

ATLANTIC STATES MARINE FISHERIES COMMISSION

Holiday Inn by the Bay Portland, Maine

JOINT ATLANTIC HERRING SECTION
NEFMC HERRING OVERSIGHT COMMITTEE

January 13, 2000

Table of Contents

Attendance	iii
SUMMARY OF MOTIONS	iv
WELCOME/INTRODUCTIONS	1
APPROVAL OF AGENDA	1
REVIEW OF PID/SCOPING DOCUMENT	1
GULF OF MAINE GEAR USE ISSUES	4
Groundfish Bycatch	4
Marine Mammal Interactions	6
Schooling Behavior	7
Herring Discards	10
Northern Gulf of Maine Conflicts	11
Community Impacts	15
DISAPPROVED MEASURES IN COUNCIL FMP	18
SPAWNING CLOSURES	20
REPORTING REQUIREMENTS	23
DAYS OUT PROVISION	26
IN-SEASON AREA 1A TAC ADJUSTMENT	28
TAC ADJUSTMENTS	30
COMMISSION ISSUES	36
AP Nomination	36
Compliance Report Review	36
Approval of Minutes	37
OTHER BUSINESS	37

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Attendance

Atlantic Herring Section Members:

John Nelson, New Hampshire Fish & Game, **Chair**
Phil Coates, Massachusetts DMF
Bruce Freeman, New Jersey DFG&W
Rep. Anthony Verga, Massachusetts Leg. Appte.
Eric Smith, Connecticut DEP, proxy for Ernest Beckwith

Lew Flagg, Maine DMR
David Borden, Rhode Island DEM
Pat White, Maine Gov. Appte.
Bill Adler, Massachusetts Gov. Appte.
Sen. Jill Goldthwait, Maine Leg. Appte.

NEFMC Atlantic Herring Oversight Committee Members

David Borden, Rhode Island DEM, **Chair**
Jim Kendall, Massachusetts
Eric Smith, Connecticut DEP

Vito Calomo, Massachusetts
John Williamson, Maine
Phil Coates, Massachusetts DMF

Ex-Officio Members:

Dr. David Stevenson, Maine DMR, TC Chair
Jeff Marston, New Hampshire, LEC Rep.

Artie Odlin, AP Chair

Staff:

Dr. Joseph Desfosse (ASMFC)
Dieter Busch (ASMFC)

Tom Nies (NEFMC)

Guests:

Lars Axelsson, New Jersey
David Libby, Maine DMR
Glen Robbins, Maine
David Turner, Maine
Tom Warren, NMFS
David Ellenton, Massachusetts
Jennie Bichrest, Maine

Marston Brewer, Maine
Dana Rice, Maine
Peter Mullen
Dick Klingaman, Maine
Greg Power, NMFS
Mary Beth Tooley, Maine
Ricks Savage

There may have been others in attendance who did not sign the attendance sheet.

Joint Atlantic Herring Section/NEFMC Atlantic Herring Oversight Committee

January 13, 2000

SUMMARY OF MOTIONS

1. *Motion to approve the PID as prepared.*

Motion by Mr. Smith, second by Mr. Coates (motion on behalf of both bodies). Motion carries unanimously for both bodies.

2. *Move to approve the nomination of David Turner (Maine fixed gear representative) to the Commission's Atlantic Herring Advisory Panel* (staff note: this is a new seat on the AP).

Motion by Mr. Borden, second by (inaudible). Motion carries unanimously.

3. *Move to approve the 1999 compliance reports for the States of Maine, New Hampshire and Connecticut.*

Motion by Sen. Goldthwait, second by Mr. Borden. Motion carries unanimously.

4. *Move to change the deadline for submission of annual compliance reports to February 1st of each year, and allow the Commonwealth of Massachusetts, which has not submitted a complete compliance report for 1999, to submit an updated report by the new deadline.*

Motion by Sen. Goldthwait, second by Mr. Borden. Motion carries unanimously.

5. *Move to allow the states of Rhode Island, New Jersey and New York to use the new deadline to submit their 1999 compliance report with the stipulation a finding of noncompliance would be forwarded to the Policy Board if that deadline is not met.*

Motion by Mr. Freeman, second by Sen. Goldthwait. Motion carries unanimously.

6. *Move to approve the minutes of the May 17, 1999 Section meeting, and the June 14-15 joint Herring Section/NEFMC Herring Oversight Committee meeting.*

Motion by Mr. Borden, second by Mr. White. Motion approved by consensus.

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COMMITTEE CHAIRMAN DAVID BORDEN: Good morning, everyone. For those of you that don't know me, my name is David Borden and I'm the Chairman of the New England Council Herring Committee, and this is a joint herring meeting and the gentleman sitting immediately on my left is the co-chair of this group, John Nelson.

WELCOME/INTRODUCTIONS

What I'd like to do to start off today -- since we do have some new faces in the audience, I'd like to start off and have each member sitting at the table identify themselves and their affiliation. So, if we could, Artie, would you start.

MR. ARTHUR ODLIN: Artie Odlin, Advisory Chair.

MR. LEWIS FLAGG: Lew Flagg, Maine Department of Marine Resources.

MR. TOM WARREN: Tom Warren, National Marine Fisheries Service Sustainable Fisheries Division.

UNIDENTIFIED: We can't hear them, Dave.

CHAIRMAN BORDEN: Got to use the mikes, guys.

MR. BRUCE FREEMAN: Bruce Freeman, State of New Jersey.

MR. PATTEN WHITE: Pat White, Maine Commissioner.

MR. DIETER BUSCH: Dieter Busch, Atlantic States Marine Fisheries Commission.

DR. JOSEPH DESFOSSE: Joe Desfosse, Atlantic States Marine Fisheries Commission staff.

CHAIRMAN BORDEN: David Borden, State of Rhode Island and New England Council.

SECTION CHAIRMAN JOHN NELSON: John Nelson, State of New Hampshire and Chair of the ASMFC Section.

MR. JAMES KENDALL: Jim Kendall, New Bedford Seafood Coalition, member of the New England Fishery Management Council.

JEFF MARSTON: Jeff Marston, New Hampshire Fish and Game, Liaison to the Law Enforcement Committee.

REP. ANTHONY VERGA: Tony Verga, Atlantic States.

MR. SMITH: Eric Smith, State of Connecticut and New England Fishery Management Council.

MR. JOHN WILLIAMSON: John Williamson, Maine industry, New England Fishery Management Council.

MR. VITO CALOMO: Vito Calomo, State of Massachusetts, New England Fisheries Management Council.

MR. WILLIAM ADLER: Bill Adler, Massachusetts Governor's Appointee, ASMFC.

CHAIRMAN BORDEN: Okay. And also at the table the gentleman in the right corner is Phil Coates. He's the

Director of the State of Massachusetts. Temporarily the Director, I would say. He's going to retire in about a month.

APPROVAL OF AGENDA

The agenda's been distributed and I would ask are there any changes or additions or deletions to the agenda as it's been circulated? Anything else that anyone wants -- getting a little bit of feedback here. Anything else that people want to add to the agenda? (No response audible.) No? I would suggest that we take up the issue of the scoping document first, because that's an issue that the New England Council has to deal with next week at their meeting. Joe.

DR. DESFOSSE: Two minor additions to the agenda.

MR. CALOMO: Excuse me. I would suggest everybody shut off their microphone, only the one that's speaking, because that's where you're getting the feedback.

DR. DESFOSSE: Okay. There's a Plan Review Team Report on the 1999 compliance reports and also there's an Advisory Panel nomination from the State of Maine that the Section needs to act on.

CHAIRMAN BORDEN: Okay. We'll do those under Other Business, unless we have objection. So, let's start off with the scoping document; and Tom, do you want to provide us with a brief introduction or any comment?

REVIEW OF PID/SCOPING DOCUMENT

MR. TOMNIES: Sure. The scoping document should be on page 5 of the package that I gave you. You'll notice that it's in a different form than a version of the scoping document that the Herring Committee saw back in October of 1999. The format is changed to match a new format that the Council used with the whiting scoping document and a couple other -- I believe the monkfish document, as well; whereas the version you saw back in '99 was the format we used a couple years ago. So, this is a little bit of an update. It takes out some of the background information that was in the earlier scoping document.

The other thing that you should have in front of you that I distributed -- and if you don't, let me know and I'll give it to you -- is a one sheet piece of paper that's labeled limited entry questions. After we distributed the scoping document, the chair asked that we put these questions together because he felt that the scoping document did not go far enough in describing the types of information that we wanted to request from the public. So, he suggested a draft list of questions that would be added to the scoping document.

MR. FREEMAN: David, I have a question.

CHAIRMAN BORDEN: Bruce.

MR. FREEMAN: I'm not sure we all have the same

information. The packet I got was -- from the Commission was the one that Joe had sent out and I don't see the scoping document.

CHAIRMAN BORDEN: So, you didn't receive a mailing from the New England Council? Have we got --

MR. NIES: There was a Council FedEx that went out Monday that everyone should have received on Tuesday. If you don't have that, you don't have the scoping document. Yes. And I do have extras if you don't have it.

MR. FREEMAN: The packet I have, Tom, is the one sent out by the Commission -- by Joe.

CHAIRMAN BORDEN: Just so everyone's clear, make sure you have a copy of the document that's dated January 9th, 2000. That's the document we're going to be working off of. Everybody in the audience have that? Okay. Everyone at the table has that. And the other document that we'll be working off is the limited entry questions. Okay? So, everybody's working off the same piece of paper.

Okay. Do you want to make any further introduction about the document itself or the content of it?

MR. NIES: The only other comment I'll make is that the PDT reviewed the scoping document at a PDT meeting last Thursday; and there was some question at the PDT meeting about why we were going out with scoping since we've had some discussions on limited entry, controlled access, that have gone on for two years, and that in fact the draft FMP included a controlled access proposal.

The reason why we prepared a scoping document and why the Council wants to go to scoping hearings is that in order to prepare a controlled access or limited entry system we need to do some sort of NEPA document with it, and either an Environmental Assessment or Environmental Impact Statement to go along with it. And part of the process for preparing an Environmental Impact Statement is to go to scoping hearings. So, that was the logic for preparing the scoping document.

It was suggested by Doctor Logan, who's a member of the PDT, that when we go to scoping, in addition to the scoping document, that we'd be sure to have with us and take along a lot of the other information that we talked about and generated, so that people realize, you know, there has been some groundwork done and has been some discussion of the issue for the last couple of years.

CHAIRMAN BORDEN: Okay. So that the question then before both committees really is -- I think a fairly simple question. Is there something that is not in this document that should be in the document? That's the question. In other words, we should have a broad range of alternatives in the document that allow us the flexibility to pretty much consider a wide range of suggestions which we're apt to get from the industry and my view of the -- at least the limited entry proposals, the range of alternatives in the document range from not doing limited entry at all, to using a number of techniques such as ITQs and so forth. So, the question to the committee is other than possibly some minor wording changes, are there any major issues that are not covered that you want covered? Mr. Smith.

MR. SMITH: The only question I have about the document -- and I refer by comparison to the whiting process and the Council process that we're -- we're at the exact same step, we're embarking on a scoping process which will include a potential for a limited access system, which was a disapproved measure in the whiting plan. What we did in the whiting document was have a couple of

model ways of doing it. I guess what I'm getting at is a question whether this document is so inclusive but so general that it doesn't give the public a sense of how such a system might work.

You're absolutely right. It goes from -- the whole gamut from absolutely nothing to the most complicated type of ITQ that could -- anyone could envision, but there's no detail to know exactly what it might mean, and I just wondered if it was possible to have an alternative or two model way of doing it.

Again, with whiting we could do that because we had the disapproved measures. We had already gone through that in the plan development process. We had a couple of ways of doing this. They got heard at public hearing and then the one we preferred got rejected. So, we put those in and said this is not what we're exactly thinking of, but this is one way it could work. And then you turn the page and this is another way it could work.

So, we -- in whiting, it's a little different because we were farther ahead, but I just wonder if from the public's perspective they wouldn't benefit from -- again, seeing a couple of model approaches, as long as the front end language said the Council and the Commission haven't taken a position on this. They're just trying to show examples of how such a thing could work.

Having said all of that, I guess the other side of it is it will clutter up this document and even if we preamble it and say -- you know, we're not taking sides on these things, somebody who reads it in a document is going to think we've made our mind up.

CHAIRMAN BORDEN: Yes, and that --

MR. SMITH: That's the disadvantage.

CHAIRMAN BORDEN: And that I guess is a comment that I would make is that really at scoping it's not us necessarily telling the industry what we want to do. We're there to solicit their input. And so to what extent do you bias that input by putting in examples. I guess my own personal preference is to leave it general and really solicit the input right up front of the industry on a broad range of alternatives.

When we come back and after getting the advice of the industry advisors, obviously we'll be putting together an alternative that then has to go through a regular public hearing process and at that point you'll have preferred alternatives and rejected alternatives and so forth, and I guess my own view is that's the time to do that.

Other general comments? I'll ask the same question. Is there anything that should be in this document that is not? (No response audible.)

CHAIRMAN BORDEN: Any objections to the document the way it's prepared? (No response audible.) Any comments on the questions? Now, the questions, the way that the questions were -- came up -- after I read through the scoping document, I called Tom and I said -- I personally think that it would be helpful to have a list of questions at the back so that the industry could look at these types of questions and they don't have to answer each one of these questions at the public hearing. But the fact of the matter is they should look at them and what it does is it gives you the same range of questions that we're soliciting input on.

So, what I would envision is you go to the public hearing and they can comment on any of these, they can comment on any other alternatives that they could come up with. So, any objections to the -- including the questions,

I guess, would be the first question. And the second one would be do you want any of these changed? Are there other questions you want to see guidance on? Any input? (No response audible.) Very quiet group today. The meeting will probably last another 45 minutes at this rate.

As we do at all of our meetings, we allow the public to comment and I'm not trying to restrict that, so I'd ask the audience, anyone in the audience want to comment on any of the issues that we've discussed so far? (No response audible.) It's a very quiet group. Then what I would suggest is that we have a **motion to approve the document as prepared**.

MR. SMITH: **So moved.**

CHAIRMAN BORDEN: So -- and you have to -- let me just -- let me back up and actually state what the rules are. Since this is a joint body, what the process of it is, is we end up -- it may appear somewhat complex from the audience perspective, but we end up having to make two motions. You end up having to make a motion on behalf of the New England Council and then there's a similar motion that is made on behalf of the Atlantic States Marine Fisheries Commission; and since you have state representatives that serve on both bodies, they have the ability to make the motion on behalf of both committees.

If both committees authorize the motion, then we will debate the motion and you'll have two separate votes on the motion. And if both groups approve the motion, then it moves forward. Everyone understand the rules? John.

CHAIRMAN NELSON: Just to complicate the discussion just a little so we do have a discussion take place, Dave, the question that was put to me and I really don't have an answer for it is, should the Commission move ahead with approving or being involved in a scoping document because they have not had a vote or had a policy issue of reopening the plan. So, what do you think?

CHAIRMAN BORDEN: I think that's up to the ASMFC Section to pretty much decide that. Since there's no obligation and all we're doing is soliciting the input of the public on this, I can't envision that other Commissioners are going to object to that. I think if -- after that, though, I would say it has to go back and get some broader discussion within the Commission.

CHAIRMAN NELSON: Okay.

CHAIRMAN BORDEN: If anybody objects to that, please speak up. Okay. So, back to the motion. Do I have a motion? Eric, did you make --

MR. SMITH: **Made on behalf of both bodies.**

CHAIRMAN BORDEN: Okay. **Seconded by Phil Coates.** You have a valid motion on the table. Any discussion? Motion is to take the document out to public hearing. Mr. Freeman.

MR. FREEMAN: Thank you, David. The comments I have relative to ASMFC -- and they get at somewhat what John was raising -- because of problems with the Commission, there was not a meeting in October. There was one with the Council. And the fact that the Council took action independently of the Commission was unfortunate. Again, it was apparently because of lack of funds from the Commission. Then there was another meeting, apparently in December, dealing with the closures, and again the Commission wasn't involved in that -- or at least several states of the Commission were involved, but it wasn't the entire section.

And it just concerns that we have -- that this needs to be a cooperative plan, needs to go together, it needs to be

done together, and we're starting to lose that continuity; and it does -- it does have some concerns.

Relative to the fact this is a scoping document and essentially goes out to the public for comment, I really will support that motion, but I just want to express the concerns that we need to keep this on track together.

CHAIRMAN BORDEN: Yes, and I completely agree with that, that I think we just have to be diligent and make efforts to do that in the future, it's unfortunate that the Commission couldn't maintain the meeting schedule during the end of 1999, but that was due to unforeseen financial difficulties and hopefully those won't arise this year.

MR. FREEMAN: I understand that, David. The concern, however, from the Commission's standpoint is again we represent perhaps the southern end of the commercial fishery for this particular species, but provisions in the plan are such that each state is obligated to put in place regulations to support the plan and relative to the spawning closure tends to be an issue that New England's been struggling with for a number of years, but nevertheless whatever the outcome is we'll be obligated to adhere to whatever comes out of that discussion, such that vessels from New Jersey now certainly are capable of fishing anywhere throughout the range of this species so that what goes on in New England will have direct implications to us, as well. We want to make sure that we're part of that process.

CHAIRMAN BORDEN: Okay. Other comments on the motion? Eric.

MR. SMITH: I just want to make sure it's clear, although I didn't say so, I followed your lead as incorporating these questions as some form of an appendix to plant the seed for the public to be thinking about the questions. That should be noted that it's included in the motion.

CHAIRMAN BORDEN: Okay. Any other comments on the part of either one of the boards? (No response audible.) Anyone in the audience care to comment before we take the actual motion? (No response audible.) If not, I'll let John Nelson call the vote of the Commissioners and he'll probably ask for a caucus.

CHAIRMAN NELSON: Yes. In keeping with our tradition and our new way of doing business, I'll let -- give a minute to each of the states to caucus and then we'll call the vote.

CHAIRMAN BORDEN: Okay. So, you've got one minute and then the vote's going to take place (Pause.) Ready for a vote here? John.

CHAIRMAN NELSON: All right. Joe, if you would, states are all ready. Could we have the roll call?

DR. DESFOSSE: Maine.

MR. WHITE: Yes.

DR. DESFOSSE: New Hampshire.

MR. NELSON: Yes.

DR. DESFOSSE: Massachusetts.

MR. CALOMO: Yes.

DR. DESFOSSE: Rhode Island.

MR. BORDEN: Yes.

DR. DESFOSSE: Connecticut.

MR. SMITH: Yes.

DR. DESFOSSE: New York is absent. New Jersey.

MR. FREEMAN: Yes.

CHAIRMAN BORDEN: Okay. New England Council -- or John --

CHAIRMAN NELSON: For the record, **the motion**

is unanimously passed by the Section.

CHAIRMAN BORDEN: All right. Council, are you ready for the question? All those in favor, signify by saying aye (Response.) Opposed? (No response audible.) Abstentions? (No response audible.) **The motion carries unanimously.** Okay. That concludes -- unless someone has something else under that agenda item, that concludes that segment of the agenda. We'll move on to the next item, which is gear use issue in the Gulf of Maine.

GULF OF MAINE GEAR USE ISSUES

By way of introduction, first of all there is a report -- the section of the document that the PDT prepared with an outline -- a whole series of answers. These are questions that came up at the previous meeting and what we did was in an effort to make decisions based on facts, we referred the questions to the PDT and asked them to flesh out the current state of knowledge on each one of these issues.

So, Tom, how do you intend for us to proceed here? Are you going to introduce each one of these?

MR. NIES: Well, I can introduce and briefly summarize the five or six points that the PDT was asked to look at, give a little background of where this issue came from, and depending how much detail the Committee or the Section want to go into, Joe and I or some of the other members of the PDT that are here today would answer more detailed questions about why the PDT concluded what it did.

CHAIRMAN BORDEN: All right. Unless we have objection, what I would suggest is we just work through these one at a time so that it simplifies the discussion and why don't we start with the issue of groundfish bycatch. The essence of this issue was that there was concern that was voiced about midwater vessels having a bycatch of groundfish and discarding that catch or in fact landing that catch. And Tom, could you just quickly summarize the results, please?

Groundfish Bycatch

MR. NIES: Well, there's limited information available on groundfish bycatch in the herring fishery, both in purse seine and midwater trawlers. Most of that information has been presented before in the Atlantic Herring FMP and it was summarized again in the SAFE document that we prepared in July.

Much of the information comes from some observer trips that the State of Maine ran through a funded program in 1997 and 1998, and the conclusion of that program is that there's very little bycatch in either the midwater trawl or purse seine fisheries, very little groundfish bycatch.

Now, one point of information that came in after that observer study was done was that there was one incident in January of 1999 where a midwater -- where the catch from a midwater trawler was found to have about 1500 -- I believe it was juvenile haddock in the catch. The PDT did not have a lot of the details from that particular incident. The boat was issued a violation for that, for landing the bycatch -- for landing the groundfish. But the PDT noted that there had been no other violations since then reported and no other instances noted.

The summary data that came from the observer report -- from the observer reports in 1997 and 1998 can be found on page 13. You can see that probably the single largest

bycatch was spiny dogfish in seine vessels and Atlantic mackerel for trawl vessels, but if you look through the list and you look at the cod and the other groundfish, you see that there's very little cod or other groundfish that were noted in those observer trips.

The total number of trips, I think, was around 50. I think it was 27 midwater trawl trips and 23 purse seine trips. The numbers are in the summary. I may be off one or two. So, it's not extensive coverage, but it's really the best information that we have.

CHAIRMAN BORDEN: All right.

MR. NIES: This is by pound.

CHAIRMAN BORDEN: Comments on that? John.

MR. WILLIAMSON: It is interesting to note under the trawl category a bycatch of monkfish and of winter flounder. It's hard for me to imagine a monkfish up in the midwater column. So, you wonder -- one wonders if the effects of having an observer aboard a vessel that -- whether that vessel changes its fishing strategies.

CHAIRMAN BORDEN: And that's probably a discussion that we could have for three or four weeks. That's something that the New England Council has discussed on a number of occasions, whether or not the behavior changes. But other comments on the subject? We don't have to approve these. I'm just going to go through them one by one and allow anyone to comment. Anyone in the audience care to comment on this issue? Vito.

MR. CALOMO: I just wonder, Mr. Chairman, is this numbers of fish on this chart or pounds?

MR. NIES: Pounds.

CHAIRMAN BORDEN: Okay. Any other --

MR. CALOMO: Oh, I see it now. I see it now. Sorry. Thank you.

CHAIRMAN BORDEN: Okay. Thanks, Vito. Jim.

MR. KENDALL: As per John's comment about the monkfish, monkfish are known to come up off the bottom. So, I won't question that. The winter flounder may be another example, but one pound I think could also account for something that gets (inaudible).

One of the questions that's been raised both at the Council and at the Law Enforcement Committee had to do with the designing of some of the midwater trawl gear, specifically I'm referring to the cookies on the sweep, chafing gear, which falls under a close definition of groundfish gear. It's prohibited.

I think a larger question would arise about that gear if a vessel is fishing within -- or traveling through a currently closed groundfish area without this gear being properly stowed, because that would incur a second -- possibly a second violation. I think it really needs to be cleared up. Understand if we want to continue with that definition, and if so then the industry has to be made aware of the consequences of that question arising at any time. They may win the question, but they would still have to participate in the war.

CHAIRMAN BORDEN: Okay. That -- this issue has been discussed in a couple of different contexts -- and I know the advisors already have discussed it. Have they formalized any position on it?

MR. ODLIN: (Inaudible.)

CHAIRMAN BORDEN: You're going to have to use the mike, Artie.

MR. ODLIN: I thought there was a regulation that it was covered under the groundfish, because they're using smaller than the regular mesh, and that they would have to

cover their cod-ends transiting through any area. I mean, it's a common practice that they do all the time anyway.

CHAIRMAN BORDEN: Tom.

MR. NIES: I don't know if this clears it up or not. Midwater trawlers don't necessarily have to cover their gear when they're in a closed area because they are allowed to fish in the closed areas at present under Framework 17 of the Groundfish Plan. So, to say that they have to cover their gear when they're transiting those areas would be inconsistent with the fact that they are allowed to fish in groundfish closed areas at present as an exempted fishery.

The current regulations in the Groundfish Plan -- I don't have the precise wording at the top of my head, but basically it says that the gear cannot be fished on or rigged for fishing on the bottom. And so that would prevent them from having anything that you think would mean the gear was being fished on the bottom. I don't know if there's anybody from the Groundfish Committee, but I thought the framework that will be discussed next week included a provision that specifically says midwater trawl gear won't have cookies or chafing gear on the net. Wasn't that added to the framework at the November meeting?

CHAIRMAN NELSON: Yes.

MR. NIES: Yes. So, that regulation is moving forward and will be voted on next week.

