially the last two sentences about limited entry issues and we should be lock-step with the council, or should the council be lock step with us?

I mean, I just want to make sure that in any of these things that is a co-equal process, that it is co-equal. I'm coming to find in a lot of cases it is not, so that particular wording troubles me and I'm not in support of it. Thank you.

CHAIRMAN FLAGG: Other comments, Bruce.

MR. FREEMAN: I see a lot of wasted time and effort. If each group is going to discuss this separately, one is going to have to vote before the other. Limited entry, obviously, it's an issue; effort control, that needs to be discussed. If one group wants to go one way and one the other, without that common discussion, I think that it would be a waste of time and confusion.

Again, I've had the ability to sit on the New England Council committee, and the issue of fixed gear in the state fishery is an important issue, but it's going to be left to the states.

I think the spawning area is another issue to be left to the states. But, most of the other things we're going to talk about are going to have to be jointly discussed by both the commission and the council.

To do it separately at different times is simply, in my opinion, going to be confusing. To sit down together and do it is certainly going to be productive. We may not agree on all issues, but at least we'll have that discussion, and you'll understand the reasoning

behind what people are advocating. We may not get that full discussion at these separate meetings.

CHAIRMAN FLAGG: I'm not sure that we're going to have the kind of difficulty that I think you're suggesting we might have, because I don't view the commission's plan as having to be exactly like the council plan.

It certainly would be desirable to have it complementary, to have the two plans complement one another, but I think there will be differences. There will be differences between the federal plan and a state waters plan, but it doesn't necessarily mean that those differences can't still be complementary to fostering better management of the resource. George, you had a comment.

MR. GEORGE LAPOINTE: I did, Mr. Chairman, thank you. George Lapointe from the state of Maine. I've not seen a copy of the letter, but it strikes me that the idea -- nobody can argue against the idea of better coordination between two management entities because there is confusion.

As a commissioner from the state of Maine, I share Megan's concerns about some of the logistical concerns. It strikes me that -- and not understanding entirely what Gil's concern is either, it strikes me that it would be worthwhile just not to take action on this now and have people look at it, have staff look at the implications of following through on the spirit of the letter as well as the detail and taking it up at another meeting, so that, in fact, we move the right way and not in haste.

CHAIRMAN FLAGG: Thank you, George. I think that's a good suggestion. If folks have no objection to that, I think it would be desirable to think a little bit more about this issue. Tom.

MR. FOTE: **I would make a motion to table until the staff has basically looked at it and whether we have the funds or not.** That's a whole consideration, so I don't think we have funds allocated to do this. It costs a lot of extra money, all of us flying up to do a day in New England. So until we have that done, I think I'd table the motion.

CHAIRMAN FLAGG: We have a motion. Do we have a second?

**MR. WHITE: Second.**

CHAIRMAN FLAGG: Pat White. All those in favor of tabling. Okay, it's a vote. **We will ask staff to**

**follow up on this and report back at our next Section meeting.** Other issues? Seeing none, the meeting is adjourned.

(Whereupon, the meeting adjourned on at 12:20 o'clock p.m., March 8, 2004.)