CHAIRMAN BORDEN: Okay. I guess my question is is that regulation consistent with current industry practices? Yes, okay. So, there isn't a problem here. Okay. Then -- and no one in the industry thinks there's a problem with it? Yes. You're going to have to come up to the mike, please. And as is our custom, please identify yourself so everyone knows who you are.

LARS AXELSSON: My name is Lars Axelsson, Fishing Vessel Flicka, Cape May, New Jersey. We do a lot of midwater trawling, have done it since the mid '70s and we've used many different kinds of sweeps, the bottom footrope of our midwater trawl, and presently we're using chain. We have used wire covered with cookies. We've used combination rope cable, wrapped rope. It's up to the individual fishermen's preference. It's not for how it tends the bottom, but it's for if the net comes in contact with the bottom that you can save damage to your gear. Most of the time when you're midwater trawling you're around a lot of bottom that's not very healthy and you settle the net down on the bottom and it's done as far as broken. I had noticed that regulation a couple of months ago coming through and it sent warnings in my mind because there's a lot of fishermen that don't know that that regulation's pending or how severe it's going to be. And it took me by surprise.

The only thing that happened for me was that luckily I've been experimenting with simply chain sweep. Overseas they use lead line, pieces of lead inside rope. And I really don't know if that has an issue at all as far as for how -- how it tends to catch fish. You can make a midwater trawl go to the bottom and likewise you can make a bottom trawl go up in the water column. But how efficient is it when it is used that way?

And as far as the sweep itself, if you have a two-inch cookie or a three-inch cookie on your sweep, that's not going to save the net, per se, from boulders and rocks at all. But it's just in that -- in the time when it settles to the bottom it can be lifted off.

I kind of wish that definition would be removed, but that's your call. It basically takes the option away from different fishermen on the kind of sweeps they prefer on

their net.

CHAIRMAN BORDEN: Okay. Other comments? In the back, please.

MARSTON BREWER: Marston Brewer, fishermen out of Stonington, Maine. My first comment on this is that three minutes isn't really a lot of time to review anything. So, it's awful hard to -- you know, form an opinion when you haven't read the material.

The second comment on the groundfish bycatch is -- it's stated in here there's insufficient information and I think that pretty much sums it up. If you're ever going to get the information you need as a management tool, it's going to be essential to put observers on these boats to get an understanding of it, because other than that, it will always slide through under the pretense of there's not sufficient information. Thanks.

CHAIRMAN BORDEN: Okay. Thank you. The thing I'm a little bit uncomfortable with the whole issue of -- you know, changing the definitions and whether it's a groundfish change or a herring change it's irrelevant, without actually taking the definition and making sure that we circulate it fully to the industry and let the industry take a look at it, is that the -- I think we owe them at least that step in the process.

So, is it going to be a problem, Tom, if we ask that the definitional change issue be consolidated in some type of document and circulated to the industry, just so that -- Number 1 they're apprised of it, and Number 2 that they can then advise the appropriate people in this process whether or not it's going to be a problem or whether or not we should change things? Is that -- Jim.

MR. KENDALL: I think the problematic language that comes in is I believe in the groundfish regs there's a word within that framework that says this gear is not to be designed to come in contact and the word designed. Once they start putting cookies on and the chafing gear, then the presumption is it's being designed to protect -- like some of them have already explained -- inadvertent contact. But that inadvertent contact is not supposed to exist in the first place. And to design something to prevent damage because of that inadvertent contact seems to kind of go against the language as it's been argued more than once.

CHAIRMAN BORDEN: John.

CHAIRMAN NELSON: Let me make sure I've got my memory right. The existing regulations that allow midwater trawls to be in the closed areas already have that type of language in there, as far as the gear. And the only thing that the Groundfish Committee has done is to investigate concerns that were raised that indeed people were apparently bringing the nets either contrary to what was already proposed -- what was already in the law, or were doing something a little bit differently. And that that then was investigated -- was found that they should not be having that type of gear on their nets. That was already the intent of the regulations and therefore we are merely reaffirming that. And I think the discussion with the Council was that -- you know, maybe there's some other wording to make sure that it's very clear to everybody on what midwater trawl is and what it should not be.

So, it's not something that's new that's being proposed. It's something that's been out there for some time and it's just bringing it to light again. I think your point is about making it clear to the industry by making sure they get that information is a valid point, but I don't think it's -- it's not something new.

CHAIRMAN BORDEN: Yes, but I guess -- I agree with you, but I guess my point is if we circulate the definition and then if people in the herring industry have a problem, then what they're going to have to do is talk to one of their representatives on the Groundfish Committee and then that will be factored into the deliberations --

CHAIRMAN NELSON: Tomorrow?

CHAIRMAN BORDEN: Oh, is that when it's going to be taken up? Tomorrow? Rather soon.

CHAIRMAN NELSON: Yes.

CHAIRMAN BORDEN: Artie.

MR. ODLIN: Thank you, Mr. Chairman. I thought right from the get-go that this should have been remanded to the Herring Committee and have them take a look at it, because I was at both of the meetings and there was not a herring person at any one of those meetings. So, that's just my take of it. It should have gone through the Herring Committee.

CHAIRMAN BORDEN: Well, you know, there's going to be a limit to what we can do here, Jim, and the time constraints. So, what I would suggest is we take the definition, we circulate it then to the herring industry. If it turns out that it's a problem that the herring -- this committee can always make a recommendation to the Groundfish Committee to change it, if we have to do that. Okay. Any objection to doing that? (No response audible.) Anything else under groundfish? So the essence of groundfish is -- their conclusion is that there's no evidence of excessive groundfish bycatch. Jill.

SEN. GOLDTHWAIT: I would just have to say that the statement that there's no evidence must be read in conjunction with the insufficient information statement.

CHAIRMAN BORDEN: Yes.

SEN. GOLDTHWAIT: I mean to just say there's no evidence indicates that it's been studied and that's the conclusion, but it appears to me that it's a matter of we don't really know. There isn't any evidence because we haven't gone out to look for the evidence.

CHAIRMAN BORDEN: Yes, I think your point's well taken. It might be a better way to characterize it is based on a very limited amount of sampling, that's what the conclusion is. And we should get more sampling and that's all part of the groundfish effort, it's part of the Herring Plan, it's part of the ACCSP process. We all know we need more advisors. We just have to get the money to do it -- I mean observers, excuse me. Eric.

MR. SMITH: Our information is always going to be insufficient for the level of knowledge we'd like to have, and that's a fact of life and while I don't agree with Senator Goldthwait, I would observe there were 50 trips in '97 and '98. Of 200,000 pounds total bycatch there was a very small amount of groundfish and that's probably better data than we have to answer some of the other questions that we're confronted with.

So, while more observer coverage will always be better and we have to find a way to get it, insufficient -- I guess I shouldn't -- I wouldn't want to use that word to perjure what we do have, which is a 50-trip data set of 200,000 pounds of bycatch observations. And by comparison, that's pretty good. That's not too bad. And what it shows is a very small amount of it is groundfish.

CHAIRMAN BORDEN: Jim.

MR. KENDALL: One thing I'd like to point out that some of the evidence that never did materialize was something that I had -- one conservation group actively

looking for it. They were out purchasing barrels of bait and so forth when the human cry was on about the landings of the groundfish. And as far as I'm aware of, we've never received any reports to justify any further investigation. So, I believe that would be a good sign on that point, because if there had been a problem, it would have been brought to our attention, I would assume.

CHAIRMAN BORDEN: Anyone else? If not -- excuse me. Jill.

SEN. GOLDTHWAIT: I'd just like to point out that the word insufficient isn't mine. It's the PDTs.

Marine Mammal Interactions

CHAIRMAN BORDEN: Okay. Let's move on. Next issue is -- there was a concern about marine mammals and potential marine mammal catches by midwater boats. And Tom, could you just summarize the results there, please?

MR. NIES: When we prepared the FMP, we consulted with NMFS on the interactions in the herring fishery between the gears and marine mammals, and the advice we got from the Northeast Fisheries Science Center is that we should assume that midwater trawls do have some interactions with marine mammals, even though they had very limited information in their database. They said the record from other fisheries in the world is that they do have some interactions.

We had a -- as part of the FMP approval process, we also do an Endangered Species Act Section 7 consultation with the Fisheries Service. The conclusion of that Section 7 consultation was that the interactions between all gears in the herring fishery, not just midwater trawls, were not likely to jeopardize threatened or endangered marine mammals. Now, that consultation only looks at those marine mammals and other species that are threatened or endangered. It doesn't consider all marine mammals.

The discussion that the PDT held -- noted that in a lot of documents we have, both the Maine observer trips and the Section 7 consultation, that both gear main types, purse seine and midwater trawlers, have interactions with marine mammals. And in fact one of the conclusions of the Section 7 consultation is that purse seines are more likely to have interactions with a certain type of threatened whale than some other gears.

The conclusion of the PDT is that yes, herring gear, midwater trawls, are likely to have interaction with marine mammals, but there is no information that indicates that one of the gears or the other is any better or worse with respect to marine mammals than the other.

CHAIRMAN BORDEN: Okay. Comments on that point? Any comments? Vito.

MR. CALOMO: Thank you, Mr. Chairman. I think Tom's point is well taken. I just -- I could back it up 100 percent. I'm just wondering why that question specifically targets midwater trawls. It should be saying in the herring industry or in the pelagic industry and it's both.

And also going back to your chart here, it shows the trawl survey having a harbor seal of 300 pounds. That could be one, two seals?

MR. NIES: Yes. I think it was two seals.

CHAIRMAN BORDEN: On your first point, Vito, when this allegation came up at the committee meeting, it was primarily directed at midwater boats and not purse seine boats. But when we referred it to the PDT we wanted a fact finding that would apply to all gear types. I mean,

your point -- I understand the point you're making.

MR. CALOMO: That clarification should be noted.

CHAIRMAN BORDEN: Okay.

MR. CALOMO: Thank you.

CHAIRMAN BORDEN: Jill.

SEN. GOLDTHWAIT: Thank you, Mr. Chairman. I'm not sure I understand what appears to me to be an inconsistency between the summary statement and the review of the discussion. The summary statement says according to NMFS these interactions are not likely to jeopardize, threaten or endanger marine mammals. So, then how is it that in 1999 the midwater trawl fishery was listed as a Category 2 fishery that has an occasional likelihood of causing incidental mortality and/or serious injury?

CHAIRMAN BORDEN: Tom.

MR. NIES: Well, I don't think those two statements are inconsistent at all. The Section 7 consultation concluded that they're not likely to endanger or threaten -- I forget the exact words -- endanger or threaten marine mammals. They're not likely to jeopardize them.

The finding of jeopardy doesn't mean that there may not be any interactions at all, but that the interactions are at a low enough level that they will not jeopardize those endangered and threatened resources.

In addition, in the Federal Register Notice that listed the midwater trawl -- herring midwater trawl fishery as a Category 2 fishery, NMFS noted in the language in the Federal Register that they had no records of actual interactions between the herring midwater trawl fishery and any marine mammals, but that because of their concern that this was likely to happen based on experience around the world, that they intended to list it as a Category 2 fishery, which gives them the ability to place observers on midwater trawl boats to try and determine the specific level of interactions.

CHAIRMAN BORDEN: Jill.

SEN. GOLDTHWAIT: If you don't mind a follow-up, because I have a --

CHAIRMAN BORDEN: Go ahead.

SEN. GOLDTHWAIT: -- particular interest in the ESA these days, I'm not sure I understand the requirements for how this is looked at. If there is no indication that it happens, how can it be expressed that there is an occasional likelihood of it happening?

CHAIRMAN BORDEN: Tom.

MR. NIES: Well, that was a question many in the industry asked when NMFS published their notice proposing to list it as a Category 2 fishery, and I think the answer was that they didn't feel the fact that they had no record given the limited observer coverage on the fishery meant that it never happened. They know that midwater trawl fisheries in other parts of the world occasionally do have interactions with marine mammals. They know that our own experience over here with the midwater trawl mackerel fishery in the '80s with some of the foreign vessels had some marine mammal interactions, that they felt that they could justify listing it in order to get observers on board to find out what that level was.

I think the comment in the letter from the Center was that the fact that we have no information on this particular thing, given what we know goes on in other parts of the world, should not be -- lead to the conclusion that it never happens.

CHAIRMAN BORDEN: Jill.

SEN. GOLDTHWAIT: So, my final point, Mr. Chairman, is that it seems as though NMFS is saying notwithstanding insufficient observer coverage we're going to list it as a Category 2. The PDT is saying despite insufficient information or inadequate observer coverage, we're going to say it's not a problem. So, it's sort of the same approach of acknowledging inadequate coverage, but on the one hand that led to so let's list it anyway, and the other hand it's leading to so we're going to assume it's not a problem. Thank you.

CHAIRMAN BORDEN: Okay. Anyone else on this issue? Anyone in the audience before I go back to the committee one last time? (No response audible) Okay. No hands up in the audience. Bill Adler.

MR. ADLER: Yeah, Jill, I wouldn't be too upset about a Class 2 finding for marine mammals in that I find that Class 1/Class 2 a little bit warped to begin with, obviously because lobster's Number 1 -- listed as Number 1 and we have very little reaction really. So, Class 2 is not a problem, I would think, because it's just -- that whole thing seems to be a little bit warped to me anyway.

Schooling Behavior

CHAIRMAN BORDEN: Okay. No other comments on this, we'll move on and take the next item, which is schooling behavior. This issue came up in regard to a concern that was brought by some members of the industry -- or voiced by some members of the industry that there may be negative impacts on herring by certain gear types at certain times of year when the fish are spawning. So, Tom, could you --

MR. SMITH: Mr. Chairman?

CHAIRMAN BORDEN: Yes.

MR. SMITH: Just in order of the document -- we missed discards of herring or are we going to take it later?

CHAIRMAN BORDEN: Yeah, it's in reverse. I'm just working -- I'm working off the --

MR. SMITH: I got you, okay.

CHAIRMAN BORDEN: -- cover of the --

MR. SMITH: The cover sheet. Thank you.

CHAIRMAN BORDEN: The cover sheet, but it's in reverse in the actual written material. Thank you, Eric. Tom, could you just summarize what the finding was on this?

MR. NIES: The question the PDT was trying to look at was is there information available that shows that one gear type or another has a different impact on the schooling behavior of herring, particularly after the herring are subject to the fishing gear. We conducted a literature search and part of the problem right up front with the literature search is that most of the literature on herring focuses on how the fish react to fishing gear so that you can design better ways to catch them or so that you can figure out how that screws up your assessments that you're trying to perform. And that's a slightly different focus because they're looking at -- most of the studies focus on what the immediate reaction of the fish is to the fishing gear, rather than what are the fish doing ten minutes later after the fish have gone by. But from looking at a number of studies that were done from the late '60s to the 1990s, the information shows that herring seem to react -- generally react to fishing gear of all types in much the same way that they react to other predators. There's a wide variation in the response of the fish depending on what time of year it is, whether

they're in spawning condition, whether they're migrating to feeding areas, and some of the studies even seem to indicate that there's different reactions depending on what specific stock of herring it is. So, it's difficult to make the conclusion that what happens to one school of herring in one place is going to happen to another school of herring at a different time in another place.

But from looking at the studies, it appears that herring do react to fishing gear and fishing boats, they react to noise, there's some indication that during daylight they react differently, which may indicate that they also react to seeing the nets or seeing what's approaching them; but that there -- we didn't find any indication that they lose their ability to school after they are subject to fishing activity.

In fact, in one of the studies there's just sort of a footnote mentioned that this was a small research trawl, I believe, that the herring that evaded the research trawl were observed to have reschooled 400 yards behind the trawl, which they figured was three or four minutes at the speed that particular trawl was traveling in.

Other indicators that seemed to indicate that fishing activity doesn't have a very severe effect on the schooling behavior of the fish is that there are a number of examples of herring stocks where the fish continued to school while they were subject to very heavy fishing pressure, and in fact this very fact they continued to school led to the eventual destruction of that particular stock, because the fishermen were still able to target them and make money doing it.

Dave Libby is here in the audience. He can probably answer some more specific questions about some of these studies if anybody has them, and he might have also found some additional information that he found since last Thursday. I don't know if it conflicts with what I said or just adds to what I said.

CHAIRMAN BORDEN: David, would you like to comment?

DAVID LIBBY: David Libby, Maine DMR. Tom has said most of what our findings are, which is that the other implication on the behavior of schooling fish and reaction to gear is obviously that the bigger the gear, the more the reaction when the gear comes into the water, especially a trawl or whatever it is creating a lot more noise, a lot more head pressure. Herring sense this, they see it, they feel it, and they're going to react, and depending on such things as temperature and season and their life history, what part they're in, whether they're spawning or they're migrating, they're going to behave differently.

But the most part, the schools split up, evade the predator, the gear, and once that danger has passed, they reschool. The schooling is their nature. This is what they do. They use schooling for migration, for spawning. They also use schooling for -- that's their defense. The bigger the school the better with herring. So, they're always looking to reform the schools, especially with fish their own size.

One anecdotal piece of information that's been seen in Europe is that possibly long-term fishing effort on schools will change fish behavior to the point that they can sort of sense if they've noticed that -- if a boat is -- you know, is traveling quite fast, not doing much, is going across the surface, they really don't seem to care. When that boat slows down, starts throwing gear in the water and starts going slower, fish will start to behave like they've been -- they're being chased or preyed upon and react to that noise.

And there was also a mention about the Maine -- the east coast herring in the U.S. here, being that they're a

young stock and they're easily caught because they haven't learned yet how to evade fishing -- fishing gear. But then they seem to think that it's more the case of there's just so many fish here that they're usually caught that way.

So, there is no real evidence to say that one gear is going to effect the behavior of schooling fish any other than other gear is -- or from any other predator such as whales or tuna or whatever.

CHAIRMAN BORDEN: Okay. Thank you, David. I'd suggest you stay right there. Questions for Tom or David. Vito.

MR. CALOMO: Thank you, Mr. Chairman. I think I want to add something instead of have a question. Spending about 20 years in a spotter plane, I concur with Mr. Libby here, absolutely by sight.

If you go back 20 years ago, when we used to tell the purse seine boats that they hear you coming, they used to think I was one who flew over the cuckoo's nest. But here we are 20, 30 years later, exactly what I seen from an airplane many times, and when you capture part of a school or go through half of the school the rest form and sometimes two schools come together for protection.

What both gentlemen have said here today is absolutely gospel with my eyes that I've seen it. So, I can appreciate what's come back 30 years later or so. Thank you.

CHAIRMAN BORDEN: Okay. Any questions? Bruce.

MR. FREEMAN: A question directed either to Tom or to David. The literature that you looked at, did it include other than herring, for example, Pacific sardine?

MR. LIBBY: No, these are mostly Atlantic herring. I don't think there was any -- I'd have to ask Tom. He looked at half the data, I looked at the other half. This is mostly European stocks. This was -- most of the studies were done through the ICES group in the North Sea and Celtic Sea, in and around that area.

CHAIRMAN BORDEN: Tom.

MR. NIES: Some of the studies I read did talk about some other species of fish, but I tried to extract just the information that applied to Atlantic herring. You know, in some cases they looked at herring and (inaudible) at different stages of the study and I just tried to pull out what they specifically said about herring rather than other schools.

MR. CALOMO: Herring and menhaden are the same.

CHAIRMAN BORDEN: Okay. Jim Kendall.

MR. KENDALL: Yeah, David, maybe you can give me an answer. It just popped in my mind when you were talking about the behavior of the herring to various interactions that they're experiencing. Anything done on the new question about seismic activity through the oil research and so forth and if there's any documented effects because of that type of activity?

MR. LIBBY: Not that I know of. I haven't heard of anything like that.

MR. KENDALL: All right. Thank you.

CHAIRMAN BORDEN: Any other committee comments? (No response audible) Anyone in the audience have a comment? Yes, in the back please. You're going to have to come up and use the mike. David, if you want to just sit on the -- bring a chair up and sit right on the corner of the table, you can use Artie's make.

DANA RICE: Dana Rice, fisherman. Reading through your document here it says -- I keep seeing no

evidence, no evidence, no evidence. And all of the testimony here -- you're talking about whatever you gathered. But the issue from my side of the fence here is that all of the evidence and most of the data I think that you're talking about is test trawls and purse seine data. The pair trawl we're only talking the past two years in my area that they've had a presence, and four or five years in the presence anywhere but Georges.

So, I guess the question -- I'm asking a question more than anything else. The data that you're using here, that you have in hand, doesn't relate well to the issue that the industry's bringing forward regarding pair trawlers.

There is no evidence, and my question or what bothers me about -- how are we going to gather evidence. Has anybody got any ideas? How are we going to gather evidence on the impact or non impact of pair trawlers? I don't think there's any mechanism out there to do it. And it kind of scares me to see this thrown around here. Not that I'm disagreeing with some of it that's out here, but when 50 percent of the fishery say that there's a problem and we just keep saying there's no evidence, no evidence, no evidence, I'm afraid that in a year or two there's going to be some evidence that something was drastically wrong because the fish stock are not going to be there and we're going to be in trouble. I think we need to be proactive, not reactive, and can someone answer my question how are we going to get this evidence? Has anybody got an idea how we're going to test one gear type against the other?

CHAIRMAN BORDEN: Someone on the -- Artie.

MR. ODLIN: The midwater trawl industry has -- in the last five years has tried to get a good comprehensive observer sea sampling program going. I've talked with the region and there's a lot of money around but it's mostly dedicated to multispecies. So, if we want anything, I guess we're going to have to knock on a senator's door and get -- you know, an appropriation just for herring sea sampling.

CHAIRMAN BORDEN: I'd just add that the other alternative here is to try to work with some of the Sea Grant programs or some of the universities up and down the coast to see if in fact they could bring some of their resources to bear on the issue. John.

MR. WILLIAMSON: Yes, as I understand the concern that Dana's raising, I think it's best reflected in some of the data we just heard reported upon that the schooling behavior of herring means that they can get knocked down to very small levels and still be very susceptible to harvest.

And the question I think the industry is raising or the seine fleet is raising is that that sort of depletion level and exposure due to schooling makes -- makes the midwater trawl gear type more -- makes this species very vulnerable to the midwater trawl gear type; and the question is does -- because that a midwater trawl can work on very small aggregations of schooling herring. The implication seems to be that the seine is not able to work on very small aggregations, so that it's not able to knock a stock down to as low a level. Now, that's an -- that's something that's implied in the testimony you're hearing from industry. I don't know if it's been tested.

CHAIRMAN BORDEN: Bruce.

MR. FREEMAN: I just want to comment on the last comment and the reason I raised the issue of Pacific sardine was there was a history of that fishery similar to herring schooling species, very important to the California fishery, who fish primarily by purse seines and it was fished down

to extremely low levels, in fact there was no fishery for over 40 years because of this problem.

Now, again, I don't know the similarity between the Pacific sardine and herring, but the point is the schooling fish aggregations are such that Pacific sardines aggregated very close to shore, were fished very intensively down to a few schools, and then they were all but eliminated. So, there seems there may be some connections, but I think the fact of the schooling behavior is such that those types of gears that can concentrate on the school can be very effective and it's just something we need to look at.

CHAIRMAN BORDEN: John Nelson.

CHAIRMAN NELSON: In answer to your -- perhaps an answer to your question, there was allocated in the federal budget about two million dollars for a new consortium to utilize for research with the industry; and I think that Dave has already kind of touched upon it that the Sea Grant of the various states, certainly Maine and New Hampshire and Massachusetts, are working together to try to reach out to the industry to find out what are some of the problems that they have and do research with the various industry members, whether using their boats or whatever, to try to address some of those. And that's really a separate funding source that can be tapped in, and I would suggest you touch base with the Sea Grant office in Maine and let them know what your -- what your problem is that you're seeing and let them work with you to come up with a proposal to try to address that. They haven't done anything except start their preliminary discussions now, so this is a good time to get in and have that input to them.

CHAIRMAN BORDEN: Vito.

MR. CALOMO: Thank you, Mr. Chairman. I might state the obvious here, but 300,000 pounds a vessel carries, whether it's with a purse seine or a midwater trawl is 300,000 pounds. What's the difference which way he catches them? There's 300,000 pounds of dead fish.

I'm having trouble figuring out -- they say the midwater trawl breaks up the fish. I hear testimony amongst our science people that -- and myself that come back together. If you catch 300,000 pounds with a purse seine or 300,000 pounds with a midwater trawler, you've caught your limit.

It feels like to me that it isn't the resource that is being talked about, it's the method of catching them. And I just don't see the difference. If they're dead, they're dead, whether by purse seine or midwater trawl.

CHAIRMAN BORDEN: Okay. Thank you. Glen. Excuse me. Jill, did you have a question?

SEN. GOLDTHWAIT: If I might respond to Vito. Vito, thanks for bringing up that point and I agree if one could presume that both gear types are going to take an equal number of fish, what's the difference to the fish. And in that scenario there wouldn't be one.

However, when we get down to Number 6, community impacts, I think that's where the difference lies because a lot of the Down East Maine communities are heavily dependent on the smaller boat, nearer shore types of fishery which are really the ones that are accessible to them. It's a broader employment base and it will have a significant impact on those communities if that purse seine fishery goes out of business.

CHAIRMAN BORDEN: Vito.

MR. CALOMO: Thank you, Mr. Chairman. We probably should wait till we get down there, but just to answer Jill, there's a gentleman here that was a captain of a smaller vessel, he sits in the audience today, that that

smaller vessel used to load six carriers a night. Again, it was a smaller vessel, but he still captured the same amount of fish as a bigger vessel did. So, again, 300,000 pounds is 300,000 pounds. Thank you.

CHAIRMAN BORDEN: Okay.

MR. RICE: You know, it's an old argument when we've been talking about it a long time, but what -- the point that I would like to press only, it hasn't got a lot to do with the document, but I've got to keep throwing this in there because it's critically important. I don't think that -- I know we don't agree, but there's a lot of danger out there that's being looked over. I don't think we've got time enough to put the process of observers to come on board. The criteria you're going to have to go through and go out to -- I'm -- what I'm seeing and the people that agree with me and 50 percent of the herring fishing community are seeing that one more year or 24 more months, it won't make any difference what you're talking about during the discussion, you're observing the damage is going to be done in Zone 1A.

Zone 1A is unique to this fishery. It has had no presence up until last year with the midwater boats. And at the time of year when that fishery is happening, those fish are -- they're schooling and they're spawning. That's the critical part of it. And you know, I hope that I'm -- in ten years I'm proven wrong, but I'm certainly sure that if we don't do something, take some measure in Zone 1A soon, the results aren't going to be good. Thank you.

CHAIRMAN BORDEN: Glen.

GLEN ROBBINS: As a fishermen --

CHAIRMAN BORDEN: Glen, you're going to have to --

MR. ROBBINS: Glen Robbins, Western Sea.

CHAIRMAN BORDEN: Most of us know you, but you still have to identify yourself for the record.

MR. ROBBINS: Glen Robbins, Western Sea, purse seiner, converting over to midwater trawl presently. What Vito said is true and what John said is true. John says they're smaller schools, we can't work on them, especially when you're in the western part of the fisheries area towards Rhode Island or down the southern. Those schools many times do tend to the bottom and if they don't come up and if they're not a large school, we don't -- we can't work on them. It's too small of a bunch. We can't reach them.

In the eastern area, yes, it is a healthy -- it seems to be healthier than the western area because it has a lack of trawling in that area. Where we do sit on a school of fish we circle it and drift away. The school is not broken up. When a trawler goes through, they do break it up. If it's a good healthy school, they'll come back together. But if it's a smaller school and they get most of it, then the fragments are -- they don't come together too well. Because I've tried to fish around trawlers and once a trawler goes through a smaller group, even if there's something that you think you can get, it's not there. You might as well go off somewhere else and find another bunch if you can.

Trawling will be going on after seining is all done, because if we continue to trawl as more trawlers and more trawlers come in, they will eventually put the purse seiners out of business what I see, and we'll all be trawling because I won't be able to catch any with a seine anymore. They'll be too small of a bunch. And the fish seem to be tending to bottom more than they're coming up on the surface. In the summer, they still do the routine. They're on the bottom during the day. But at night they come up. And that works

fine. But even in the summer, there are times that they don't come up and all the winter fishery -- right now the fish are coming up and down. They're off Block Island so I've understood -- it's a pretty healthy bunch is down there. In a little while, they'll be staying down closer to the bottom.

And at times you have to tow your net on bottom. Now I've never towed a net, but I've been on boats that tow nets and that's the most efficient way, if you can get away with it, if the bottom's bad, now you can't touch bottom. You're going to rip up. And they'll stay away from it. But what I see trawlers fish when they are in smaller bunches because they just pick them away, I can't seine on them then, it's not healthy. Another time they hit them when they're down on bottom is during the spawning time when they're ready to lay their eggs.

This year was a little better. They had some problems. But that's one thing we've got to watch more than anything when the trawlers hit those fish when they're down there trying to spawn. As Vito says, 300,000 or 300 ton, whether you catch them one or other when the groups are healthy doesn't really matter a lot, you know? If they're good healthy groups. But when they get to be small groups, it's harder because you're breaking them up and they're picking away and there's nothing left after they're -- they say -- and I've talked to a lot of people -- purse seining is most efficient on larger groups when there's herring around. But as the herring become dwindled and become less, then midwater trawler and eventually the pair trawler is going to take over everything and there's people in here who will attest to that.

I'm rigging up and I'm trying to go pair trawling because that's the most efficient way to do it. Why fool around, you know? If you're going to do it, do it right. Because that's the name of the game. Get out there, save your fuel, catch your fish, get a good product and get back in.

CHAIRMAN BORDEN: Thanks, Glen. Anything else under schooling? We're going to get to this issue of the midwater fishing in the northern Gulf of Maine. It's really Agenda Item 5 which we'll be into here shortly. Anything else on schooling? (No response audible) If not, let's move on to discarding of herring. This came up because once again there were certain allegations being made about different gear types, so we asked staff to go forward and put together a finding of fact. Tom.

Herring Discards

MR. NIES: Thanks, David. Well, once again, the main source for the information on discards of herring came from the observer trips that were run through the Maine program in 1997 and 1998. During that program, most of the discards of herring that were observed were discards from purse seine vessels. The program gave the primary reasons -- listed the number of reasons for discards. Some of those reasons included gear damage. One of the primary reasons was that the vessel was too full to take any more herring on board and the herring were released.

Now, the study noted that there's some indication that at least some of the fish released from seines and from midwater trawlers may survive, but we really don't have any indication of what the long-term survival rates for release from either of those gears are.

CHAIRMAN BORDEN: All right. Questions on the issue of discarding? Any questions of staff? (No response

audible) Anyone in the audience? (No response audible) I see no hands up. Back to the committee. John.

MR. WILLIAMSON: Yeah, Tom, there was no evidence at all on this as far as fish that swim away that the herring are more susceptible to stress levels or -- and blood chemicals that cause delayed mortality. There's been studies like that done on some groundfish species.

MR. NIES: Well, no, that isn't what I -- the problem I think is that we didn't have any information on comparative studies that showed one from the other. There is -- there are a couple studies done by a Finnish researcher where he was looking at examining whether you could control the size of a herring by the size of the cod-end, you know, using different mesh sizes. And in his study, he has some indication that -- you know, it's not just a question of scale loss, but exactly what you said, internal damage caused from trying to swim with a net. But I don't know if that directly compares to the issue we're looking at in this instance. But there is some of that.

There is also some indication that that happens in seine vessels, as well, that as the first stuff that some of the fish anyways, even though they don't come in contact with the net, wind up dead from the stress of capture and sort of thing.

CHAIRMAN BORDEN: Any other -- Phil Coates.

MR. PHILIP COATES: I'm just trying to gain some insight into this issue because this is one we've heard going back to the '70s that the seiners would assert that the pair trawler or the midwater trawlers -- or they were pair trawlers mostly in the '70s off Massachusetts -- were not able to control their catch and their releases, and the purse seiners could make a set and look at it and if it wasn't desirable, if they were feedy or whatever, the various issues, too small, they could release them alive.

Now, the counter on that from the pair trawlers was they took subsamples. They used the small experimental tri-trawl almost to get an idea what the size of the school was. And I just -- you know, we'd hear these comments and -- I don't know how well they were verified. I was just wondering if any of the -- yeah, midwater or pair trawlers are still using that technique or if it ever became a technique that was vetted through the process to validate that the herring that they were catching -- you know, were okay. You know, in other words, they took a subsample, okay, these are the right size or whatever, and off we go.

CHAIRMAN BORDEN: Okay. To that -- to that point, Artie or someone in the industry?

MR. ODLIN: I don't believe so. I mean, there's been a lot of talk about tri-nets and stuff like that. I didn't realize that they had been tried before. So, you say in the '70s?

MR. COATES: They allege they did.

UNIDENTIFIED: Absolutely.

CHAIRMAN BORDEN: Anyone else in the industry want to comment on that? Lars.

MR. AXELSSON: Lars Axelsson again, the Fishing Vessel Flicka. We have invested literally hundreds of thousands of dollars in acoustic equipment and net monitoring equipment that allows us to better judge the school before we set. It's a doppler effect. It gives you size discrimination. It's much like what a lot of research boats have been talking about putting on their boats. We have that on both our boats, my brother's boat and mine. It's an indicator. It's not foolproof, but it helps. We also have equipment that we put on the net, catch indicators. So, you can set your egg as we refer to it as at any level you want.

You can set it on two tons. You can set it on 100 tons. If you're not sure of what specie it is or if you're not sure of a size of the specie, you can make a very short dip and instead of killing hundreds of thousands of pounds, you'll haul back a ton, two tons and you can see what it is. And in the overall scheme of a complete season, one or two tons now and again is nothing compared to if you were to make a -- well, let me see, have we drug long enough, is the cod-end full, is it time to haul back? We have equipment now that tells us we're at the point we want to be, let's haul. And we use this as a conservation measure.

I am also a freezer trawler. I only need X amount per day to work. My tank's only so large. So, I don't like to overkill. And with this equipment, I'm able to achieve that 99 times out of 100. I just figure I'd throw it out on the table to show you that we as an industry are improving our abilities to monitor how much we catch as well as the size.

CHAIRMAN BORDEN: Okay. Thanks, Lars. Anyone else in the audience on this point? (No response audible) If not, anyone back on the committee care to comment further? (No response audible.) If not, we'll move on to the next one, which is the northern Gulf of Maine issue. Tom.

Northern Gulf of Maine Conflicts

MR. NIES: This one we might be better to refer to some of the industry folks in the audience, but the answer we got when we said why were you in eastern Maine in 1999 was the comment that they didn't find any fish in other locations and that's why they went to fish there. I don't know if any of the industry members would like to elaborate on that.

CHAIRMAN BORDEN: Anyone in the industry care to comment on this? Peter.

PETER MULLEN: Peter Mullen, Western Venture. The reason we were in eastern Maine is that that's where the fish were. We hunt for the fish up and down the east coast. I go all the way from south of Cape May all the way to the Canadian line and wherever that fish is, we're going to be looking for it. So, we follow the schools of fish. As the old song says, hunting for the shoals of herring.

CHAIRMAN BORDEN: Anyone else in the audience on this issue? Dana.

MR. RICE: Dana Rice. Peter stated my point exactly. That is the problem. He was in eastern Maine because of no fish on Georges, scientific data told these guys that -- lots and lots of herring on Georges, from Cape May to Georges -- we're talking about my little area Down East there that drastically needs some protection real quick.

When you -- about one sixth of Peter's area or less than one sixth of the normal area that Peter's talking about the Gulf of Maine, and it's closing in that little corner and it's just way, way too much pressure on that area if -- it's too much pressure, period, without getting into the argument of the gear type, which I feel strongly about.

But I think Peter summed it up real well. That little corner Schoodic Ridge -- half of Zone 1A supplies the bait, lobster bait for the entire coast of Maine and part of Massachusetts and New Hampshire two or three months. It supplies the canneries, basically, in that two or three months. It did this year, that's for sure, because they weren't catching any fish on Georges, it was a desert.

You know what I'm going to say. I've just got to keep hounding the point home. Let's protect that area. There is

a concern out there. There is no evidence. It's going to take some time to get evidence. But at least 50 percent of the herring harvesters have a problem with midwater boats in that area. Let's be proactive instead of reactive. When that's gone, the year 2000 -- the effect I think is going to happen there if that amount of pressure is put back on them, there's not going to be any herring. And then there's going to be a cry up and down the coast of Maine and we're all going to wish we'd been proactive instead of reactive. Thank you.

CHAIRMAN BORDEN: Thanks, Dana. Peter, I see your hand up, but anybody else from the industry that hasn't commented on this point? Lars.

MR. AXELSSON: This here is a direct result of management measures that have occurred in other fisheries by quota settings, by limited access, by forcing boats to specialize in their different fisheries. I for one have always concentrated on the underutilized species, squids, the two species of squids, herring and mackerel is generally my mainstay.

When you can't find one, you search for the other. When you can't find the other, you go to Item 3, you go to Item 4. But as is always the case for any fisherman, you always want to try to find something that is in your own backyard first. From there, you wander further. And that's just the nature of fishermen.

I have seen quotas on the *Illex* get shut down and I never thought I'd see the day that I'd have to go up into the Gulf of Maine to go chase cheap herring but I've done that two years in a row because of quotas that have been set on scup, on flounders. I used to fish all those. And I can't because the quotas are so low that daily trip limit -- or the trip limits are so low it's not worthwhile to even put that aboard my boat and steam home with it. It just won't pay the bills.

Whereas before when you were allowed to take a little of everything, but you can't now because of mesh restrictions, cod-end restrictions. So, you're just seeing an effect that hey, the herring is going to be our saving grace and for a lot of us it has been. And by setting quotas as have been done is good. It will create a sustainable fishery. And that's what we're all trying to achieve here. And I just hope that you realize that just because a Cape May boat is in Maine this year, he may not be in Maine next year due to another fishery that is down off our own backyard, and it's just nature of things. Thank you.

CHAIRMAN BORDEN: Okay. Anyone -- anyone else in the audience that hasn't commented? (No response audible) If not, Peter. Peter.

MR. MULLEN: (Inaudible.)

CHAIRMAN BORDEN: You don't want to speak? Anyone else? (No response audible.) Okay. Anyone else on the committee on this issue? Eric.

MR. SMITH: It's kind of related and it doesn't come up in the document and it's also way far removed from anything involved in Connecticut. But just as a good faith exercise I would note for our attention the letter to George Lapointe from Mr. Greenlaw and it's the fixed gear issue that's come up periodically and it seems to fit into gear issues. And I'd just -- I mean, it's a very compelling letter. It's outside the way normal business letters are written and when I read it it just made me stop and really think about the point they're making.

And I don't have a solution to it, but I guess I wonder if Maine DMR or anyone more local to that area has

figured out a way to resolve what is kind of a unique fishery type issue there. Everybody can claim their fishery is unique, but this one, you know, it's fixed gear, it's near shore, it doesn't move around looking for fish, it waits once in a while for the fish to come to it, and is there a way to accommodate that uniqueness?

We've asked the question before. We've never had a good answer. I'm simply asking it again because it's on the table today and it seems to fit in this overall community gear type agenda item.

CHAIRMAN BORDEN: Anyone from the Maine delegation want to speak to Eric's question?

MR. FLAGG: Yes. This has been a really serious issue for the Down East fixed gear component, mainly because obviously they can't move. They're fixed at the shore and they do have -- they are somewhat disadvantaged when it comes to the mobile gear fishery. And the success of that fishery from what I've understood in the past has -- has been attributed somewhat to the availability of large predator fish that drive herring into the shore and into the weirs which are not there anymore.

So, I don't have a good solution for it, but I think that this fishery does deserve some -- some type of consideration for the fact that they in recent years have had little impact on the herring resource in terms of harvest, although in the past they have had very high harvests from some of the historical records, but I do feel that there does need to be some consideration for this fishery because of the disadvantages they have.

CHAIRMAN BORDEN: Jill.

SEN. GOLDTHWAIT: Thank you, Mr. Chairman. One of the primary issues for me is what I referenced earlier, which is for the most part we always feel like we don't have sufficient information to make the decisions we would like to make. But in this case, in the specific instance of this Down East fishery, not only do we not have sufficient information, we have a very, very short track record to look at. And as Dana has said, if we guess wrong on this, we can do all the academics we want later on, but it will be over as far as those fishermen go.

The configuration of the way the regulatory lines work brings those lines in very close in a wedge on the Down East coast. Their options are more limited as far as a nearshore fishery than almost anybody else in the whole New England area. And it does not seem to me that for -- if you look at it in the balance of the possible impact on both fixed gear and purse seiners in that Down East section versus the impact on anybody else in the fishing fleet, anywhere else there are herring, I'm not sure why we're taking this risk.

And we seem to have two opposite policies. One is when we say we don't have enough information so we're going to protect, and that's kind of the approach the Endangered Species Act takes, versus we don't have enough information so we're not going to do anything. It's an inconsistent policy and we seem to be going down that route in this case of saying we can't really identify for sure what the effects are, so we're going to say we don't know that there are any and we're not going to change the status quo.

I don't understand -- I'm sure somebody could offer me a good explanation -- I don't understand in a fishery where it's supposedly the resource is abundant enough that it's going to be one of those fisheries that we're heading other people into for opportunity that suddenly boats from that

far away are only finding fish down in that tiny little pocket way Down East, that there's something going on there that I don't understand.

But be that as it may, if there is not an overall resource issue and according to the studies there are fish elsewhere, is it not reasonable to extend a protection to those purse seiners and fixed gear people that live down there and fish down there and have no other alternatives?

CHAIRMAN BORDEN: Okay. Anyone else on the committee on this point? Vito.

MR. CALOMO: Myself and Mr. Axelsson are going to probably speak the same language. If you have fish in your backyard, why would you want to go offshore? And being a fisherman for many years, when the fish are in your backyard, you're not going to venture offshore, even though there could be millions of pounds offshore, the closer you are to the resource and home and to the trucking makes it a lot more inviting.

The resource happened to be very close to shore Down East this year, better than any other year they've seen in several years. They always have some resource there. This year was an abundance there. They're closer to the trucking, closer to land, less expense, easier to catch. And that's why I think everybody went Down East this year.

For many years, they were in Ipswich Bay, which is my backyard. And everybody stayed in my backyard. That's where the resource, cheaper, easier, all expenses are cut for an inexpensive fish. So, I think that's why everybody was in your backyard this year. Thank you, Mr. Chairman.

CHAIRMAN BORDEN: Eric.

MR. SMITH: I did that badly. I wasn't intending to fall into the trap of the purse seine/midwater trawl dilemma, which is basically what most of this analysis has depended on, limited data, what have you. I don't have an answer to that one, but I see those fisheries as somewhat more similar than this other one that wasn't analyzed and wasn't talked about.

I mean, midwater trawl/purse seines, they're mobile type boats, they do fish differently, I'm aware of that, but they -- to some extent they go looking for schools of fish. The fixed gear is right along shore and it doesn't go looking for fish. It waits once -- if you believe -- and I have no reason to disbelieve this -- once in a while the schools of fish come to where the fixed gear is set, and to me that's a whole entirely different level of how a fishery management plan provides access to people who use that traditional gear.

And Mr. Greenlaw has a couple of points on page 2 of his letter about Canadian fixed gear fishery and a set-aside and a good fishery in U.S. waters usually went along with a bad fishery elsewhere, and I'm just -- in looking at those kind of points, I'm just wondering if -- how we would devote a little more attention to a very unique fishery relative to the mobile net fisheries that are the other things we've talked about this morning, to try and see if there isn't a way for that onshore fixed gear fishery to have some preservation for the -- what, one in ten years when the fish actually come to the beach, to use what's been said in the past.

I know that's still an allocation and protective devices and it raises the hackles of people depending on what direction you look at this issue. I'm aware of that. But I think there's a substantial enough difference with that kind of fishery relative to the mobile net fisheries that at least it ought to be looked at.

And I don't have a solution either. I appreciate the dilemma. I didn't mean to put Mr. Flagg on the spot. I don't think he's offended by that, but I did point to DMR and say is there a solution and it's -- right now it's an intractable problem. And I just wonder if there isn't some way that a subcommittee or a group of like-minded individuals couldn't say -- well, here would be a solution. If we treat the fixed gear fishery in Maine the same way we treat the fixed gear fishery in New Brunswick for purposes of the plan and we do these three things, when the fish come to shore one of every ten years, they'd have their access. And then the other nine years, they've just got to lump it, because fish aren't coming to the fixed gear.

I mean, we have -- we've never gotten over the hump of figuring out how to do that for the fixed gear fishery. And maybe that's because it's a harder problem than I think it is and it just can't be solved, but I just -- that was a very good letter and it just -- to go unaddressed, I didn't want to see that happen. I don't have a solution either.

CHAIRMAN BORDEN: To your point, Eric, and I'm not advocating that -- I'm just following up the point that -- I mean, there are methods of solving that problem if we want to solve that problem. We can -- we can do the same thing we did with the Canadian New Brunswick fishery. In other words, we could make a gear allocation to that particular fishery for a given period of time, and if it's not caught by a certain period of time, it's released to all the other gears. I mean -- and I'm not advocating that. I'm saying there are ways -- if the committee -- the joint committees want to solve that problem, there are techniques you can use to solve that problem. Vito.

MR. CALOMO: To Eric's point, when I fished Down East many years ago, most of the purse seiners were the same fishermen that used the stop twine to stop off a cove. So, they really didn't wing it for the next nine years. They went purse seining for the next nine years. There is opportunities at that time where they did catch thousands of tons of fish in the east coast. It's a good fishery. But in past history, they haven't been there for many years in any abundance. But they are starting to see -- because I've talked to a few of them -- they are starting to see some of the coast come back and they are starting to pick it up again. Maybe it's the cycle that they have, but they definitely do another fishery.

CHAIRMAN BORDEN: Pat.

MR. WHITE: Just briefly to Vito's point, because I've been a weir fisherman and a weir fisherman doesn't necessarily have the opportunity to go off and be a seine fisherman, Vito, because of the size of the boat and the gear that they work. Maybe a stop seiner does because it's a bigger gear type, but having been there and done that, I didn't have that opportunity and never would have.

CHAIRMAN BORDEN: Okay. David, you want to -- you represent that area and that constituency. You want to give us your perspective?

MR. DAVID TURNER: My name's David Turner. I was partially responsible for setting up the group -- the fixed gear -- Down East fixed gear group because we didn't feel we were represented in the herring management plan. We have met with Lew and the Commissioner and Mr. Libby. They came to Eastport. We set up a very informal group. The only way you join that group is to come to the meeting. We had 12 people come to that meeting. That's more people that came to most of the herring meetings that I've been to as fishermen.

There's a very interested group down there that's being left out of all of this. Very upset with what's going on last year in September, the State of Maine dropped an exemption that had been there for 22 years for the spawning east of Cutler in the effort of conservation. And what I've been listening to in the past couple of months here on the changes you're talking about making in the spawning fishery you're going to take a lot more spawn fish by dropping the states for and changing the way you're doing things and you took away this exemption in the name of conservation for that small group Down East.

Granted, the one in ten year number now is more like 1 in 15 years, because there hasn't been a big fishery. But the solution that was discussed here of the possibility of that group being treated the same as the Canadians include that group right in that Canadian 20,000 that nobody seems to have a problem with.

Granted, one year in 15 or maybe 20, you're going to have a big problem, because there's going to be a catch there. But more than likely, the year that you have that big catch, the Canadian fixed gear fishery will have a reduced catch because of the market conditions, or maybe the purse seine or the trawlers will have a reduced catch that year. But the thing you're doing is taking away the opportunity for those guys that have been sitting on the bank for 15 years waiting for the fish to come to shore. They may never come to shore again, but you're taking away that opportunity for them to make up for lost time.

CHAIRMAN BORDEN: Phil Coates.

MR. COATES: I have a lot of sympathy for the issue Eric raised and has been reaffirmed by this gentleman here and that's because we have a similar situation with regard to a different species and a different array of fishermen, but they basically wait at the end of a very long gauntlet for a fish that is in very -- more short supply and -- you know, they're turning to us for help; and it's a very tough issue and I -- you had suggested a couple of options that the entities could consider.

I'm not sure if this is more in the purview of ASMFC because these people are exclusively within state waters, probably exclusively within internal waters if there are boundary lines in Maine, so -- but it does have implications with regard to the overall allocation and the subquotas in 1A and whatever.

But I'm -- I'd urge the -- at least the ASMFC to look at some ways of alleviating this issue and I think the suggestion of a suballocation that would go away at the end of the -- and I don't know how these seasons interact, I don't know what the weir season, stop seine season is up here, whether that is a -- you know, could be worked out in such a way that there would be -- if they were uncaught they would be available for recatching by the other groups, but I'd be very supportive of any action in that regard.

CHAIRMAN BORDEN: David.

MR. TURNER: If I might, the issue is complicated, because with the TAC and this fishery in eastern Maine being a -- generally speaking, a fall fishery, this exemption -- there's exceptions to that. But this year with the 45,000 there was concern that the catch at one time may even be caught in August. So, we're not even going to get a chance to get a whack at the TAC in that particular fishery. So, it complicates the issue even more since you've changed the fishery from the traditional May/June start, now it's a more governmental oriented January IRS year.

CHAIRMAN BORDEN: Stay right there, David. Pat.

MR. WHITE: To that same point, because we went around this on the Herring Committee for quite a while, and that's where I had concerns about the allocation issues because if you allocate this number of fish to this area and it isn't used over a certain period of time and it's saved for that, and then you let the allocation go back to the industry, by that time the herring's gone into Canada. So, nobody gets a chance at it.

So, it almost seems to me that you'd have to redesign the area configuration so these people could have -- if indeed fish came into that, they could have their own allocation. But to include it on the allocation on a general basis, I don't think they'd win with it either.

So, it is -- I'm wholly supportive of a group getting together and trying to work this thing out, because something's got to be done to preserve this.

CHAIRMAN BORDEN: I mean, the suggestion that I would make is that we ask Lew as the formal head of the Maine delegation to kind of convene a subcommittee that's composed of some industry representatives from that area and your other representatives as part of the delegation and try to flesh out some different alternatives that could then come back to the joint committee. Anyone object to that? Vito.

MR. CALOMO: I don't object to that. I would just ask a question.

CHAIRMAN BORDEN: Okay. Ask your question then, please.

MR. CALOMO: I think David's point is well taken. We've talked before about -- you know, you could catch the TAC before the fish reach him and he's out of business. He'd never have it. But also I just want to ask a question. Do you not own a purse seiner, too, or have you owned purse seiners in the past?

MR. TURNER: Yes.

MR. CALOMO: Okay. That's all. Thank you.

CHAIRMAN BORDEN: Okay. Any objection to doing that then? (No response audible.) All right. So, Lew, if you could take on that additional task, please, and report to us at a subsequent meeting. Tom.

MR. NIES: Just so it's clear for the record, is this an ASMFC Section subcommittee or is this a Council subcommittee or a joint subcommittee?

CHAIRMAN BORDEN: ASMFC action. Really affects -- I mean, although it ultimately will have a broader impact on Area 1, which is both groups, it's -- it's as some kind of set-aside or allocation change in the allocation structure or seasons or whatever, that will get discussed when the report comes back. And what I would hope is that you don't come back with just one option. I would hope you'd come back with a couple of different options that can then be presented and if you want to make a recommendation for a preferred option, that's great. But that way we'd have the benefit of what are the other alternatives. And impacts, if you can look at the impacts on the current herring regulations. John.

CHAIRMAN NELSON: To that end, I agree it probably should be an ASMFC subcommittee. However, I think that that subcommittee should certainly be looking at making sure that there's -- the concerns that would be surfaced on the Council should also be taken into account. That means that probably we ought to make sure that there are people that are on the Council side get invited to those so they can provide input at the same time. Thanks.

CHAIRMAN BORDEN: Lew, I'd just make sure that

-- ask you to invite Tom to any meeting that goes on and he can -- he can be -- he can be our formal liaison on the subject. All right. Anything else on this particular issue? (No response audible.) Anyone in the audience? (No response audible.) If not, then let's move on to the last issue, which is community impacts. Tom.

Community Impacts

UNIDENTIFIED: (Inaudible) move onto this one before lunch?

CHAIRMAN BORDEN: Yes. Let's move on to it before lunch.

MR. NIES: With your permission, I'd like to take a little time to characterize these discussions because at least at the PDT level these were probably some of the most contentious discussions we had. The first point I'd like to make is that -- bullet A kind of says it -- is that we don't have a lot of information available to estimate what community impacts are. This is a problem that the Council's Social Sciences Advisory Committee has noted in all fisheries, not just the herring fishery, but it is a problem when you're trying to address this issue.

Madeleine Hall-Arber is a sociologist who is on the Herring Technical Committee who came to our meeting, and she managed to do a little bit of research with some primarily seine fishermen from Down East, Maine, and it's clear that they believe that there are a number of problems caused by midwater trawlers. She pointed out that -- she wanted to make it clear that she was not trying to build this as a comprehensive survey and she certainly hadn't addressed all gear types on the issue -- the fishery but she said it's obvious and it's definite that they believe that there's a perception that this midwater trawl fishery has bad impacts on the fishery and by extension could eventually have bad impacts on the communities in Down East Maine.

Now, the problem that many of the PDT members had with this is that they felt that there really hadn't been any specific evidence presented that said what these impacts were or how these impacts would happen and that most of the information was coming from one of the gear types that claimed all the adverse things were going to happen to them without any counterbalance coming from the other side of the argument.

But Madeleine's point was I think that -- kind of twofold: One, there's not enough information and we need to gather more of this type of information for all the fisheries we manage, but particularly in this case. And at least in this instance there is a perception that there is a problem up there.

Now, in the packet, one of the things we did do that was perhaps a little bit more objective is we tried to look at the history of landings by gear type to see if we could show that yes, indeed, one gear type or another has suffered -- so far anyway -- or has demonstrated suffering a reduced catch or really a change in the levels of catch or the distribution of the catch. And the short answer to that is -- if you wade through all these graphs that we have is that we really can't demonstrate that that's happened.

If you look on page 21 of your -- of your package, there's a graph that's labeled incorrectly -- it's actually purse seine landings. It's labeled midwater trawls, I believe, at the top. But anyways, you can see the history of purse seine landings going back since 1950. And this is from the NMFS database. And you can see that outside 1953 the

levels were generally below 10,000 metric tons. They started to climb in the mid '60s and they continued to climb through the 1990 -- late 1980s and early 1990s to where the highest years for the seine fishery were 1996 and 1997. And then you see a drastic drop in 1998.

If you look on the next page for the midwater trawl landings, we looked at the available information from the same database, which does not go back as far in this case. It only goes back to 1972. And once again you see almost a similar pattern moved 30 years down the road and that in 1972 through about 1992 or '93, '94, the landings are well under 10,000 tons and then they begin to climb in 1995, 1996, '97, to where the highest year is 1998, where it goes above 50,000 metric tons. And the immediate sense is that you look at this and you say well, if the midwater trawl landings went way up in 1998 and the seine landings went way down in 1998, which proves the argument of the purse seine vessels.

If you look at it in a little more detail, which you can if you look at page 23, however, which shows the 1998 catch by gear, management area and by month, you'll see that the reason the midwater trawl catch continued to increase is that in 1998 they caught a lot more fish, primarily in Management Area 3 than they had in the past. They took 18,000 tons in this area where -- if my memory's right -- the most they took from Area 3 before, which is Georges Bank, was about 3 or 4,000 metric tons, in recent history.

And the other thing you'll notice that is in Management Area 1A, the purse seine fishery continued to dominate the catch in that area. They took more than 50 percent of the landings in that area, which is what they've done for a number of years. The Management Area 1A catch further is shown broken down by month in a graph on page 24, and you can see how the fishery proceeded through the year, and there could be a lot of reasons why it went this way, and one of the big reasons very possibly is the spawning closure regulations that were in place in 1998.

But what you'll notice is that in the early part of the year when the fishing started in April and May, the two gear types, purse seines and midwater trawls, were taking roughly the same amount of fish, equivalent amounts of fish. Then in June, July and August, the midwater trawl catch dropped to almost nothing in Management Area 1A while the purse seine and fixed gear catch increased. The purse seines had its biggest month obviously in July.

And the midwater trawls didn't really start catching fish in Management Area 1A again until September, and then they continued much later in the year than the seine vessels did. And I think one of the points to draw from this is if looked at at a whole area-wide basis, which is not necessarily -- which may reflect that they fished in different areas -- but if you looked at the whole area-wide basis, I think it's hard to argue that the midwater trawl catch in '98 adversely impacted the purse seine catch in '98, because the purse seiners were catching fish much earlier in the year than the midwater trawlers did. So, at least within that one year, if you only look at that one year, it's hard to argue that that happened.

And the next pages, some of which are numbered and some are not because of operator error with the computer, there are some circles that are drawn, and let me explain a little bit what these mean.

We took the information available from a Maine DMR database and each of these circles is an area where herring

was caught by either seine gear, midwater trawl gear or both. The size of the circle has nothing to do with how much fish caught -- was caught in area. If they caught one ton in an area, the circle shows up the same as if they caught 1,000 tons in an area.

But if you page through these things, you can see it kind of gives you a picture of what gears fished where during the year. Each of these circles is centered on a particular ten-minute square of latitude and longitude. And it shows that in January of '97 there was some seine fishing in Rhode Island, not a lot necessarily, and that when the seine gear and midwater trawl gear fished in the same area, sometimes the seine gear took most of the catch from that area, sometimes the trawl gear took most of the catch from that area.

If you continue to page through these as they go through the months, you see similar types of information and you can see actually how the fishery moved around in 1997. And I put similar charts at everybody's table for 1998. We don't have the information available for 1999, so we can't show that yet.

And the one thing I want to point out -- couple of things I want to point out is that as you look through here, you'll see that in many months it's clear that for one reason or another the seines fished in one spot and the midwater trawlers fished in another spot. They generally got separate. But at the same time, there are some months where they fished side by side.

The other point is that with the exception of midwater trawlers who appear to do most of the fishing in Area 2 and Area 3, if you look at Area 1A, the seine boats and the midwater trawlers do move around a lot. You will see some graphs, for example, on page 26, April of '97, where the purse seiners and the midwater trawlers were essentially fishing side by side along Jeffreys Ledge.

If you look at June of '97 you'll see some where the same vessels were fishing in the outside reaches of Area 1A. The light line in the middle is the 1A/1B dividing line. And once again, as you look at the circles you'll see that when they fish in the same area, you know, it's a toss-up as to who takes more fish out of one of those 10 degree squares.

Now, what would have been ideal is if I could have somehow sized the circles so that they were reflective of what the catch was in a particular area so you could tell that -- you know, in this circle where the midwater trawlers fished in Down East Maine they didn't catch a lot of fish and the seiners did, or vice versa. But I wasn't able to do that, so the thing I did for '97 is I took the months with a lot of herring fishing activity. It's a little harder to compare, but starting on page 31 there's some charts. They don't show every month. They show the months with a lot of activity. And you put one above the other and you can sort of see where the primary landings were from for these gear types.

And the reason that would be important -- I didn't include the January chart, but for example if you go back to January '97 with the circles, you'll see some seine circles south of Rhode Island. If you were to look at the shading, the catch wasn't a lot. I mean, there's a couple circles where the seiners had a lot of -- took all of the catch from a particular ten-minute square, but the catch from that ten-minute square was a low amount.

So, I mean, I think the point to take from here is that if you look at '97 and if you also look at the '98 charts that

were displayed is that -- you know, if you look at '97 and '98 anyway, the industry did sort of sort itself out for whatever reason. It could partly be because of the regulations that were in place. It could be because of the distribution of fish. But for whatever reason, midwater trawl and seine gear did seem to in many instances sort of separate themselves and fish in different areas.

The other point to reiterate is that when they did fish side by side, like they did on Jeffreys Ledge in April of '97, it's a toss-up as to which gear took more fish from that particular area.

I guess the bottom line of going through all the catch information is that if you're looking for something in the landings, catches that shows that one gear type or another has impacted the other one, I don't think you're going to find it in the catch information, at least for recent years.

CHAIRMAN BORDEN: Okay. Comments and questions? Jill first.

SEN. GOLDTHWAIT: Thank you. I certainly appreciate the significant work and it's in a format that for once I'm a bit able to follow, that the issue though is we're not talking about overall Area 1A. We're not talking about an allocation for all of 1A or what happens and who fishes near each other.

We're talking about that little wedge at the top of the map where conditions are rather different and where the impacts of who fishes where and what kind of gear are much greater on those local communities than they are probably anywhere else along the coast, Maine, New Hampshire or Massachusetts.

And so I don't think that the Down East fishermen are claiming that the midwater trawlers outfished them. Remember, we only have one year of history, when they were in on Schoodic Ledge. That's the first year. So, I'm not sure that the issue is quite that they were outfished in that year by the midwater trawls as what is the future impact of that fishery in that particular and somewhat unique area.

So, notwithstanding this information that suggests there isn't perhaps some imbalance or unfair advantage in the catch overall if you look at all of 1A, we're not looking at all of 1A. We're looking at that particular area.

CHAIRMAN BORDEN: Jim Kendall.

MR. KENDALL: I'd question the number of participants within each sector, if we could get some better understanding. I don't see anything here. I know Tom would have it somewhere, but I'd like to see some figures on that. That's all. Thank you.

CHAIRMAN BORDEN: Vito, while Tom looks that up.

MR. CALOMO: It's along the same point. I don't think there are many -- as it was from yesteryear, any pure purse seiners left to speak of. Most of them are combination vessels. They go midwater trawling and purse seining. So, you've got a problem looking at that. There's more now than any other time that they're combination vessels.

And the second part of my question would be to Jill. Jill, I hear you and I hear you about impact on communities. I feel where you're coming from. Would you be suggesting that an amount of fish be allocated for that area for the -- say, stationary gear, stop seine gear? I'm just trying to get something clear in my mind.

SEN. GOLDTHWAIT: Well, we have two issues here and sometimes we're mixing them and sometimes we're

talking about them separately, and I think we dealt to my satisfaction by the subcommittee route with the stop -- with the fixed gear people. So, I'm really talking about the purse seine issue now, which I think is the subject, in that Down East area.

And what I would suggest is since the research of the PDT pointed out our lack of knowledge, understanding and data, that rather than jeopardize that very vital fishery to that part of the world, that we should maybe be thinking of something to do to protect that until we can gather some more data.

MR. CALOMO: Thank you.

CHAIRMAN BORDEN: Okay. Tom, have you got the numbers?

MR. NIES: I've got the numbers for 1998. I might have them for 1997, as well, if I look one more page. In 1997 in Management Area 1A, there were -- and there may be some overlap between these boats because of the way the table's done, but in 1997, in Management Area 1A there were 12 midwater trawlers that reported making trips and two midwater pair trawlers that reported making trips.

For purse seine vessels there were I believe 11. In 1998, in Management Area 1A, there were 15 midwater trawl and eight midwater pair trawl and seven purse seines in 1998.

CHAIRMAN BORDEN: Okay. Anything further to report on community impacts? That's it. Okay. Any additional questions for Tom on this issue? (No response audible.) Anyone in the audience? Yes. Dana.

MR. RICE: Well, to address the community impact first, that's critically what's most important. The resource is Number 1 important and then the community impact. As long as the healthy resource is there, it doesn't make any difference whether I go broke or I get rich. But the impact that this fishery has on the Down East communities has never been gauged, it should be, but it's going to have a direct relation to our whole economy and our whole culture down there. And to get -- you know, this is some great work here. This is good science.

I appreciate these graphs and what -- when you're talking about 1A, you're talking about 1A all the way down below Cape Cod and it sort of points out -- drives my point home. You look at this -- the interaction of purse seiners, midwater boats until you get up into about May and June in the area we're talking about, it's all purse seine. Traditionally it's all been purse seine. There's been no interaction there. And the difference -- the critical difference is that is the spawning time of the herring when they're doing their spawning thing there.

So, regardless if you buy into my theory or you don't buy into my theory, more pressure in that area, which midwater boats are going to cause, is going to have some effect. It may not be the effect I say it is, although you'll never convince me of anything different, but there is more pressure that's going to have some effect, and that is directly going to relate to the communities.

There are 5,000 -- 5,000 licensed lobster fishermen in the State of Maine. Or over 5,000. Pat can give you -- they all rely on this fishery and that three or four month period for their yearly income. And believe me, the grocery stores, banks, car dealership and everybody relies on that economy.

I tend to get overexcited when I come to these meetings because this is so important to me. It shows an interaction of midwater boats and purse seine boats and

we've all heard the testimony about that. But there has been no interaction in this area.

I'm sure you've heard it suggested before, but there's a simple way to do this, an emergency measure. Draw a line, 69 degrees. That's basically in the middle of Zone 1A, and create purse seines only down there, until we have some data, some science. It's going to take four or five years to get some data. There's no problem. They haven't been there. That gives them five-sixths of the rest of the Gulf to go fish. And if they want to come down in that area and go fishing, put on a purse seine and come on down. We'll share the quota. No problem there. Nobody wants to own the fishery. Thank you.

CHAIRMAN BORDEN: Peter.

MR. MULLEN: Peter Mullen, Western Venture. Unless I'm greatly mistaken, I don't have the exact figures, but I'm pretty sure I'm close, not this last fishing season, but the fishing season before that, there was almost 20,000 ton taken off Georges Bank. There was very little fish in inshore Maine. And if the midwater boats weren't there to bring fish from Georges Bank, the inshore communities in the Gulf of Maine would be hurting because there wouldn't be enough herring to supply lobster bait.

So, somehow we've got to get some kind of a co-existence here. We can fish inshore and we can fish offshore, whatever. We don't want to go to eastern Maine. We can go to Georges Bank. It takes the same amount of time. But if that's where the fish is and that's where the fish were, because the water temperature drove it that way, all the way up into Canada, then that's where we've got to fish. And it's nothing to do -- I mean, two years ago there was plenty fish on Georges Bank. There was very little fish inshore because of whatever Mother Nature does. Last year happened to be that's where the fish were. So, that's where we've got to go.

And you've got to remember, without the midwater boats two years ago, there'd be -- you ask some of the bait dealers. There'd be a lot -- big, big scarcity of fish along the Maine coast. So, you've got to think about that.

CHAIRMAN BORDEN: Any questions for Peter while he's at the mike? Jill.

SEN. GOLDTHWAIT: Thanks. Peter, thanks, and that's one of the reasons why we acknowledge the fact that the midwater trawl sector has an importance to Maine is the bait issue. But could you respond to Dana's comment about fishing by purse seine in that area? In other words, that -- we're not closing the area to anybody, we're simply saying if you come down, come down with a purse seine?

MR. MULLEN: I will answer that question. This is all market orientated. It has nothing whatsoever to do with midwater trawling or purse seining. If we can keep the midwater boats out of Down East, then we'll have all the market for ourself. If the midwater boats come down here, then we've got to share the market. It has nothing to do with conservation, believe me. And there's hundreds of thousands of tons of fish on Schoodic Ridge this year, miles and miles and miles of it. My boat marked ten miles of fish one night.

So, it's market orientated. It has nothing to do whatsoever with conservation. And I hate when people start to talk about we're worried about the coastal communities when they're thinking about markets. Nothing to do with the coastal communities.

CHAIRMAN BORDEN: Jill.

SEN. GOLDTHWAIT: Thanks. Well, I think that you

have your right to your opinion, as do we, and I think it's as closely held and strongly believed and not simply a ploy because of market issues, but I didn't hear an answer to the question of we're not suggesting closing that part of the world to boats from other places. We're simply suggesting purse seine only fishing in that area, which would be sharing that market and not hoarding it for one area.

MR. MULLEN: I will guarantee that if I put two purse seines on my boats right now and they're both over 100 foot that within six months Maine will ban any purse seiners over 100 feet. That's answering your question exactly, it's what's going to happen. And believe me that will happen.

CHAIRMAN BORDEN: Any further questions for Peter? Thank you, Peter. David Stevenson.

DR. DAVID STEVENSON: Yes. David Stevenson, Maine Department of Marine Resources. I've been sitting here listening to this discussion. I think it's very important when talking about community-based impacts to distinguish between fixed gear on the eastern Maine coast, particularly weirs that can't be moved around, and where the fishermen have to wait for the fish to come into the cove before they can even catch anything, and mobile gear fishery, which is operating in places like Schoodic Ridge.

In my mind, that's really a stretch to try and make a case for that fishery being a community-based fishery, because the boats come -- if the fish are there, the boats will come from as far away as we've heard as New Jersey. And most of the landings of that fish are going into Rockland are being loaded into bait boat -- bait trucks that are going everywhere on the east coast. That's a big community.

And if -- if -- I'm from Maine and I'm sympathetic with issues of community-based economies, but if we're going to make a case for the entire Maine coast or the Eastern Maine coast east of Rockland as being the community, then I think the people from Massachusetts are equally justified in making a case for Jeffrey's Ledge being part of the Massachusetts community, off limits for purse seiners. It's not a good road to go down, is my advice.

CHAIRMAN BORDEN: David Turner. All right. Excuse me. I've got to put my glasses on.

MR. DICK KLINGMAN: Good morning. Dick Klingman, Stinson Seafood.

CHAIRMAN BORDEN: Good morning, Dick.

MR. KLINGMAN: I think there are a couple of points that we're all missing here. One is that there is a statute in the State of Maine that prevents trawling within three miles. And so therefore that area is reserved for purse seine; and I don't know the exact number, I think DMR tried to calculate that at one point, but I believe it 30 or 40 percent of the fish caught in Area 1A are caught within the three-mile limit. And so that's available to seiners anytime and trawlers from any state are kept out of there.

Secondly, in terms of community impact, I don't think it's a fishing issue. It has to do with the markets. It's correctly been reported that there are some 5,000 lobstermen in the State of Maine that depend in these times primarily on herring for bait. There are also some 500 employees in the sardine industry that depend exclusively on herring for raw materials. And I would submit to you that it's these 5500 people that rely on the herring fishery, regardless of how they're caught, whether they're purse seine or trawl, that have -- that are driving the economic issues in the coastal communities, because that's where they all live and work, and not the few fishermen, whether they're trawler fishermen or seiners. Thank you very much.

CHAIRMAN BORDEN: Question -- any questions for Dick while he's at the mike? (No response audible) If not, thank you very much, Dick. Anyone else from the audience? Dana.

MR. RICE: Just one thing. I don't know where Dick got his information, but it's absolutely wrong. There's no way in the last ten years that anywheres near 40 percent of the herring caught in 1A came out of the three-mile -- is less than one percent. So, if that's the kind of data -- I don't know whether it's a mistake or what, but if that's the kind of data we're dealing with, we really need to back up and take a hold. Because anybody that fishes Down East Maine will tell you that very, very small percentage of the herring that are caught are caught inside the three miles.

CHAIRMAN BORDEN: Okay. Thanks, Dana. Anyone else in the audience care to comment before we break for lunch? (No response audible.) So everybody understands what I intend to do is we're going to take a one-hour break for lunch. Usually we can meet that time deadline around here. And then when we come back, what we're going to do is we're going to go and move on to a whole series of issues that will probably require some action by the Committee. And these are some of the issues that were rejected as part of the plan provisions. And what I would envision is there will continue to be a discussion on this issue of community impacts throughout that. They're interrelated subjects. So, we will take up the first -- the first issue is going to be that this issue of the spawning closures and then we'll move into some of the other options. So, this discussion is going to go on after lunch. So, anything further -- any statements before we break? (No response audible.) If not, let's take a one-hour break. Thank you very much.

(BREAK: 12:25 P.M. to 1:50 P.M.)

CHAIRMAN BORDEN: Let's start off with the issue of the partial disapproval and then we're going to take up the other issues. So, let's start right into that and I'd like Tom to just quickly summarize the major provisions in the disapproval so that everyone is clear.

DISAPPROVED MEASURES IN COUNCIL FMP

MR. NIES: If you look in the package mailed out by the Council that was on the table earlier on page 39 there's a short memo that was written for the Council -- for the Council's last meeting which was back in November, which summarizes what elements of the federal herring FMP were disapproved, and what my short description of the possible impacts of that disapproval were.

I want to point out that this is from me. It's not from the entire PDT, though they did all get a chance to look at it before we distributed it, but it's not really a PDT consensus and some of them may have a different opinion that they may want to express in here.

The first measure is that the -- both the Commission's and the federal FMP included a measure that said that as the TAC was approached in an area at certain levels, fishermen would be not allowed to fish on certain days of the week. It was a graduated scale that started out with Saturday and Sunday. Then it moved up to three days, until it -- I think 90 or 95 percent of the catch they weren't allowed to fish four days of the week.

This measure was disapproved and will not be included in the federal regulations when they are published. The measure was intended to slow the catch to try and extend

the fishing season. With this disapproval, there's really nothing in the FMP that will slow the catch of herring. This could be particularly an issue in the inshore Gulf of Maine. The TAC could conceivably be reached before the traditional end of the herring season, which would be the fall. And as has been pointed out earlier, that may prevent some user groups from having the ability to fish for herring.

It was mentioned earlier the fixed gear fishery would also potentially -- there's a couple small New England -- small groundfish trawlers that fish for herring in the late summer and depending how early the TAC was reached, it may prevent them from fishing for it.

It also causes some conflicts with the ASMFC Management Plan which still includes this measure. It was put in the plan. There's a couple of questions that the Section may want to consider, such as who will make -- how they're going to do this, who will make the determination on when the mandatory days off takes effect, etcetera.

Another major management measure that was disapproved in the federal plan is that the federal plan proposed a series of spawning closures all in Management Area 1A. These closures were different than the ones in the Commission plan in that they were complete -- essentially complete closures to directed herring fishing. There was no tolerance provision in the federal plan.

When an area was closed, they were only allowed a 2,000 pound catch of herring. That was intended to prevent discards of herring from some of the groundfish boats who do occasionally catch herring. And it was -- during the development of the plan, it was figured that that 2,000 pound limit would be too small to really encourage anyone to go out and direct on herring during the spawning closure.

There are some potential conservation impacts to disapproval of a plan -- of this measure. Conceivably, if fishermen have TAC left and target fishing on a spawning aggregation of herring, it's conceivable that they could fish out a local aggregation or a local stock. It was pointed out in the NMFS Section 7 consultation on the federal FMP, in their Section 7 consultation they said they thought incorporation of the spawning closures may be critical to the health of the herring resource. However, they chose to disapprove the measure when they reviewed the FMP.

Another sort of secondary impact is that by not having spawning closures; while they were not intended to do so, spawning closures likely would have slowed the catch of herring in the late summer. So, this -- extending the season and extending the TAC, so this secondary impact is gone, as well.

Now, everything I've just said I said in -- without any consideration of whatever spawning closures the ASMFC has in place. And as was seen this year, the ASMFC does have some spawning protection built into their plan, and it did prevent some fishermen from fishing in some areas, reducing catch rates, and it also provides some protection to spawning herring. And as was pointed out, there's really no direct conflict with disapproval of this measure and what's in the ASMFC plan.

One final point is that when you read the letter that disapproved the federal measures, the language in the letter I think makes it difficult to construct spawning closures in the EEZ for a couple of reasons. The letter suggests -- it doesn't come out and say this -- but it suggests -- and one of the reasons that the closures were disapproved was because the closures did allow bottom trawling to continue in the

closure areas. So, the letter suggests that any closure must also ban bottom tending gear.

This could make it difficult to show that the benefits of the closures outweigh the costs of the closures, because to date we don't have precise information where we can close very small areas. So, in essence you would be closing fairly large area of bottom to both bottom fishing and herring fishing for -- you know, a three or four-week period or however long a closure is. And that might make it difficult to justify the cost of the closure.

The third measure that was disapproved, the plan included a provision that if the New Brunswick fixed gear catch did not reach 20,000 tons by a certain date, the first of October, that the Area 1A TAC would be increased by the difference between their catch and the 20,000 tons. During development of the plan, we felt fairly confident we could get that information. I know at one point I asked DFO Canada what the New Brunswick fixed gear catch was and a day later they told me what it was. NMFS disapproved the measure because they felt there was no guarantee that they would know what the catch would be. And so they could not guarantee that in the future they would be able to adjust the TAC.

And finally, the last measure that was disapproved was the prohibition on TALFF. The FMP did not include any provision for assigning a directed foreign fishing allocation. NMFS pointed out in their disapproval letter that the law doesn't actually allow the Council to do that, that the law says you have to specify what the TALFF is, even if the specification turns out to be zero.

What this means is that -- you know, the Council has to specify what TALFF is, even if they determine it to be zero in the future. At the present time it is not likely to have any real impact because we determined that DAH -- domestic harvest equals OY. So, there isn't anything available for TALFF. But at some point in the future it could mean that the Council if DAH does not equal OY would have to specify a TALFF amount.

Those are the -- the rest of the plan was approved. Those are the four measures that were not approved. The proposed rule has not been published yet. I don't know if Tom can give us an update on when that's going to happen or not.

MR. WARREN: No.

MR. NIES: So, the proposed rule --

MR. WARREN (No microphone): (Inaudible) guess was approximately within a month. (Inaudible) -- guess.

CHAIRMAN BORDEN: And then the follow-up question, Tom, would be if you publish the proposed rule and then when will the measures actually go into effect? 30 days after that? 45 days after that?

MR. WARREN: The usual time frame is approximately 90 days taking --

CHAIRMAN BORDEN: Okay. So, we're looking at February and then you add on --

MR. WARREN: That's a minimum of 90 days.

CHAIRMAN BORDEN: --three months. So, -- okay. I won't bias the discussion. Go ahead, Tom.

MR. NIES: Well, the only thing I would add on that is that -- not to contradict, Tom, but you know, the recent experience is that it's usually been longer than that for the final rule to be published. In the case of monkfish, which admittedly was a very complex final rule, had a lot of concerns that were brought up by a lot of interests after the final -- after the rule was published, the monkfish final rule

was published eight and a half months after the proposed rule. The whiting proposed rule I think the comment period -- I'm not sure if it was the comment period ended September 13th or the rule was published September 13th. I think it was the comment period ended September 13th. The final rule has not been published for whiting yet. So, you know, recent history with those two fisheries is that it may take longer than three months to get from proposed rule to actual implementation of the regs.

CHAIRMAN BORDEN: Finished?

MR. NIES: I'm done.

CHAIRMAN BORDEN: Okay. Questions -- questions on any of those points? And I don't think we necessarily need to discuss each one now, because I want to move on to the -- one of them in particular which is the issue of the spawning closures and see if we can get some closure -- no pun intended -- on that issue. But each one of these items I think we have to come back and actually discuss as to how we want to handle it, whether or not we want to craft another alternative and submit that alternative, whether or not we want to try to beef up the justification that -- and -- essentially resubmit the same type of proposal so that -- we need -- there's a lot of discussion that has to take place. But the one issue that I think we really have to focus on is this issue of the spawning closures and how we want to handle the spawning closures. Because I think it's important to emphasize the fact that the Commission plan and the states still have the ability to implement spawning closures if they want to. And the fact that the -- there was a lack of federal action on this doesn't preclude us from taking action on it. We can just do it through a different venue.

So, with that as a little tiny bit of background, let me -- we had put together a subcommittee -- excuse me -- met and the subcommittee was co-chaired by Mr. Flagg and Dave Pierce, and John Nelson graciously entertained the meeting at his office. He was the mediator. Which one of you gentleman would like to comment on the results of the meeting? Or we can ask staff to do it, if you'd like.

SPAWNING CLOSURES

CHAIRMAN NELSON: All right. Let me -- let me continue my mediating status, and that is we did meet on the -- it's in your packet, the last letter on this -- or last memo of that packet that you have stapled there. It's a letter or a memo to the file from Tom in regard to the spawning closure meeting on December 10th, 1999.

As you can see, we had a number of folks come up and look at the problem as Dave had requested. It was because of the issue that spawning closures -- the spawning closure that was in the plan was -- created problems that were not intended, for example, in some cases it created a problem where fish were not available for bait. In other areas, it was a problem in which a fishery became directed on juveniles. And that was not -- obviously that was not the intent of the management plan.

So, we had a good discussion, I thought, on what would be possible solutions to that, looking at the knowledge that was gathered in that room; and if you work your way down to the -- some of the bullets here, we would -- you would be -- let's see -- one, two, three, four, five -- actually, the sixth bullet down kind of -- the fifth and sixth ones down basically start zeroing in on some of the details that we are recommending be taken a look at.

Closures would be in Eastern Maine August 15th through September 15th; Western Maine from September 1st through October 1st; and the Mass./New Hampshire area September 15th through October 15th. The intent is that the closures would -- there would be set time frames when people could anticipate that the closures would start to take place. The closures would be for four weeks long and that the -- when they are opened up, the sampling of the catch would determine whether or not it needed to be extended for another two weeks, and if it was extended for two weeks it was two weeks and then the fishery would be open.

The closures -- the dates for the closures to begin are also flexible in that it would be looking at the gonadic -- gonadic indices for herring, and this would be determined from the commercial catch samples or if there's other sources available, that would be examined. And as it reaches or approaches a certain level, we would in unison prepare to close the fishery, or close that area because of spawning. Obviously there would be a certain time frame in which the industry would be -- if you would, forewarned or at least given advance notice, and I think we all tried to do that at this -- under current circumstances.

There were several things that were not resolved. One was to look at the closures in two ways. One is a complete closure and another was to allow for a 20 percent tolerance of stage five and six female herring.

What we had asked was that the PDT and the Technical Committee of each of the Council and the Section be able to take a look at those, see if they were -- it was a viable -- if those measures were viable, and come back with a recommendation associated with those suggestions. And I don't think either one has had an opportunity to meet yet, Dave, so we're really still at that stage. So, unless there's some other revisions, that may be where this item then -- then does go, but I think we ought to talk about it a little bit and maybe there's some other recollection that is better than mine on the meeting itself. Maybe Lew has something or --

CHAIRMAN BORDEN: Lew.

CHAIRMAN NELSON: -- Joe or Tom.

MR. FLAGG: I think John pretty well covered it. I don't have anything more to add at this time, but later on I will.

CHAIRMAN BORDEN: So, just to summarize, basically what we would be doing is referring this to the Technical Committee and letting them look at these options and they would come back to us with a recommendation?

CHAIRMAN NELSON: That's correct.

CHAIRMAN BORDEN: Any objection to doing that? (No response audible) No objection. Artie.

MR. ODLIN: I thought we were in a rather time sensitive mode. Will there be another meeting? How is this going to progress from here? If you go back to the PDT again, then what happens?

CHAIRMAN BORDEN: John.

CHAIRMAN NELSON: Well, it should go to the Technical Committee and then the states should be in a position to be able to deal with the -- any recommendation that the Section approves because it's -- either through adaptive management, you can already do that in the plan, and so it doesn't have to have an amendment or anything else to the plan.

So, it really is then whatever the Section adopts, if it's something different than what's in there now, the states

would then through their regulatory process implement that. And I know we can do that in a very short period of time. I believe the other states also have the ability to do it in a relatively short period of time, so I -- it's really just when the Technical Committee would be able to meet. And Joe, I don't know if -- do you have an idea of that time table?

DR. DESFOSSE: I think the earliest the Technical Committee could meet would be the February week following the Commission's meeting week. That's February 7th -- the week of February 7th. So, the following week, the week of February 14th if that was good for all the Technical Committee members.

CHAIRMAN BORDEN: Okay. And then my assumption is that would come back to a Board meeting say in March?

CHAIRMAN NELSON: I would think so.

CHAIRMAN BORDEN: In which case that would leave us a couple of months to try to implement something. Bill Adler.

MR. ADLER: I think my question was the same as Artie. I was just trying to find out whether you needed to do an amendment or whether you could just do adaptive management and I think you answered that. So, in other words, somehow this thing can all be changed if that's the way it would go in time for the -- this coming next season. Right?

CHAIRMAN NELSON: Right.

MR. ADLER: That's good.

CHAIRMAN BORDEN: Just to make, you know, one personal observation, given the rejection letter and some of the language that the National Marine Fisheries Service used relative to questioning the value of spawning closures, I think that it would be helpful to have the Technical Committee actually look at that issue in light of those comments that were made; and as they formulate their position, I think it's going to be beneficial if they -- they formulate a position that basically says that we need to protect 100 percent of the spawning fish, 50 percent of the spawning fish. I mean, get some feel for the level of protection that we -- that we actually need in a biological context.

Because if in fact we don't need to protect 100 percent of the fish, you can make relatively simple regulations that are easy to administer and easy to enforce and easy for the industry to understand, and get away with -- get away from some of the more stringent monitoring requirements that may be imposed on the states.

You know, for the sake of argument, if the Technical Committee were to come back and say we still think it's a good idea and you should try to protect 50 percent of the spawning fish, that really gives you a lot of flexibility on how -- how you design the regulations.

So, I would hope they'd have -- start off with a discussion of that, what level, and then go through these options and give us a reaction to them. But other comments? John.

CHAIRMAN NELSON: No, Bruce --

CHAIRMAN BORDEN: Oh, excuse me. Bruce.

MR. FREEMAN: Thank you, David. Question that I have is the meeting that took place, was this under the auspices of the Commission or the Commission and the Council? And the next question would be: The suggestions here, would they just be for the Commission or the Commission and the Council?

CHAIRMAN NELSON: It was not an official

ASMFC one. Dave had at the Council -- and Dave is here to correct if I misinterpret -- he had said that obviously there's a problem, that we need to address the problem, and he asked if some of the participants could get together and I offered our office to -- as an inexpensive location to -- and a central location to host that and try to deal with the issues.

And the discussion then just centered around, well, what was the problems that we saw in the last spawning area and came up with the suggestions that were in here; and the recommendations from the group -- this subcommittee was that the recommendations should go to both ASMFC and to the Council for their consideration; and that's why we were saying that it would be suggested to go to the Technical Committee for ASMFC for consideration.

MR. FREEMAN: If I may, the reason for that question -- those questions, getting back to the discussion presented earlier by Tom is that, one, we need to make a determination if we made changes, would it be acceptable to the Fisheries Service, and then if not, whether in fact the states wanted to impose these and enforce these independently of what the Service wants to do. I think those decisions need to be made somewhere.

I would agree it's probably best to try to get both the Commission and the Council process to agree and then get the Secretary to agree. That would be ideal. But indeed, if we thought it were important enough, it could essentially be carried out only by the Commission. You wouldn't need the Secretary. So, I think we need discussion on that. And David, I guess we'll get into that somehow.

CHAIRMAN BORDEN: Yes.

MR. FREEMAN: The other question I have relative to the memo that Tom had done, the December 13th memo, there was some information presented official catches and then there was some refuting of that by people in the fishery, numbers were low. Was that simply because of incomplete information at the time, fishermen knowing what the catch is and yet the Service not having that available? Is that -- I'm looking at the second paragraph of Tom's memo. I'm just curious how -- if that's been resolved or --

MR. NIES: Dave Libby might be able to address that in more detail. At the time of the meeting there were not -- let me back up. There's two pieces of information. One is there's sampling information that they get from landings that gives them information on the numbers of juveniles and then they compare that to the total catch information which they get from a variety of sources. In December, his only -- his total catch information from Area 1A was only about 33,000 metric tons and he knew that was not all the landings. But he has gotten more information on more landings since then and he thinks he's got a larger percentage. But the fact is that his number of juveniles estimate I don't think has changed that much. I mean, -- Dave, I mean, what's your estimate right now on juvenile catch in '99? You might want to explain that a little bit.

MR. LIBBY: David Libby, Maine DMR. I don't have that detail with these new numbers, although whatever it is, it's not going to surpass the juvenile catches we've had in the last -- during the last four years. It's within a range of -- I think I presented at the meeting we talked about a range of anywhere from 5,000 tons to 16,000 tons of age one and two fish, those being juveniles. So, I think whatever comes out of these figures is still going to be within that and not deemed to be unnecessarily high.

As of this morning, from a download from the NMFS computers that store all the vessel trip report data which is essentially 95 percent of our -- of the data that we work with, I was able to look at 61,000 tons for the whole east coast herring fishery, and then looking at all the vessels that have reported and looking at the holds of some vessels where they haven't reported for certain months, and taking a guess at about 25 percent still left to report, we can probably come up with another 15,000, leading to a total for the year of about 75,000 tons.

CHAIRMAN BORDEN: David, do you have a -- excuse me. Do you have an estimate for 1A?

MR. LIBBY: Yes. 1A out of that -- looking at -- yeah, 30 -- well, yeah, the data I have is over 37,000 tons with the non-reporting we can probably estimate that to about 47,000 tons for the year.

CHAIRMAN BORDEN: Okay. Questions for David. Bruce.

MR. FREEMAN: Then I would assume an answer to my question is that the original data, Mr. Libby you had provided was simply only partial information and as you got more information, what Peter Mullen had indicated seems to be borne out in that the catches were higher. And so there really seems to be no disagreement, just a matter of getting the most recent information.

MR. LIBBY: Right.

MR. FREEMAN: Okay. Then the other question, David, I would have -- the other point I would have deals with the Secretary rejection of the plan, or at least the Region's rejection of the spawning closure. And it's not answered in Pat's letter is whether in fact if there were no -- if there would be a complete closure, rather than a tolerance, would that be acceptable to the Service? Is that the reason -- one of the major reasons for their rejection? I think that would also enter discussion, particularly of the Commission and the Council.

CHAIRMAN BORDEN: Lew.

MR. FLAGG: Thank you, Mr. Chairman. I think one of the other issues in terms of the Service's rejection had to do with the fact that in those spawning areas during the closures there were allowable bottom tending gear that could be used in those areas and there was concern about impacts on herring egg beds and that wasn't addressed in the plan. That was one of the issues I know.

CHAIRMAN BORDEN: Yes. I mean, all of this I think needs to get talked through when the technical people sit down. I mean, there are issues of enforcement that should be raised. I would hope that what we would do is send a formal request to the National Marine Fisheries Service that they have their experts that can speak on behalf of the agency at that meeting and let them articulate why they took the position they took and what alternative changes can we make that will be acceptable to them. And I think the committee ought to look at it in the broadest possible sense. We have groundfish closed areas and yet we allow herring boats to fish in those areas. We allow a lot of other activities.

So, exactly why is it that -- you know, we can't do this with the herring fishery and they should articulate why that is. If it's an enforcement concern, they should say that. But the letter didn't say that. You know? And I think Bruce's point's well taken that we need to understand what's acceptable and what's unacceptable. Tom.

MR. NIES: I got the letter with me if you'd like to hear the four or five reasons they disapproved the spawning

closures.

CHAIRMAN BORDEN: Yes.

MR. NIES: In answer to Bruce it had nothing to do with the tolerance provision because the federal measures did not submit a tolerance. It was a complete closure. This is a paragraph from the partial approval letter: "I disapprove the spawning area closures because it was not demonstrated that the costs of imposing the closures outweigh the benefits". I think that's a typo. I think she meant to say the benefits did not outweigh the costs. "The measure appears to be inconsistent" --

CHAIRMAN BORDEN: We thought it was a creative way of looking at it.

MR. NIES: "And the measure appears to be inconsistent with National Standard 7 in that conservation benefits are uncertain. The measure also appears to contravene the MSFCMA Section 303A1 Alpha". I can look that up, if you want. "Further, the spawning closures would not apply to mobile bottom tending vessels, just the purse seiners and midwater trawlers. Such fishing gear may also disturb spawning herring. Also, the Northeast Region Office of Law Enforcement stated that spawning area closures that allow the possession of herring on board pose enforcement problems. In consideration of the aforementioned and of concerns raised by commenters, and given the uncertainty of conservation benefits to be realized, the spawning closure at this time does not appear to be necessary and appropriate conservation and management measure".

CHAIRMAN BORDEN: Okay. Thanks, Tom. John.

CHAIRMAN NELSON: Yes, I was just asking Dave whether or not we would be striving to have the combined Council and ASMFC technical review take place, and Dave was saying yes, that definitely would be a benefit, and I concur with that. The only thing that I was going to add was that obviously people's time tables and schedules are such that there may be problems with that, and it is something that we still want to move ahead on as quickly as possible, but as thoroughly as possible; and that if it -- if it -- my suggestion would be if it is only ASMFC and not enough folks from the Council and being able to attend that we still should move ahead and have that review take place; and because if we're going to make changes, it really would be on the ASMFC side for this year. And I think that's what we're all looking at, to try to make sure if we need to make a change we should do it this year.

CHAIRMAN BORDEN: David?

MR. LIBBY: Any more questions? (Inaudible).

CHAIRMAN BORDEN: Any more questions for David? (No response audible) Thank you. Bruce.

MR. FREEMAN: One of the aspects that puzzles me greatly about the spawning closure is reading what Tom just did of Pat's letter, and then reading Tom, your response for the spawning closure, which you went over previously, that there are several quotes in here relative to apparently statements made by the Service of the impact and importance of spawning areas, and then there seems to be an argument against them in her -- and that being rejected, which just doesn't seem to be consistent.

CHAIRMAN BORDEN: It's not.

MR. FREEMAN: And I just can't understand it. I mean, the position of the Service at one time was -- appears to be to encourage the protection of spawning areas and then this most recent aspect, which would be a rejection of that. It's just -- I can't fathom that in my mind as to how

come these are so diametrically opposed.

CHAIRMAN BORDEN: I'm glad you point that out, Bruce. That's precisely the reason I said what I said relative to formally inviting the Service representatives to be there and articulate these views. I mean, there's a complete inconsistency between the positions and we've got to sort through that and get on with making whatever changes we're going to make for this year.

Because, you know, I think -- I can represent almost everybody around the table. I don't think anyone wants to complete -- well, maybe there are some -- but a repeat of what went on this year. Okay. So, anything else on spawning closures then? (No response audible) So, the issue is going to be referred to the PDT and the Technical Committee -- a joint committee and the meeting will probably take place the second week in February. Okay? Okay. Let's move on to -- excuse me for clearing my throat. The last -- the last cold is hanging on.

MR. COATES: (Inaudible).

CHAIRMAN BORDEN: Week after that. The third week then.

DR. STEVENSON: Third week some of us are going to be in Alaska.

MR. COATES: School vacation.

UNIDENTIFIED: First week.

UNIDENTIFIED: At a herring meeting.

CHAIRMAN BORDEN: Well, let's let the staff figure out, you know, when the meeting is going to take place. It's got to take place relatively soon, otherwise we're going to miss the opportunity to do something this year.

UNIDENTIFIED: We could always have the meeting in Alaska.

CHAIRMAN BORDEN: That would be a good idea, too. One issue that -- which is the next issue on my agenda, which is the -- I think we have to get some resolution to is this issue of reporting and the reporting requirements, because the time frame that was just outlined I'm concerned that we're going to end up halfway through the year before the reporting requirements. Tom, do you want to discuss this? You're on the agenda to outline the problem and alternatives.

REPORTING REQUIREMENTS

MR. NIES: Yeah. We're a little ahead of schedule. Not that that's a bad thing, but one of the -- one of the people who was going to be here to help us address this was Greg Power from the NMFS Statistics Office in Gloucester to talk about this issue a little bit. He --

CHAIRMAN NELSON: Got snowed in.

MR. NIES: He had hoped to show up around 2:30 or so, so if he comes in --

MR. COATES: Weather permitting.

MR. NIES: Weather permitting. If he shows up, we may want to ask him a couple questions. The issue is that with the area specific TACs it's relatively important to know how much fish is being caught. And the way the management plan is written, we intentionally wrote it this way thinking that the plan would be implemented in the middle of last year. The idea was that all herring caught from 1 January on would apply to the first year's TACs. So, all the fish are caught from the beginning of the year on, even when the plan wasn't implemented yet, would be applied to the TACs in 1999.

We expected that the plan would be implemented by

the year 2000, so we thought reporting would begin on 1 January of this year, but it looks like the regulations are not going to be in place by then and it looks like the regulations are going to be in place sometime later this year.

So, the issue becomes potentially we're faced with starting a plan in the middle of the year without really knowing where we are on the TACs. This means that it will be difficult for us to monitor -- you know, there's a list of potential problems on page 43 of the handout. It makes it difficult for us to monitor the area specific TACs. The existing vessel logbook system does not cover all herring vessels. The logbook system right now is only in place for those boats who have another Northeast Region permit. And while that covers many of the herring vessels, it doesn't cover all of them.

In addition to that, the current vessel logbook system really is not designed for quota monitoring. There's some delays built in. Fishermen doesn't have to submit his logbook until 15 days after a month, so there's some delays built in as to when the information really becomes available. And a prime example of that is the trouble Dave Libby had trying to use a logbook system in December to figure out what had been caught in August. So, that system alone really isn't an effective way to monitor quotas.

The PDT kicked around some possible ways to address this problem. One would be no action, just to let it go on. Another would be to ask the Fisheries Service for emergency action to implement the permit and reporting requirements in the FMP.

A third option would be in order to use a small mesh net, either a purse seine or a midwater trawl in the Gulf of Maine or Georges Bank regulated mesh areas, whether or not you've got another federal permit, the Multispecies Plan requires that you get a letter of authorization from the NMFS Regional Administrator to use that small mesh. And you're subject to any conditions or restrictions that NMFS places on the letter. So, another option conceivably would be to have NMFS as a condition of that letter say that you report through the VTR and the Interactive Voice Response System.

And then a fourth option, and one that I think Dave can talk to, because this is an approach Maine is already working on with NMFS, will be to have the states implement reporting requirements which I think they're required to do under the ASMFC plan. And as part of that reporting requirement have a requirement that the fishermen report in to the NMFS IVR system. Now, the IVR system is basically a touch tone phone call-in system where the fisherman calls in and enters some information by touch tone phone and it's automatically logged and then NMFS has access to it. The FMP requires herring fishermen to do that every week. And this was intended primarily for the quota monitoring ability it gives us.

The reason Greg Power was going to come up was to talk about this program a little bit. He is ready to do this for as many states as want to make this a requirement. This might be a preferable way to go rather than emergency action because emergency action can be a headache for the Regional Office and the Council staff to put together the documents to get it approved -- and speak of the devil, Greg just walked in.

And then the other -- the other option is that NMFS in the past I think has been hesitant to implement a regulation through a letter of authorization. They feel that kind of tries to dodge the proposed rule-making comment and

reporting process. So, you know, assuming that the committee and the section want to do something, there's these three options to look at. And it's possible that this state option might be the way to go.

Greg just walked in the room and we just started talking about this, Greg. I thought you might want to talk a little bit about the IVR system and some of the discussions you had with the State of Maine about how you're considering handling herring landings in the state.

MR. SMITH: Your timing is impeccable.

MR. GREG POWER: Could have done a little bit better. Could have been another half hour late.

CHAIRMAN BORDEN: Actually you're 30 seconds late.

MR. POWER: We've had discussions with Dave Libby, State of Maine, on collecting herring information through -- more or less through their authority under using a combination of our systems and their systems, kind of expansion of what we do now for dealer information, vessel information, and also quota monitoring information.

We are looking at adding herring vessels to the Interactive Voice Response System, which is a call-in system, the same thing we use for regular quota monitoring. Excuse me. We're looking at collecting catch, discard, area fished on a weekly basis from vessels. This is similar information to what we've talked about under the federal plan, and I believe the State of Maine already has rules in effect or can put rules in effect very quickly to do that.

We're also looking at moving or -- for the boats that don't have a federal permit already that catch herring ask -- getting them through again the State of Maine to complete vessel trip reports for every trip, to give us that level of information.

And we're going to be looking at getting the dealers to be submitting weighouts, similar to what we do now, to the State of Maine, for the trips that they have, including bait dealers. And those data would be processed through our normal systems and the quota monitoring data through the IVR system would be available.

CHAIRMAN BORDEN: Questions for Greg? Any questions? Artie.

MR. ODLIN: Thank you, Mr. Chairman. Hi Greg. A time frame from a report to finalization of -- how quickly can you get them? Monthly -- on a monthly basis? Weekly?

MR. POWER: We're looking for the quota data on weekly submissions right now, and those data are put directly into our database and they're available as soon as the call ends. And we'd be issuing -- either us or the State of Maine would be issuing summary reports (inaudible) now on a weekly basis.

MR. ODLIN: Thank you.

CHAIRMAN BORDEN: So that I get a sense of timing, if we were to go with that option, Greg, what's the fastest it could be up and running?

MR. POWER: We're looking -- we're already scoping out what we need to do. The data elements are pretty much set. To program the system is not very complicated. We have some work to do to match the permit systems -- some identifier for the vessels that don't have a federal permit already. We're looking probably -- without a whole lot of -- without a whole lot of pushing four to six weeks to implement it.

CHAIRMAN BORDEN: John.

CHAIRMAN NELSON: It sounds to me like that's --

should be our primary focus, but should we also have a backup in case there is something that comes along that that system won't work, and that is that if there is the ability by the Regional Administrator to already add a requirement to a small mesh fishery permit, should we hold that one as the Option B and make sure we don't miss out on getting reports?

CHAIRMAN BORDEN: Comments to that point? I mean, I can give you my own opinion, but anyone want to comment before I --

CHAIRMAN NELSON: Let's hear yours, Mr. Chairman.

CHAIRMAN BORDEN: Well, I mean, I think we should go -- this is the key to making this plan work, and so I think we ought to go with both strategies basically, allow the technical people to try to as quickly as possible develop the system that they're talking about. Rhode Island would certainly be willing to participate and now we've got a similar type of system. I think Massachusetts has a similar type of system.

My reaction here is this is almost a technical problem. It's like put one technical person from each state that's responsible for that activity in a room with the appropriate federal staff and say solve the problem. And they should be able to solve it themselves without even coming back to us.

Lacking that, if they run into some insurmountable problem, I would think that our fall-back position would be that these two committees would jointly recommend to the Regional Administrator that they make the permit modifications so that they can do it by the alternative. You know, and so I would hope that in a matter of a couple of weeks you could work through the technical issues and get the system up and running, and if not, we would automatically have authorized a letter to be sent out -- a joint letter from the two -- both from the Commission and the Council asking the RA to modify the permit --

CHAIRMAN NELSON: You want to just get a concept of -- that by consensus, both the Section and the Council agree to that concept?

CHAIRMAN BORDEN: Well, let me ask this. Does anyone object to it? If not, what I would say for the record is that we adopt it by consensus without having to get into the formality of a vote. Bruce.

MR. FREEMAN: David, there's a number of states, including our state, has declared *de minimis* because we're less than the one percent. However, the reason we did that was to avoid month -- or weekly reporting. That's really our reason for it. And I'm just concerned that as Lars Axelsson had indicated at times our vessels -- particularly most recently with squid closures -- would be involved in harvesting herring in the fall. I just want to make sure that our delay in the response is not going to destroy the system somehow.

Now, in all likelihood, we'll be fishing on Georges and that quota will not be reached. But I think New York declared *de minimis*. There may be a catch there. Ourselves and New Hampshire. I just want to make sure that there's a mechanism so that we -- our catches can be included. But again, the reason we all declared *de minimis* is to get us out of this weekly reporting. I just don't know how that blends in with this. Whether our catches would be significant or not, if you're talking primarily Area 1A, you know, they may not. I don't know. But this could create a problem because we would not be required to report weekly.

CHAIRMAN BORDEN: Well, the beauty of the herring fishery is that 90 percent of the resource is landed by 16 boats. You know, so if we get -- excuse me -- if we get -- and we know who those 16 boats are. We can identify those. So, all those primary boats should be in it. And if all of a sudden we get a new player, we have to figure out the appropriate means to get that person reporting.

MR. FREEMAN: Well, I'm not objecting to this. I just want to make sure that we do get the best information and it may be under bullet Number 3 that those vessels with the small mesh exemption could be required by the Service to do this. And it would take care of that problem, I think. But I just want you to be aware of the potential problem and if we can overcome that, we'll certainly do it.

CHAIRMAN BORDEN: Well, anyone disagree with that concept? If not, then I would say we unanimously agree to it and that as the staff work out the technical difficulties, if Bruce's issue surfaces and we need a letter to go out, it will go out as a joint letter from the two requesting action and that will solve the problem. Okay? So, good job. You came 30 seconds late, but it only took five minutes to take care of the problem.

MR. POWER: It was worth the three-hour drive.

CHAIRMAN BORDEN: Tom.

MR. NIES: Just to get it on the record, Greg, do you need the state representatives that are here to talk to their statistics folks to make sure this happens? Or do you think you'll be able to arrange it yourself just by calling them up?

MR. POWER: I don't think we'll have any problems. Again, the major -- once we figure out who's going to do what, the major problem is coordinating the permit -- some identifier for the vessels. And that's not difficult.

CHAIRMAN BORDEN: Okay. Thank you very much. Anything else on the issue of reporting requirements? (No response audible) No? Then we'll go back -- let's see. On my list of issues that I think we ought to discuss -- we should go back and discuss the issue of days out. We've discussed the issue of spawning. I think we'd get some benefit out of discussing the Canadian issue again. Do we need to discuss TALFF or is that strictly a technical? No. Eric.

MR. SMITH: I guess the only thing as I reflect on the disapproval letter, either I missed it as I was mulling over other points being made, or we didn't really capture comments on the whole of the spawning area closure issue. We seemed to immediately get into process and I guess my question is I'm a little -- since this was an October letter, maybe the heat and the emotion of the anxiety over continued NMFS disapproval -- partial disapproval of plans, maybe that's blown past. I thought -- and perhaps I missed the last meeting and maybe that's where the emotion, if it was apparent, came up.

There are a number of things in here that I think we could arguably say we don't agree with your reasons. The one that comes to mind is the issue of trawlers and impacts on the spawning area closures. I mean, I think there's two sides to that whole issue. The spawning closure issue in the plan principally was a directed fishery issue. Secondly, it was a disruption of habitat type of thing. Yet the disapproval letter and Tom rightly pointed out that we may have a future problem in the NMFS disapproval comments versus how the plan played out.

I guess my question is, is there a time when we're going to send back a cruise missile of a comment letter that

says we respectfully disagree with how you're doing this plan approval process, and herring is the latest example. When we compromise on a plan, between industry, Council, Commission, Service, it's a hard compromise. Everybody's always giving and taking.

When the plan is partially approved and partially disapproved, that's giving you half a plan. And we've had three or four examples of this, at least in the Council process, where the half a plan we see being a bigger problem than if we had just had the full plan with its compromises and potential blemishes fully approved so we could deal with it and then make adjustments in the future if we needed to.

So, I see this kind of disapproval as just another symptom of a continuing new kind of behavior from the Service, where we don't happen to like that measure, so here's the National Standard we use to justify disapproval and there are three or four points in whiting and groundfish framework and now herring.

And I guess my question is -- and I've posed it to the Whiting Committee a couple of times before, too -- how do we get the point across to the Service that we don't think this is appropriate behavior on their part, if in fact that's what the group believes? That's just -- that's just the issue that stuck with me for a moment and since you had mentioned we dealt with that issue now that we'll go to the other ones, I didn't want to leave it aside.

CHAIRMAN BORDEN: I mean, I totally agree with you, Eric, and I'm glad you highlighted the problem. I think that at some point we're going to send a letter back to them and argue some of these points. After we go through the rest of these issues, I think there's some ground to send a letter back and say with all due respect we disagree. And that's kind of where I would suggest we're probably going to end up.

The bigger problem to me is -- and I'm becoming increasingly concerned that there is this tendency -- and I won't get on my high horse because I'm the Chair, unbiased Chair I might add today --

CHAIRMAN NELSON: Esteemed unbiased Chair.

CHAIRMAN BORDEN: That's right. But we have this problem going on in lobster. We have this problem going on in herring. We have the same problem on a number of species. This process -- the Commission and the states did what they said they were going to do. All the states have implemented the regulations.

The New England Council did what it said it was going to do. It put together a plan and submitted the plan. And now what we find out is that the regulations aren't going to be promulgated for four or five months and -- I mean, keep -- I'll just -- I won't belabor this point, but it is problematic -- we were talking last year about getting the data collection program so that we could properly manage herring on line last summer. That's when we originally started talking about it.

Now what we're talking about is next summer. It's a whole year away. So, I mean, this is a real -- it's a big problem in terms of how we manage resources. I think we're doing our jobs in terms of getting the recommendations into the system. But if the system can't process the regulations on a timely basis, we conceivably take up a bunch of these issues, go through a framework process, before they had implemented the regulations of the plan, and have another round of changes that we would be willing to put on their doorstep and they hadn't

implemented the first set of changes. I mean, something has to change here, you know, without being too critical. But I mean we've got the same problem with the lobster plan, and I won't get into that one because that's even worse.

So, let's get the Chair out of the business of discussing these things and move back into the issue of the days out. I think that some discussion of the days out provision -- and I'll try to be unbiased on this.

DAYS OUT PROVISION

The whole reason we went to this, and both boards agreed to do this, was based on a concern that the industry had articulated at our meeting that there were going to be excessive catches in the Gulf of Maine, particularly in Area 1A, and those excessive catches were going to compromise the biological integrity of the stock. So, out of what I would characterize as an abundance of caution, the two bodies took what I thought was a very risk adverse position, adopted a very conservative number, which was a compromise in itself, and put that forward with a provision that would then start to actively move effort out of those nearshore areas and into the offshore areas where you have a different mix of fish and therefore it would remove some of the biological stress.

And that was the whole concept that was put forth. You know, it was the industry itself that had initiated much -- you know, to the credit of the industry and the fact of the matter is we can't put that in place.

Now, one of the issues here -- and it goes back to the point that Eric made -- is that they couldn't agree to that provision the way we had formulated it. That doesn't in my mind mean that they can't implement it. They just couldn't implement it the way we had recommended it. So, I think one of the options you've got is trying to recraft that in a manner with adequate justification to submit it to accomplish what the original objective is.

Lacking that, I think the thing that we ought to discuss is what are the other alternatives that would achieve the same type of result that the original mechanism was designed to achieve. You know, and then basically the final thing you have to do is pick a strategy, and one of those strategies ought to move forward in terms of the two bodies. So, with that as a little bit of background, I'd just open it up for discussion. John.

CHAIRMAN NELSON: Thank you, Mr. Chairman. I go with Option 1, which captures what Eric has already proposed as a response back to the Regional Administrator. Obviously it has to have a certain amount of rationalization associated with it, and we've already heard about how within a -- probably within a month -- hopefully less than that -- we would actually have a reporting system in place that we'd be looking at on a weekly basis. I think that was really what -- as I -- my sense was that the Regional Administrator felt that they wouldn't have timely information and therefore couldn't make the adjustment.

If that's not the case, if they would have timely information based on agreements between the states and the Service, it really negates that argument and therefore that's why I'm suggesting that perhaps our first approach would be to put together a response that again requests them to reconsider that based on the following facts.

CHAIRMAN BORDEN: Comments to that suggestion? Eric.

MR. SMITH: One of the problems that we have now in disapprovals of plans we didn't use to have before the Sustainable Fisheries Act. There used to be a provision that you could disapprove a part of a plan and when that got back to the Council, the Council could revise or make a better justification, resubmit the measure and then they had 60 days to approve or disapprove. But it all caught up to the whole plan approval and implementation of the regulation process. Sustainable Fisheries Act took that part out for some reason.

The Service is as upset about it as we are, by the way. We, the Council. Because there's no vehicle now other than a plan amendment. Whiting, again, is a good example. They disapproved the limited access system. Mindlessly, how can anybody figure out why, because they love limited access systems. They didn't like that one. They disapproved it. We couldn't reform it and send it back in with some fixes. We have to do a full plan amendment in our scoping, the whole nine yards. So, Plan A, which is a comment letter, I like the idea of, but I don't think we should think that we can just revise the disapproved measures and send them back in and let them catch up. They're going to have to be in a subsequent framework or new plan amendment, depending on the approach we take. And it's no longer as easy as resubmitting, unfortunately.

CHAIRMAN NELSON: Thanks, Eric. I'd forgotten that.

CHAIRMAN BORDEN: Yes. I actually thought that that's what he was proposing. The way I looked at it, you had made the suggestion for a letter and I think you still do both. In other words, you do a letter, and in the letter you basically say we intend to proceed with a formal amendment to this plan to do precisely what we proposed originally with the justification that John outlined that we're going to improve the data collection, that we've already taken this step to bring this on-line, and if there's some other reason that you rejected the original provision, we need to know that now.

MR. SMITH: I don't disagree with that. I like that idea. Here's the problem it creates. If it should -- because this is a plan and not just an amendment, if this should require a plan amendment, you'll never get these things fixed by this summer fishing season. Even if it's a framework and we started it now, that's a very tight schedule.

CHAIRMAN BORDEN: All right.

MR. SMITH: And if it can be done by a framework, it's going to be out of sync with the normal annual adjustment framework and we all know, workload being what it is, we're trying very hard not to have piecemeal frameworks midstream because they just bog down getting all the rest of the work done.

So, on the one hand, I would -- for herring's -- the benefit of the herring resource, I would like have to a rapid turnaround and a quick fix to these four -- well, the TALFF thing is separately -- the three fundamental measures, get those fixed as quickly as possible.

But in the reality of how the process goes and the workload goes, I think the best we're going to get out of Option A is a very strong yet diplomatic letter saying we respectfully disagree and here are the reasons why we think you've really -- you know, you jeopardized herring management with this kind of disapproval of these measures.

But I don't think -- I don't think they have the power

now to say why didn't I think of that? What a great reason. We're only kidding. We'll just put those measures back in. I don't think they have the ability to do that anymore, which doesn't mean I disagree with you. I think maybe we get the point across, but let's not fool ourselves into thinking we're going to get a rapid turnaround, because I don't think we are.

CHAIRMAN BORDEN: But we could -- and I'm not disagreeing with you, it's just we could also take the step that we ask for emergency action or interim action because we're moving forward with a -- you know, in other words, make it clear, you basically say we're going to prepare -- we intend to prepare a framework to accomplish action and why -- we changed the data collection system. That's up and running. And because of the timeliness issue, we're going to request emergency action or interim action to implement this, and normally when they know there's a framework in the process that's going to modify the regulations, they're more receptive to either emergency action or interim action. Okay. So, on days out, does anyone else want to consider any other strategy? David.

MR. DAVID ELLENTON: Yes, Dave Ellenton from Worldwide Trading. I think if you get Tom to do what you did on the last rejection point letter, you'll find that there's a heck of a lot more to the reason why they rejected that provision than being able to count fish. There's a lot more -- if we went back with that simple response, we're ignoring probably 90 percent of the reason they gave for rejecting that provision.

CHAIRMAN BORDEN: Stay right there, David. Tom, if you've got the letter, you want to read the paragraph.

MR. NIES: Yes. I'd actually like to make one comment. This is probably the one measure that the Regional Office was very consistent throughout the plan development that they said they thought it was a poor measure and would not achieve its goals, it would cause administrative complexity. That was told to the Committee at a number of meetings by a number of different representatives from NMFS. When we sent the draft -- a management plan out to public hearing, we got a letter from the Regional Administrator. I think after the public hearings we got another letter from the Regional Administrator and he and she both consistently said that they did not think the mandatory days out provision, as it was being discussed, was a good idea, and they hinted very strongly it would not be approved.

When the actual final disapproval came through, this is the paragraph that they wrote: "I disapprove the days out provision because I believe that participants could easily work around the days out restrictions and undermine the conservation intent of National Standard 1. It may cause some fishers to fish on bad weather days, raising a safety issue under National Standard 10. The cost of imposing days out on the fishery outweigh the uncertain benefits and may be inconsistent with National Standard 7. Further, given the dubious benefits resulting from this measure, it is not a necessary and appropriate measure for conservation and management of the fishery and therefore contravenes Section 303A1 Alpha of the Magnuson Act. Also, due to lack of demonstrable conservation benefits, industry impacts may not be justifiable under the Regulatory Flexibility Act. This measure imposes a burden with no purpose".

CHAIRMAN BORDEN: It's curious to note that

there's no conservation benefit -- the last point, that they say there's no conservation benefit of the hard TAC. Somehow it just escapes me, the logic. But -- Tom.

MR. NIES: I think in talking to the NMFS staff, they felt that the mandatory days out, which is designed to slow the catch and extend the season so the TAC isn't caught early, would be too easy to evade, particularly in an open access fishery. They pointed out that if -- first off, when you look at the data, at least that we had from '96 and '97, the two days that were taken -- that were proposed to be taken out at 50 percent of the TAC, in those years, there weren't a whole lot of boats that fished on Saturday and Sunday anyways. There were few boats that did at a certain time of the year, but NMFS argued at a number of meetings that the impact of those two days was relatively meaningless to the catch rate. And indeed some of the projections that the PDT showed that are included in the FMP show that that two days out may not have had a whole lot of effect on slowing down the catch.

Then when you started to get to the other days out, they pointed out that in an open access fishery, all the boat -- if a guy really thought that his catch was going to decline, because of those days out, he could go get another boat if he wanted to, which obviously there's some economic problems, perhaps with that, but he could go get another boat, he could make more trips, he could bring in more fish, and do that all on the days when he could go fish to make up for the days that he couldn't fish, so that -- you know, he would just extend it. He could hold the fish on board, you know, go out and fish the last day, hold it on board and sell it on one of the days out. They came up with a lot of reasons why they didn't like it.

As far as the safety reason that NMFS objected to, I just do point out that as part of our plan submission process, we submit all our plans over to the Coast Guard and ask them specifically for comments, whether there's any safety issues in the plan, and it is a matter of record and it is in the comments we received that the Coast Guard did not identify any safety issues with this management plan.

CHAIRMAN BORDEN: You know, it's difficult for me to actually chair this meeting when we get into these types of discussions. I'm going to have to turn to John and get him to chair -- why don't you chair the meeting for a little while so that --

CHAIRMAN NELSON: I wouldn't recognize you, Mr. Chairman.

CHAIRMAN BORDEN: It's inconceivable to me that the National Marine Fisheries Service can't manage a fishery with a days out provision for 16 or 19 boats when they manage a bluefin tuna fishery with 12,000 permit holders on a days out system. I mean, am I missing something here? Somebody correct me. Where is -- where is the logic in this? We can't do it for 19 people and we can do it for 12,000. I just don't understand this.

UNIDENTIFIED: (Inaudible.)

CHAIRMAN BORDEN: And later on I'll tell you what I really think. Now, Mr. Chairman, you chair the meeting for a couple of minutes.

CHAIRMAN NELSON: You're doing fine, Mr. Chairman. You've already spoken your peace. I thought you were pretty well done and you were just looking for other comments. Eric.

CHAIRMAN BORDEN: Any other comments? Eric.

MR. SMITH: I don't suffer from the burden of being a chairman. The sky's the limit.

CHAIRMAN NELSON: Two minutes.

MR. SMITH: Thank you. Actually, I wanted to partially disagree with Mr. Chairman -- the other Chairman there, because I read their comment to say that they didn't think that the TAC was a bad idea. They thought the days issue for the reasons -- some of the reasons Tom described didn't do any good towards metering out the TAC like we thought it would. And that's subjective.

I mean, he inadvertently used the key words that set me off. They didn't like this measure. What they should have done, I think -- my own non-chairman opinion, so I can offend anybody -- try it. We compromised on this. We worked through this. A bunch of different bodies and a lot of industry advisors. A lot of people's time. Try it, see how it works. If it doesn't work, change it.

Instead, they said we're not even going to give you the opportunity to try it. You're absolutely right. The logistics of 16 boats is mind-boggling why that's a problem. The fundamental reason, I think, is the inadvertent words Tom used is they just didn't like this measure, they were consistent over the last two years, they told us they didn't like it. I respect them for that. But somewhere there's 17 members of a Council and however many members of a Commission that in majority vote decide on things as compromise measures that go into a plan, and it galls me that the Fisheries Service has the power of veto over that, at least in the Council process, where we don't get to try the things that we've compromised on.

Having said that, here would be one solution, if it's possible to be done. If we can't get that kind of a measure through the Council/NMFS system, because they have this power of veto, is there a way that the Section -- the Commission Section can adjust -- by their emergency action process conceivably -- adjust how we deal with the days out system? One of the suggestions was this -- do it as a landing restriction instead of a fishing at sea restriction. If there was some way to tailor -- to revise the Commission way of dealing with this issue, in effect we could ignore them for a year and try it through the offices of the states' regulations and the Commission plan authorizing it.

Now, I don't know if that can be done, but that's an alternative way of getting past the hurdle of this power of veto that I find onerous quite frankly.

CHAIRMAN BORDEN: John.

CHAIRMAN NELSON: I don't know if we have a consensus on whether we could do it through addendum or whether it would be more than that, Eric. So, what we can do is look into that and come back and give an answer on that.

The other suggestion that I was going to suggest is that the Chair see if it would be appropriate to have a subcommittee of the Council meet with representatives of NMFS and try to work out a compromise or a position that both sides can find agreeable on this particular point, and then move ahead with our letter -- with our other points and say this is what we're planning on doing and we would like to move ahead either in the interim action or emergency action, as you've already outlined.

CHAIRMAN BORDEN: Okay. On that suggestion, any -- Jim -- comment?

MR. KENDALL: Well, a question. Where some of the NMFS's concern, which is very nice of them, for our safety and the industry's safety and so forth, based on taking time out of the fishery and forcing them to fish in weather they would prefer not to because that's the only days they

have available, could we consider a variable rate of layover time between trips? Not specific days, but total days.

In other words, early on you may only have -- you may have no layover time between trips, and followed up by a period of time after each landing to coincide with the days required out of the fishery. That would kind of circumvent naming days and coming in favor of a number of days.

CHAIRMAN BORDEN: Okay. Art.

MR. ODLIN: I think a little later on this afternoon we're going to be talking about an added 10,000 metric tons going into Area 1A. Is that going to solve our problem? Because this whole thing of product availability was predicated on 45,000 metric tons, not 55,000 metric tons.

CHAIRMAN BORDEN: It could, but I mean fundamentally I think you want to set up a system that's going to work anyways. You know, so I still see a need to address it. And I'm also not confident that we necessarily could prevail on -- ultimately prevail on making an adjustment of 10,000 on a timely basis. I mean, given -- if you just think about the time sequence here. It might be another three months before -- you know, we actually get the regulations in place at that point. The way the plan is designed, for the sake of argument, you were at 45,000 tons, you shut it down at that point.

MR. ODLIN: I'm losing something. This is just 1A. The fishery in 1A doesn't start till April.

CHAIRMAN BORDEN: But the fishing year starts January 1st; correct? So, what they catch right now is counting towards 45,000 is my point.

MR. ODLIN: What they catch in 1A.

CHAIRMAN BORDEN: Right.

MR. ODLIN: Nobody's fishing in 1A.

CHAIRMAN BORDEN: Right. Okay. So, John had suggested the concept of having a small subcommittee sit down with NMFS and do we have volunteers? A couple of volunteers?

MR. SMITH: If that's a Council to NMFS interaction, I would suggest that we'll put it to the Executive Committee which has a meeting already scheduled February 3rd or 8, somewhere in there -- the 3rd, and normally speaking the Regional Administrator is invited to attend. If she's there, then maybe we can talk. Because it's symptomatic of all plans, not just this plan, and I don't think -- short of a Herring Committee meeting to work out herring issues, I think the larger question is the Council leadership through the Executive Committee talking to the Regional Administrator, trying to get a sense of how to fix this problem, because it's pervasive in all plans.

CHAIRMAN BORDEN: Okay. So, -- as the Vice Chair, you'll --

MR. SMITH: Yes.

CHAIRMAN BORDEN: -- head that up then and report back to the committee. Okay. We may end up with a number of issues that you end up raising on that same day. Okay. So, anything further on days out then? (No response audible) No? We've done the spawning closures. Canadian catches. The Canadian issue. I think -- once again, I think we could benefit from some discussion on this particular issue. This was primarily rejected, as I understand it. Why don't you just read the paragraph again, Tom, please.

IN-SEASON AREA 1A TAC ADJUSTMENT

MR. NIES: "I disapprove the in-season adjustment of

the TAC for Management Area 1A because there is no way that the Agency can assure that real time data from the Canadians would be provided in future years. The measure does contravene the MSFCMA Section 303A1A Alpha as it isn't a necessary and appropriate conservation and management measure because it may not work. Further, it is inconsistent with National Standard 7 because it will only impose costs to the Agency without benefit".

CHAIRMAN BORDEN: I'd solicit comments on this, but I think you can do just what we've just done and basically formulate a whole series of points of rebuttal that ought to be addressed with the National Marine Fisheries Service, not the least of which I think is the issue -- for the sake of argument -- I mean, this is a U.S./Canadian industry, is what it is. I mean, and everybody knows it. You're shipping the herring from the United States into Canadian factories and the Canadians are shipping the herring into U.S. factories and it goes back and forth. Depending upon where the fish are, the fish get caught by one country and get shipped to the other country to satisfy the processing needs.

The simplest argument on cost and benefits is nothing more than the fact that if the Canadians -- if the availability of herring is such that the herring are in Maine waters, and the Canadians therefore don't catch them, then all of the benefits accrue to the United States and not only do they accrue to the United States, you could conceivably, hypothetically, end up with 20,000 metric tons more catch than you would under a normal scenario. If they caught zero, our fishermen would get the benefit of catching an -- under what we proposed, they would get the benefit of catching an additional 20,000 metric tons.

We have to be able to work this out. I mean, the Canadian data is available the day after, I think. They have a one-day delay in data reporting and once again it's inconceivable that they're going to get rid of their data reporting program. I mean, that's one of the best programs that they've got. So, my only suggestion here if there are other points that I think we ought to make, people ought to identify them now. But I would suggest that Eric as part of his discussion on the previous issue also raise some of these points -- and John, on this issue -- I mean, and then we'll figure out the appropriate strategy to go back and do it. But other comments?

MR. FREEMAN: Thank you, David. It seems a contact with the Canadians to get some verbal commitment or a written commitment that indeed they would supply this as they have in the past is simply all that's required. Again, it indicates that the major -- the major issue here is the Agency cannot assure that real time data from the Canadians would be provided. That seems to be the issue here. That seems that's something we could contact the Canadians and get a commitment that indeed they would do this, as indicated already.

CHAIRMAN NELSON: It sounds good.

CHAIRMAN BORDEN: John.

CHAIRMAN NELSON: That's it.

CHAIRMAN BORDEN: Eric.

MR. SMITH: I want to -- I want to be clear on this Executive Committee meeting. We're not going to talk much about herring. We don't talk species management, because it's not noticed to the public that way, we're not going to make herring decisions the way I envision this.

CHAIRMAN BORDEN: You're not going to make the

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MR. SMITH: The Executive Committee's going to talk about the issue of partial disapprovals and the basis for those things and try and find a solution to that. Whether herring or whiting or lobster or anything is used as an example to emphasize what the concern is. The letter that you're talking about that gives the reasons why these disapproved measures probably shouldn't have been disapproved -- in fact our view, that needs to come from this Committee or through the staff, however you decide to do that.

I don't think there's going to be any outcome from the Executive Committee that speaks to those kind of questions. Is that how you see the --

CHAIRMAN NELSON: I would --

MR. SMITH: We need to stay away from species specific issues in this committee. We deal with the business of the Council.

CHAIRMAN NELSON: But if we can get that concurrence with National Marine Fisheries that -- yes, there needs to be a process set up. I mean, let's assume it's a small subcommittee meets with them to go over these individual points for a particular species disapproval or FMP disapproval, then that's the process and therefore then this -- the Council Committee can move ahead with that.

Now, it's just whether -- whether we wait till the Executive Committee has met and had that process developed, approved by -- between the Council and the Service, which I -- you know, you would think that there would not be a reluctance to have that take place, but -- could -- well-intentioned minds would not come up with a reason not to have some type of process like that take place.

MR. SMITH: I'm afraid the answer may be the law doesn't allow us to do that anymore. And if that's the answer then it would be kind of a standoff, I would say that the subcommittee of this herring group that puts together reasons that we think those points ought to be reconsidered somehow -- if the Service can do it as a reconsideration, great, but I don't think they can -- if we have to do it as a framework, emergency interim action, that's a good idea.

The imminence of the herring season coming up, the unforeseen circumstances, we didn't think they were going to disapprove what we think are critical management measures. I think you can make that case. Whether they buy it or not, I don't know. But that should be a subcommittee of herring specific people and then we can talk about the process of how to fix the problem if we can fix it or not let it happen again in the future of partial disapprovals.

CHAIRMAN NELSON: Okay. I think we're on the same wavelength. I was just wondering whether that subcommittee would wait until after the Executive Committee's had a chance to meet and actually says this is a good way of dealing with it. That subcommittee can meet now, as you pointed out, start developing its rationale on why it doesn't agree with what happened. I would just -- I would just like to see that the Service was also involved with that subcommittee, discussing -- discussing it is different from reconsidering.

CHAIRMAN BORDEN: Okay. So, we're -- I mean, the Executive Committee meeting is when?

CHAIRMAN NELSON: February 3rd.

MR. SMITH: The 3rd of February.

CHAIRMAN BORDEN: All right. So, what I suggest -- suggest here -- I don't want to delay this.

MR. WARREN: Excuse me, Mr. Chair.

CHAIRMAN BORDEN: Yes. Excuse me.

MR. WARREN: I would agree that we're discussing two separate issues --

CHAIRMAN BORDEN: Right.

MR. WARREN: -- a process issue and a nuts and bolts herring management issue and I will relay to the Regional Administrator the concerns with both issues, okay, and make it clear that there are two different issues going on here.

CHAIRMAN BORDEN: Yes. And I'm glad you pointed that out. The thing I would suggest we do is pick a small subcommittee to develop the letter and you're going to go forward and say that we're going to -- so, we submit a letter and simultaneously request a formal meeting of the subcommittee, but you can go into the generic policies at the Executive Committee and that will be followed up very shortly thereafter by the herring subcommittee, which will report the findings back to us.

So, in terms of a subcommittee, do we have any volunteers? I think it would be good to actually have a couple of representatives from each of the committees, if we could do that, so that it's not just the Council committee that goes forward, we go forward in a unified front. So, I hear -- is there a senator present that would like to volunteer for --

CHAIRMAN NELSON: Representing a major constituency?

UNIDENTIFIED: Is there a senator in the house?

CHAIRMAN BORDEN: All right. How about --

CHAIRMAN NELSON: Very gracious of Jill.

CHAIRMAN BORDEN: Jill will agree to do it. Lew representing the State of Maine. Vito for Massachusetts. And I think maybe we'll include the two co-chairs to round it out. So, that will be a subcommittee of five. Any objection?

CHAIRMAN NELSON: -- major states included there.

CHAIRMAN BORDEN: I mean, given the fact that the State of New Hampshire borders on two --

CHAIRMAN NELSON: Two great ecosystems.

CHAIRMAN BORDEN: -- great political systems --

UNIDENTIFIED: (Inaudible.)

CHAIRMAN BORDEN: Okay. So, we will flesh out the arguments jointly on the part of the subcommittee and what we will try to do is circulate a letter that all of you can look at prior to the meeting. So, if you can think of other arguments that we haven't put together or you disagree with the arguments, then we'll change them and then take them forward. Okay? Everyone comfortable with that?

We don't need to do anything on TALFF and we've taken care of the data collection issue. What other issues do we need to discuss today? Do you want to discuss -- Artie, you had mentioned something about adjusting the TACs?

TAC ADJUSTMENTS

MR. ODLIN: Well, that was a discussion at the plan development -- the Technical Committee meeting that -- let me back up. Two years ago we started -- started the whole thing, there was 55,000 metric tons in the Gulf of Maine anyway. And then that was adjusted, 10,000 went to Area 1B. And at the discussion last week, there was some thoughts that you could put the 10,000 back in. I'd ask Tom to fill us in on that.

CHAIRMAN BORDEN: Tom.

MR. NIES: I want to be careful to characterize the PDT discussions right. The PDT knew and at the meeting in December in New Hampshire there was some talk that because the mandatory days out had been disapproved, the season would be extended obviously if the TAC was a little bit higher. And really the discussion at the PDT was not a recommendation in either way to increase the TAC, but they just pointed out that at the beginning of the process the scientific advice was that a TAC, depending on what TAC assignment method was used, in Area 1A of somewhere around 55 to 60,000 tons would be consistent with what we know about the status of the stock. You know, the issue of whether to move it or not I think is really -- really a policy question, in other words. This would result in a decrease in the TAC of 1B.

The TACs were decided at the meeting in Fairhaven, I think, back on either August or September and I've got the minutes of that meeting with me and it was a rather tortuous chain of events where the TAC motion that originally started was 60,000 tons and -- you know, one point that passed the Commission but not the Council and went back and forth, there was a brief recess and I don't know what went on during the recess, but then we came back after the recess and the 45,000 ton in 1A was put forward and passed both groups unanimously.

But if you go to the public hearing document and from talking to the PDT last week, you know, a TAC in 1A of somewhere between 55 and 60,000 tons is not inconsistent with the science, with what we know.

CHAIRMAN BORDEN: Okay. So, the issue is open for discussion. Artie.

MR. ODLIN: If this can be justified biologically, then it solves part of our problem of continued flow of the product with the fisheries. If last year we took 30 -- 57 out of that area and you've got 60 to play with, this probably -- the TAC would not be reached. And I don't know whether Tom's done any work on 60,000 when that would be caught, but I would guess it would be real late in the season if it ever did happen.

CHAIRMAN BORDEN: So, Tom, if we ended up for the sake of argument reallocating, doing what was proposed, the TAC in Area 1A would be 60,000 and the TAC in 1B would be what? 10?

MR. NIES: I think it was 10. I'd have to go back and look at the numbers. I think the total in Area 1 was 70, so --

CHAIRMAN BORDEN: Now, the other point that I would make on this is obviously you can change this by framework and that's a whole process, but given the fact that the National Marine Fisheries Service is going to be proposing the final rules, does that give us a window of opportunity -- should everyone agree that we wanted to do this, could we simply at that point make a recommendation to adjust the TACs? And comment as part of the proposed -- proposed rule? Can we do that through that mechanism?

MR. NIES: Well, maybe. I think the short answer is yes, but -- which leads to a long answer. The first question is you're going to have to -- we're going to have to be able to justify the change and show that there is a reason for the change and why the Council is making it. It was only last July that the Council once again voted on a 45,000 ton -- the Council and the Section voted on a 45,000 ton TAC in 1A. So, all of a sudden we're going to be coming in and saying let's increase it by 33 percent and raise it. We're

going to have to be able to justify that.

In order to do that change, I think you're going to have to get both the Section and the full Council to vote on it. I don't know -- I don't think you'd be able to get the full Council to vote on it at this Council meeting because it would be a stretch to say it fits under any of the agenda items.

The comment period during the proposed rule is only 30 days, and we've already got a submission package prepared for the year 2000 specifications, because they differ from what went forward in the plan. And the idea all along has been that once the proposed rule is published, the Council will submit those 2000 specifications as comments on the proposed rule. NMFS will then publish -- at least if they approve it -- NMFS would then publish those specifications in a final rule as the specs for 2000 rather than the old specs.

So, if we can get the Council -- if we can justify the change, if we can get the Council to approve the change in time to submit it as a comment on the proposed rule, that might work. The other option would be that the plan does allow for in-season adjustments to the TAC. And it is conceivable that regardless of what is published in the final rule, the Council could always go back to the Regional Administrator, say they've consulted with the Commission, and justify an in-season adjustment to the TAC. That would be a longer process because that also has to go out to public comment again and then the Regional Administrator could make the change. In theory, that could still be done this year. It all depends on when the proposed rule is published.

CHAIRMAN BORDEN: Okay. So, given all that as background, there's obviously a mechanism that you can change the numbers.

MR. NIES: Yes.

CHAIRMAN BORDEN: And it's just a question of how we do it, you know. So the real question is do we want to do it, you know, and I think there everyone has to go back and reflect on some of the reasons that we ended up with 45,000. And it was this concern, primarily by the interest in the Gulf of Maine about the status of the Gulf of Maine resource, and they did at that point wanted to take -- want us to take a fairly risk-adverse position, which ultimately prevailed in the scheme of things. So, comments on the concept of changing numbers? Vito and then John and Artie.

MR. CALOMO: Thank you, Mr. Chairman. We went on this plan, as you had said -- as you had stated. We were at 35,000 metric tons that time and we brought it to 45,000 metric tons. Now the suggestion is 55 to 60,000 metric tons.

The whole TAC was supposed to be about 70,000 metric tons in the whole Gulf of Maine. Why do we split the Gulf of Maine in 1A and 1B, if we're going to bring it all from 1B back -- just about all -- 10,000 tons we're leaving outside now -- to 1A.

Why don't we just get rid of the line and say there's 70,000 metric tons and keep it simple? I think that's the simplest instead of playing tic tac toe whenever we want to, because it isn't in the name of conservation anymore. It's just more fish. We could see that the TAC would run out because it's supposed to be a hard TAC, but it will run out before the season ever -- may even get off the ground. So, why don't we just leave the TAC in the Gulf of Maine, take away the line, just keep our spawning closures, whatever

we want to do there, and just leave it as 70,000 metric tons -- very conservative figure, I believe, resolve a lot of the problems that we're creating. Thank you, Mr. Chairman.

CHAIRMAN BORDEN: John and then Artie, then Lew.

MR. WILLIAMSON: If the quota that had been -- had been -- if the plan had been implemented this year and there had been 45,000 metric tons for the Area 1B, has anybody looked to see when the season would have shut down, assuming that there had been --

CHAIRMAN BORDEN: Tom.

MR. WILLIAMSON: -- the layover provision.

MR. NIES: I don't think -- well, unless Dave Libby can answer that, I don't think I -- I know I can't answer that for '99. I can answer it for the last ten years, if I can find my drawing here.

MR. WILLIAMSON: That's what I -- didn't I say that? 1A? That's what I meant. And the second question I think was any reading on how many -- how much landings came out of 1B.

CHAIRMAN BORDEN: Go ahead.

MR. NIES: The cumulative 1A -- cumulative Area 1A landings from 1990 through 1997, the 45,000 ton point was reached in -- by the end of September in only two years, in '96 and '97. In all the other years in that period, 45,000 tons was not reached till -- at the earliest at the end of October. There were a couple of years where it wasn't reached until November. So, 45,000 tons lasted a while.

If you look at the 60,000 ton number in 1A, looks like there was one year, which was 1996, which was the year of the highest landings, that it was reached by October, two years when it was reached by November, and in the other years in the time period it wasn't reached at all.

As far as landings from 1B, the high year was either '96 or '97 and the high amount was around 6,000 tons -- 5,000 tons from 1B, I think, in '96. I think that was the highest amount. Most years it's been less.

MR. LIBBY: David Libby from Maine DMR. Yes, '99 figures would show that the fishery had reached the 45,000 TAC in Area 1A in the middle of October. And actually this year we have reported 1,300 tons from Area 1B.

CHAIRMAN BORDEN: Bill.

MR. ADLER: While you're there, do we have Areas 2 and 3, any figures from there, the unlimited supply that we had there?

MR. LIBBY: Area 2 projected 23,000 tons and Area 3, 5,600 tons. And that's Georges Bank.

MR. ADLER: And you said 1,300 from 1B?

MR. LIBBY: 1,300 from 1B, yes.

MR. ADLER: Thank you.

CHAIRMAN BORDEN: Okay. Any other questions for David on the numbers while he's here? Vito.

MR. CALOMO: I know what I believe, but maybe the science people can tell me. But I'm going to say this before he even says anything. I believe you're seeing the fish taking the routes that was taken back in the '60s and the '70s and the early '80s and returning back into the Gulf of Maine instead of down towards Southern New England, Rhode Island, and down in Long Island; and it's returning like the years when I fished, and I can almost make wager upon this -- like I did in Las Vegas -- I lost -- that it's happening because of what I've seen outside of Thatchers Island off of Gloucester. This year there was a great body of fish -- and what we've seen up on Schoodic Ridge, a massive body of

fish, and what we're seeing in the areas around -- again, back into the Gulf of Maine that the fishermen are catching fish actually almost outside the breakwater in Gloucester again. And that's where I did fish at times from there.

So, are you seeing fish coming back into the area that you think are -- I don't know if you can answer that without a tagging program, but are you seeing more fish do you think into the Gulf of Maine?

MR. LIBBY: Yes, especially this year was an anomaly as far as the availability of fish. Fish were around, they just weren't available. The water was warm -- especially to the south and out on Georges Bank. The year before, '98, there was fishing on Georges Bank starting in June. I mean, it was fished all summer long. In '99 they couldn't find any fish there. They had disappeared. Because of the warm water on Jeffreys, there was a lack of fish there, and so you found all the fish in eastern Maine. And later, after that -- later in the summer, fish showed up on Jeffreys and there seemed to be plenty of fish on Jeffreys and later in -- oh, the beginning of October, fish were found out on Georges Bank -- quite a sizable amount of fish on Georges Bank.

MR. CALOMO: Thank you.

CHAIRMAN BORDEN: Thanks, David. Back on my list, I've got Artie, Lew and then John. Tom, you had a point you want to --

MR. NIES: Just one point of clarification. Assuming what Vito recommended, doing away with the 1A/1B line, it doesn't necessarily mean you're going to wind up with 70,000 tons in Area 1A. The line gives you the advantage of assuming that some of the fish are caught offshore and those are not necessarily Gulf of Maine fish. They might come from other spawning components. If you move the line because people may fish more inshore, the recommendation in the public -- the document we took to public hearing was that if you went with an overall TAC in Area I that overall TAC should be 60,000 tons and not 70,000 tons, because of the likelihood people are going to fish closer to shore.

You know, I wouldn't stake my life on that number, but the point is that it may be something the PDT ought to look at again before you jump to the conclusion that if you do away with the line you have 70,000 tons still in 1A.

CHAIRMAN BORDEN: Just so everyone's clear, the disadvantage is if you have -- if you do away with the line, the total amount of fish that you can catch in Area I goes down. Because of exactly the last point that he made. Vito.

MR. CALOMO: To the last point that he made. Maybe the PDT should take another look at what's really going on in the ocean again, that the influx of fish is really being generated from the Gulf of Maine now. Things are changing and I can -- you can prove that to you because the fishermen wanted 35,000 metric tons because they could not find any more fish in the Gulf of Maine, but as the year went on, they said well, we should have another 10,000 tons in the Gulf of Maine. Now, we should have another 10,000 tons in the Gulf of Maine. Another 10,000 tons in 1A in the Gulf of Maine -- I should say 1A, because the fish are returning there. It's because there's bigger biomass there than anybody figured. And we went through the thinner times and now it's regenerating itself.

CHAIRMAN BORDEN: All right. Tom.

MR. NIES: I want to word this carefully, because I'm not disputing what Vito says, but I just want to point out that in last fall's acoustic herring survey done by the Center,

which they haven't published all the results yet, but from talking to Bill Overholtz, while there may be more fish in the Gulf of Maine, there's still a heck of a lot of fish out on Georges and in some of those areas. Bill has said that in that survey they saw huge masses of fish almost everywhere they went. Historically, if you look back at landing records from the foreign years, the fishery on Georges for a lot of those years with the foreign fleets really didn't get going till September, October or November. It was a late -- a late summer, early fall fishery.

CHAIRMAN BORDEN: Okay. Back on the list. I've got Artie, Lew, John and then Peter in the audience.

MR. ODLIN: I'll pass.

CHAIRMAN BORDEN: Okay. Lew.

MR. FLAGG: Thank you, Mr. Chairman. I would like to reiterate the comments that Mr. Nies mentioned, because that was my recollection when we talked about having this 1A, 1B area in the Gulf of Maine. The reason why the 1B quota was established was because it was to encourage a more offshore fishery for herring, to encourage people to go offshore to fish for herring with the expectation that their catch would be a mixture of some Gulf of Maine fish along with Georges Bank fish. So, that is exactly why the quota at the time was set at 25,000 metric tons to encourage that fishery to occur, knowing that there would be some contribution of Gulf of Maine fish in that catch. But certainly with the situation as it exists today, it seems as though the -- increasing the TAC in the 1A area by 10,000 metric tons would not have a deleterious biological effect on the Gulf of Maine stock, because you're just taking it out of Area 1A rather than Area 1B, which would still have an allocation of 15,000 metric tons for people to go out there and fish on.

CHAIRMAN BORDEN: Okay. Thanks, Lew. John.

CHAIRMAN NELSON: I'm not going to debate the point about whether we should or should not -- all I can say is that I am concerned about the process and the process would be if we -- in my opinion arbitrarily decide to do something now, which is really contrary to what the plan calls for, I'm not sure we have the validity to just do that.

I think it needs to have public input. I recall the public was very concerned and expressed themselves very clearly to us about the stock in the Gulf of Maine. I just don't have anything just from -- you know, people around the table, even though I think -- you know, I value the opinion of everybody here, I don't see -- you know, anything as far as facts and figures to tell me that we should change anything at this stage, without having -- the public having an opportunity to provide that input to us also. So, I would be very reluctant to change anything without going through a public hearing process.

CHAIRMAN BORDEN: Peter.

MR. MULLEN: Peter Mullen, Western Venture. Just one point I think you're missing is that when we would have been fishing Area 1B, the whole area was closed down -- tolerance basically. Any fish in that area was all above stage four. So, no boat could have fished it anyhow.

That's the problem I see with the whole thing right now. I mean, 25,000 ton is probably too much. It could take ten and put it inside, but you've got to leave some on the outside, because that might be where the fish is going to be next year. It could be all around Cashes and (inaudible). So, we couldn't fish it in the time of year that we should have been fishing it.

CHAIRMAN BORDEN: Okay. Anyone else on this

subject? What's the preference of the committee? Phil.

MR. COATES: In view of what Mr. Mullen just said, it would seem to me that you're going to take the action and John's concerned about public process, he may as well take the whole bite rather than fool around with just the reallocation and get rid of the boundary line. That would be an addendum process, would it not?

CHAIRMAN BORDEN: Yeah. If we were going to -- Tom, it's an addendum? Well, it's an addendum through the --

CHAIRMAN NELSON: Framework.

CHAIRMAN BORDEN: -- Commission. It's a framework through the -- well, what -- preference of the two committees on how to deal with this thing? Eric and then Artie.

MR. SMITH: I'm not real certain how this thing has evolved to the point where it is right now, but it seems to me the process we have is somewhere in the summer we set annual specifications for January through December. And here we are in January, and admittedly it's probably provoked by the disapproved plan measures and how things are going to change and how we know they've been in the last four to six months. But it doesn't seem like -- I have yet to hear the justification of why we shouldn't wait till the normal annual adjustment process, and at that time say -- because that's when we're doing the framework anyway. We start that in June, July, and we finish it a few months later, and it changes numbers for January through December, if I remember how this whole schedule works.

That would be the time with the kind of PDT justification that you would need to say in retrospect we don't think we need a boundary line there, or in retrospect we think we could shift some amount of IB TAC into 1A. But to do it out of sync with the schedule for what in my mind is kind of -- you know, the question of why we would do it now is still kind of unanswered in my mind. I hear different points of view battered around.

I'm not sure what kind of a change in the system is justified to start in the middle of the process. So, it leaves me a little uncomfortable to think about starting something right now. I would rather wait till the annual adjustment process.

CHAIRMAN BORDEN: Artie.

MR. ODLIN: As far as removing the line, I think there was a biological justification for keeping that line in some of the discussions we had so that if you eliminate that line does it mean then you'll have a 70,000 metric tons in 1A?

CHAIRMAN BORDEN: No.

UNIDENTIFIED: Maybe --

MR. ODLIN: Well, one says no and one says yes.

CHAIRMAN NELSON: We said we don't know, based on the -- you know, you'd get the -- you'd get -- you'd get your quota or your allocation based on the review of the -- by the PDT Technical Committee. I mean, they're the ones that come up with the recommendation. It could be 70. It could be less.

MR. ODLIN: Tom, do you remember what the -- why when we first started there was 35,000 metric tons for Gulf of Maine; is that correct? Or 45? I can't remember. And then at a meeting 10,000 was taken out of 1A. Do you remember that?

MR. NIES: I've got the options that went forward to public hearing with, and it was tied -- the numbers that you come up with were tied in with how you calculated the TAC, so that the different methods of calculating the TAC

wound up with different methods -- with different numbers.

CHAIRMAN BORDEN: While he's looking it up, David, go ahead.

MR. ELLENTON: Dave Ellenton, Worldwide Trading. The way the 45,000 came about, Artie, was from these minutes that Tom says he's got of the September '98 meeting where there were votes from the ASMFC and from the New England Council on 60,000 tons and 10,000 tons, which was negated by one or the other or both, and then another set of numbers was put forward and there was a split vote, and then in the end there was a 45/25 proposal by somebody after the break and it was a unanimous decision by both sides. That's how it came about. We were just playing with numbers.

And like you said before, if we eliminate the line will we end up with 70,000 tons in 1A? There won't be a 1A. What we know is there won't be 70,000 tons in the Gulf of Maine. The scientists have already told us that. So, we've just got to be careful. I think to just arbitrarily remove a line like that that's been put in place -- and I'm not one -- I honestly couldn't tell you whether I'm in favor of it or against it right now. I'd have to look back. But --

MR. ODLIN (No microphone): I wasn't contemplating (inaudible). I just wanted to know how it was developed.

MR. ELLENTON: Yeah. I just think we've got to be careful what we wish for. If we get rid of the line, I think we're going to have 70,000 tons. I don't think we're going to have 70,000 tons. And I think we've got a whole other thought process on limited access and all sorts of things, too, if we get rid of that. Tom's got the minutes of the meeting in September --

CHAIRMAN BORDEN: And your point, David, relates to the point that I made before, which is the amount of Georges Bank stock that you catch in what I consider the Gulf of Maine goes down.

MR. ELLENTON: Right.

CHAIRMAN BORDEN: In other words, your access to that stock goes down. That was the whole reason we put the line in to begin with, to try to get the Gulf of Maine more fish, and that's what that -- what the -- I mean, if you look at -- just get down to what the net result is, it gets you more total fish for the Gulf of Maine.

MR. ELLENTON: The fact of the matter is, of course, that when the specifications are published -- the initial publication of them, everybody who wants that number to be different can write in and say that they want the numbers to be different. You've got 30 days to get it done.

MR. ODLIN: -- why it was changed in the first place, when I'm quite sure -- well, maybe Tom can clear it up.

CHAIRMAN BORDEN: Okay.

MR. ELLENTON: I think the State of Maine changed it.

CHAIRMAN BORDEN: Tom.

MR. ELLENTON: I think the State of Maine voted a 45,000 ton -- and everybody went with it.

CHAIRMAN BORDEN: Yes, it was. It was Maine --

MR. ELLENTON: Jill, you must remember. You made the motion.

SEN. GOLDTHWAIT: No.

MR. ELLENTON: No? Got to blame her for something.

CHAIRMAN BORDEN: Tom, have you got something more?

MR. NIES: I don't know which question you want me to try to address.

CHAIRMAN BORDEN: All of the above.

MR. NIES: Okay. The first place the Area 1A/1B line came from was from spawning closures. Back under the old ASMFC plan, the spawning closures went from the beach out to the outer boundary of Area 1. There was no 1A/1B. And the first place we came up with dividing up the area into 1A or 1B was so that the spawning closures would be in closer to the shore, the assumption being they'd go from the shore to that first boundary.

As the spawning closures developed, the outer boundary of the spawning closures actually moved inshore of that 1A/1B line. So, that reason kind of fell apart for the 1A/1B line. And then at that point the justification for the line was -- as the Chair said is that if you assume there's some mixing of fish from other components out there, by putting that line in place, unless you take more from all of Area 1 than if you get rid of that line and assume that everybody takes fish close in shore; or you -- or rather than assume that, but you ignore the mixing of fish that goes on out there, and that's why that line went forward.

Well, I'll go through briefly the three -- the two motions that failed at that meeting and frankly the justification was never clearly explained on why a lot of these changes were made. The first motion was the TAC be 60,000 tons in 1A, 10,000 tons in 1B. That failed. So, then -- well, actually, that was talked about. That motion was perfected to increase the Area 1B allocation to 20,000 tons. So, that would be 50 in 1A, 20,000 in 1B. That motion failed.

Then it became Area 1A 60,000 and then a combined Area 1B and 2 to receive 60,000 with 130,000 TAC reserved for Areas 1B and 2. That motion passed the Commission but failed to pass the committee -- the Council.

Right about then was when there was either a caucus or a small break. And they came back with the 45,000 in 1A, 25,000 in 1B, 50 in Area 2 and 50 in Area 3. And I might be wrong, but I think part of the concern over 1B was related to IWPs and the distribution of IWPs between Maine and Massachusetts, if I recall; because there was -- you can't take IWP fish from Area 1A, and so as -- I think Massachusetts was arguing that the 1B number should be bumped up because that gave them the opportunity to take IWP fish out of Area 1B. And there was also concern expressed about the inshore stock and -- you know, whether a 50 or 60,000 ton number was too high in Area 1A.

CHAIRMAN BORDEN: Jim.

MR. KENDALL: I think Tom stated that 13 ton were taken out of 1B last year.

MR. NIES: 1,300.

MR. KENDALL: 1,300, okay. I'm sorry. Can a midseason adjustment be made using the total amount or a good portion of that total amount? In other words, if you see the disposition of the stock is in 1A and they're going to reach their TAC either sooner or just projected to reach it, and there's very little pressure going on, can you do a midseason adjustment much like you would with the Canadian figures?

CHAIRMAN BORDEN: I guess the question is, is that within the RA's powers as part of the in-season adjustment powers? In other words, clearly the RA has the power to change numbers in an area. The question is can they allocate fish from one area to another? That's -- is that permitted by the plan?

MR. NIES: Yes, I think so.

MR. KENDALL: Then perhaps that should be considered, given the fact that there's a lot of concern that they will meet or exceed that TAC for the subarea, really, if it's not a full area, as I understand it. It seems to be more of a subarea for a variety of reasons, and that might preclude any possible problem with either losing a resource that's available and allocating it for some of the gear sectors that could be shut up, much like the weir fishery could lose because there's something not being prosecuted from 1B. I mean, it would stand some investigation, I would imagine.

CHAIRMAN BORDEN: Okay. With Jim's point in mind, then, we could continue the way Eric basically characterized it, which is be a little bit more deliberative, get more information from the PDT on the impacts of changing the numbers, and if it turns out that it's a problem for this year, that's one of the alternatives that we've got for an in-season adjustment. But it would be based on better numbers and at some point at a Committee meeting or a Council meeting you come back and basically say -- this is the hypothetical example, it's the end of August, nobody's fishing in Area 1B and you say we recommendation to the RA that they shift a minor amount of fish into 1A so that the fishery doesn't close down. Vito.

MR. CALOMO: Also another reason was to -- and we talked about this many times and many meetings -- develop the offshore so that was -- that 25,000 tons was enough that boats would go offshore to develop it, and we from time to time have asked to develop the offshore fishery; and again that's the reason why we left 25,000 -- that was another reason why we left 25,000 tons in the 1B. There was several reasons given. I'm just adding that other reason.

CHAIRMAN BORDEN: Okay. Pat, you have your hand up.

MR. WHITE: I just -- I think this year would have been different if we didn't get the warm water on Georges so quick. I don't think they would have stayed inside and had the harvest rate that we did in 1A. We would have done -- could be an entirely different scenario.

CHAIRMAN BORDEN: Yes. Is everyone comfortable with that scenario, that we'll refer the -- let me just summarize. We'll refer the issue of the numbers in 1A and 1B back to the Technical Committee and ask them to look at those numbers again in a general sense and basically what we'll do is that will evolve over a couple of months.

Now, you'll be into the year at some point if based on catch rates -- if we have an unusual year and all the fish are in 1A, then we may have to consider an in-season adjustment. But it would be based on better information than what we've got right now.

MR. KENDALL: Do you want that in the form of a motion?

CHAIRMAN BORDEN: No, we don't -- is everybody comfortable with that strategy? Okay. Everybody in the audience? Yes.

MS. MARY BETH TOOLEY: Mary Beth Tooley, Fishing Vessel Starlight, and I believe you have a couple of letters of ours in front of you but the one that was dated November 18th that was to the Council.

MR. CALOMO: Bring the mike closer to you. Can't hear you.

MS. TOOLEY: Is that better? We addressed some of the issues that we're talking about right now and the disapproval of parts of the plan. But on the second page we addressed the idea of increasing the TAC for 1A by utilizing some of the TAC in 1B. And I would say the

primary reason to make the consideration is the community impacts to small and isolated communities in Maine particularly, and at the PDT meeting the other day, Bill Overholtz from the Northeast Science Center said that he saw absolutely no problem with increasing the TAC in 1A for a range of up to 60,000 metric tons, based on current assessments. So, if that's what he says as of Thursday last week, what is the point of then going back to a Technical Committee and asking that question again?

CHAIRMAN BORDEN: Well, the only point -- that was his statement as an individual member. Did the rest of the PDT agree with him? In other words, was there an --

MS. TOOLEY: It was my understanding -- of course you could ask Tom if it was his, as well, that it was a consensus of the group that there was really no biological problem with increasing the TAC in Area 1A. And if you then send it to a technical committee, are you sending it back to the same people or are you sending it to a slightly different group? I mean, if you're sending it to the same people that had the conversation, I'm not sure.

CHAIRMAN NELSON: Again, I think that what we're trying to do is -- I mean, whatever discussion took place I'm not sure what context it took place in, because they were not charged with reviewing the quotas that were in those areas. So, they may be discussing it based on new information that they got, which is wonderful.

The charge needs to come from the Section and the Committee to specifically look at this area. If they're already done it, then it would be quite quickly -- quite timely. But --

MS. TOOLEY: So, in other words --

CHAIRMAN NELSON: -- it needs to come from this group to specifically ask what we're looking for and why. There have been a lot of concerns before that the Area 1A is overfished; and just because you take an allocation from an outside area to the inside, all you're doing is continuing to overfish the area that's already overfished. We want to make sure that that's been analyzed and discussed.

MS. TOOLEY: I think our concern with the idea of 1A being overfished is that the current level of 45,000 metric tons, that would be good -- is a decrease from past landings in 1A. So, it effectively, you know, is cutting fishermen back from what the landings in that area have been for the past several years. We've exceeded the 45,000 metric tons.

CHAIRMAN NELSON: But that's what the quota was in those years, I believe, too. Weren't they around 40 --

UNIDENTIFIED: The last two years.

CHAIRMAN NELSON: The last two years. Yeah, and if they've exceeded them, then they've exceeded them. So, is that continuing to overfish a stock? Before that -- they hadn't exceeded that -- whatever tonnage was allowed out there. So, they need to look at it, and that's all we're saying, that the process is there. If they've already got new information, then it can be done in a timely fashion.

MS. TOOLEY: And if we go through this process of going back to them and then having them report back to you, is it still going to be -- you know, an opportunity for this coming fishing year to increase that TAC instead of having the fishery shut down I guess is the only concern that I would have.

CHAIRMAN BORDEN: Yeah, I mean -- actually you've got two opportunities to change it. One opportunity would be in the proposed rule. The public could comment that -- you know, this is an inappropriate number and we

think it ought to be 60,000. And then the second method is through this RA's adjustment mechanism for an in-season adjustment. And that -- both of those could conceivably take place this season.

MS. TOOLEY: Right. And if you were to choose to ask the RA for an in-season adjustment, how does that come about, process-wise?

CHAIRMAN BORDEN: Tom.

MR. NIES: A request would have -- the Council would have to consult with the Commission, which basically means these folks here. The Council would have to vote on it. We would send it forward to the Regional Administrator. She's supposed to provide an opportunity for public comment. So, it would have to be published in the Federal Register. There would have to be a public comment period of -- I don't know if there's a minimum -- a comment period of say 15 to 30 days to comment on it, and then it could be made (inaudible). You're probably talking about a couple months anyway in order to get it in place.

MS. TOOLEY: Okay. Thank you.

CHAIRMAN BORDEN: Okay. Anyone else? In the back of the room. And then we're going to move on.

MS. JENNY BECHRIST: Jenny Bechrist. I kind of lost my train of thought because I've been waiting for a while, but I guess I am fully not in support of increasing the -- I feel like -- you know, a few moments ago when we were talking about the provisions that have been booting out by the Service that none of the provisions that were set in the plan have been implemented at all. So, we're already -- those 45 metric ton, if I remember correctly, started way back in advisory meetings, I thought that the whole industry -- you know, we went back and forth, back and forth, and that -- you know, we agreed that we were concerned about the nearshore fisheries and while -- you know, I'm going to suffer just as bad, it's a very scary thought, but it may shut down at 45 metric ton that we need that. And this summer I think is -- we've caught more because the effort was there because there was no fish anywhere else. So, the numbers are -- it doesn't necessarily mean that it could support that year after year. But this year, it was caught there because that's the only place that they could catch anything. And I just feel that why now are we going to throw this whole -- go back and revisit it again when we don't even know that it still can support it. I mean, not everyone is reporting yet. What figures you have, if it's 50,000 metric ton that we've caught out of that area now, that may not even be all the fish that really was truly caught there, because the reporting has not been implemented.

And you know, while I'm really upset that the Service -- after everyone in this room's hard work is just saying well, we don't like that, we're doing the same thing to say oh, well gee, we should get another 10,000 metric ton in there. Let's let it work for a few years and get the whole thing up and running, because I still personally think there is some concern for the inshore areas, and if we just automatically oh, we're scared, we better give it some more, we're -- a few years down the road, then there's not -- it's not going to be there. So, let's just wait and let it all work together. Thank you.

CHAIRMAN BORDEN: Okay. Thank you. Jim.

MR. KENDALL: To comment on your statement would be that the in-season or a mid-season adjustment wouldn't be quite the same as saying now that we're going to allocate another 10,000 pounds just to satisfy the hue and

cry from the industry. It would give the RA -- and I don't think she'd be in too much of a hurry to throw something away unless she was pretty sure that it was in fact doable. So, I would think that this might be a better method for addressing both your concerns and the other concerns that have been expressed that there is a need for more in there.

CHAIRMAN BORDEN: Okay. David and then we're going to move on. We've got a couple more quick items we need to address.

MR. ELLENTON: Dave Ellenton. I'll be real quick. I just want to make sure that the in-season adjustment is doable. Isn't that one of the things that the RA threw out of the plan? Or was it just a specific in-season adjustment and not related to this? You know, I'd hate Mary Beth to go away thinking an in-season adjustment was really the way that it's going to go if in fact it's not going to be the way --

CHAIRMAN BORDEN: Lew.

MR. FLAGG: Thank you, Mr. Chairman. I think that was a Canadian issue. It had to do with the fact that the Service was concerned about getting real time data from the Canadians, from an area that they have no control over in terms of data collection. But in this instance, they would have -- we would have control over data collection within Areas 1A and 1B and so forth. So, I think -- I don't see that that would be a concern on the part of the RA.

MR. ELLENTON: Except it wasn't just data collection that -- that wasn't just the only reason that it was rejected.

CHAIRMAN BORDEN: Okay. So, we're going to -- Eric.

MR. SMITH: Only to the point of the letter. What David is asking is absolutely right. It just needs to be researched. Because how they write the rule is going to be the telling decision here. The letter says I disapprove the in-season adjustment of the TAC for Management Area 1 because Agency data Canada. That because is just a reason and the question is if they disapproved that whole process then we don't have that available as a tool. If they've left the process intact but said we're not going to do it -- we're not going to allow ourselves to do this because of the data deficiency, then that's different, and it needs to either be answered or researched.

CHAIRMAN BORDEN: Tom.

MR. NIES: If you recall, after the November Council meeting, the Council sent over a request to NMFS that they provide us all the decision documents they used for the herring plan. I'll go back and double check that, but I read it when it came in; and according to the decision document, the only measure they intended to disapprove was the adjustment because of the New Brunswick catch, not the overall idea that they could make in-season adjustments to the TACs. But once they publish the proposed rule, I'll double check and make sure the proposed rule includes the option for in-season adjustment.

CHAIRMAN BORDEN: Okay. We've got a couple of Commission issues that need to be discussed. So, John Nelson.

COMMISSION ISSUES

CHAIRMAN NELSON: Thank you. There are -- in your packet there are several items here. One is an Advisory Panel nomination form for David Turner from Maine -- Down East Maine.

AP Nomination

MR. SMITH (No microphone): (Inaudible).

CHAIRMAN NELSON: These are under other business. The ASMFC one we do public.

CHAIRMAN BORDEN: Council is private.

CHAIRMAN NELSON: Has everyone had a chance to review David's -- do you want to say a few words, Lew, on that, or --

MR. FLAGG: Yes. I would like to say that I think this would be a valuable addition to the ASMFC herring team, mainly because Dave is involved with the fixed gear fishery in eastern Maine. He's had a lot of experience and contact with our Canadian counterparts and there is a lot of interaction between the Canadian fisheries and the Maine fisheries in that part of this -- of the range of this species. So, I think he could bring a very valuable -- some very valuable knowledge to the ASMFC herring group.

CHAIRMAN NELSON: I was just reminded by Joe that this is a new seat that we're adding.

CHAIRMAN BORDEN: I'd just comment that I've worked with David at some of the U.S./Canadian meetings and I totally concur with what Lew said. I think it would be a valuable addition to the AP, so I therefore **move that we approve the appointment.**

UNIDENTIFIED: **Second.**

CHAIRMAN NELSON: Okay. Comment on the motion? (No response audible) Okay. All those -- well, all those in favor from each state, just one vote, please. Just raise your right hand. (Response) Six. **There's six in favor, Joe. Unanimous.** All right. I think that's it for the advisors. There is also a letter from the -- yes, go ahead, Bruce.

MR. FREEMAN: Relative to Maine's position, I guess, Jill, either you or Lew, I feel personally to have fixed gear representation would be very good. Is it -- do you feel comfortable that one person can do this or -- you would prefer seeing more than one person representing fixed gear, so they won't go through this again?

CHAIRMAN BORDEN: Jill.

SEN. GOLDTHWAIT: How many seats can we have?

MR. FREEMAN: Well, that worries me, too.

SEN. GOLDTHWAIT: I do think that it is a small enough community that David will be able to represent the interests of both fixed gear stop seiners as well as the general interest of the industry and the coast.

MR. FREEMAN: Okay.

Compliance Report Review

CHAIRMAN NELSON: All right. The next item is compliance reports, something dear to all of our hearts. And there you have a memorandum from the Plan Review Team on their review of the 1999 compliance reports dated January 12th. The first recommendation -- conclusion recommendation, the PRT recommends **the Atlantic Herring Section approve the 1999 compliance reports for the States of Maine, New Hampshire and Connecticut.** Do we have a motion to that effect?

SEN. GOLDTHWAIT: **So moved.**

CHAIRMAN BORDEN: **Second.**

CHAIRMAN NELSON: Okay. Second by Dave Borden. Any comment on the motion? (No response audible) Okay. Two-second caucus. Okay. All those in favor, please -- (Response) Okay. **Passes unanimously.** All right. Number 2. State of Massachusetts -- Commonwealth -- I'm sorry, I almost made it a State. The

compliance report for the Commonwealth of Massachusetts is lacking several components and they recommend two options to consider: A) find the Commonwealth of Massachusetts out of compliance with Amendment 1 for failure to submit a complete compliance report for 1999, or B), set a new deadline for Massachusetts to submit the elements lacking in the '99 report with the stipulation that a finding of noncompliance would be forwarded to the Policy Board if the deadline is not met. What's the pleasure of the Section? I recognize the esteemed colleague from the Commonwealth.

MR. COATES: I would recommend B unless you want to get into a real long, no-win -- I respectfully request that the --

CHAIRMAN NELSON: What date would you like --

MR. COATES: -- Section giving us the latitude to get this report in.

CHAIRMAN NELSON: What deadline?

MR. COATES: (Inaudible).

CHAIRMAN NELSON: What deadline?

MR. COATES: When is the -- a month should be more than adequate.

CHAIRMAN NELSON: I would think so.

MR. COATES: Yes.

CHAIRMAN NELSON: Wait a minute. Joe has a comment on it.

DR. DESFOSSE: Under Number 4, the Plan Review Team recommendations, is a recommendation to change the deadline for submission of compliance reports, and the new deadline would be February 1st of each year. If the Section would like to use that as a new date.

CHAIRMAN NELSON: Okay. We want to be consistent. Yeah, David.

CHAIRMAN BORDEN: Yeah. I'd just suggest that -- unless we have objections, we adopt that new deadline and that will give the State of Massachusetts and any of the other states a little additional time to remedy the situation.

SEN. GOLDTHWAIT: **So moved.**

MR. WHITE: **Second.**

CHAIRMAN NELSON: Let's see. No, I'm sorry, Pat. Not from the same state. We have a motion by Jill to adopt --

CHAIRMAN BORDEN: **Second.**

CHAIRMAN NELSON: -- February 1st -- David has seconded. Thank you very much. Any discussion on that motion? (No response audible) Again, the motion is to have February 1st of each year as the date for submitting compliance reports. Okay. All those in favor, please raise your right hand. (Response) One, two, three, four, five, six. Sorry, Jill, we didn't count you that time. Okay. **Six in favor. It's unanimously passed.**

All right. This next one should go quickly then. Compliance reports were not received for the States of Rhode Island, New York or New Jersey and the PRT recommends two options to consider: A) Find each of the states out of compliance with Amendment 1 for failure to submit compliance reports for 1999 or B) let them use the new deadline to submit their 1999 compliance report with the stipulation a finding of noncompliance would be forwarded to the Policy Board if that deadline is not met.

MR. FREEMAN: **So moved.**

SEN. GOLDTHWAIT: **Second.**

CHAIRMAN NELSON: All right. I have a motion by Bruce and a second by Jill to go with B, which is February 1st date of this year for their submitting of the compliance

report. David.

CHAIRMAN BORDEN: Yes, the State of Rhode Island had submitted its report. It just hasn't been distributed to the PDT.

CHAIRMAN NELSON: Okay. Very good. I'm sure the Pony Express will get there before February 1st. Any other comments on that motion? (No response audible) Okay. A caucus. Okay. All those in favor, please raise your right hand. (Response) One, two, three, four, five. I lost one. Okay. Thank you. **The motion passes.** Okay. And that's that. Very good. Any other points, Joe, from the Commission?

Approval of Minutes

DR. DESFOSSE: Just that the packet of information that I distributed to everyone had minutes from the last two Section meetings. There was a joint Herring Committee /Herring Section meeting in June and also the minutes from the May 17th meeting in North Carolina. They have been distributed and are waiting for approval.

CHAIRMAN BORDEN: **So moved.**

MR. WHITE: **Second.**

CHAIRMAN NELSON: All right. Pat has seconded. **David made the motion to approve the minutes of the last two meetings. Consensus? Okay, I see consensus. Everyone agrees to that.** All right, David, back to you.

OTHER BUSINESS

CHAIRMAN BORDEN: Anything else to come up at the joint meeting of the two committees today? Tom.

MR. NIES: Just one comment. Over lunch I got a copy of the language that's being considered in the groundfish framework to change the definition of midwater trawl gear and I gave it to Ricks Savage and he was showing it to a couple midwater trawler fishermen. If anybody wants to see it, check with Ricks in the back of the room.

CHAIRMAN BORDEN: Okay. Jim.

MR. KENDALL: Yes, I'd make a comment on it. I looked at it briefly and I think that there's room to remove the word bobbin from there, because a bobbin actually in my mind's eye view -- and I could talk with some of the groundfish fishermen that I'm familiar with would actually add buoyancy rather to the -- to the sweep, rather than try and cause it to come in contact with the bottom, it would work the opposite way. So, I wouldn't see any real reason why, unless there's another application for the bobbin and I stand to be corrected, but to me it would add flotation rather than -- you know, as an incentive to get it on the bottom would be getting it off.

CHAIRMAN BORDEN: My suggestion here is that what we do is basically break and allow a group of any individuals that are interested in that issue to simply get in a corner. They can use the table or whatever and discuss the issue. Because there is a Groundfish Committee meeting tomorrow and if in fact they've got a recommendation, that way the recommendation can go directly to the Groundfish Committee. Ricks.

MR. RICKS SAVAGE: Lars could explain it probably better than I. If you would -- he explained it to me. He's given me a drawing that I'll be happy to share with you, but let him explain it right now if you've got two minutes.

CHAIRMAN BORDEN: Lars, do you want to do that

right now? I still think -- you know, it doesn't -- it's not necessarily going to affect everybody in the room. So, let the group of people that are most interested in it do it. If you can just hold off for a couple minutes, we'll clear some of the people out of the room.

Anything else to come before the joint committee? (No response audible) If not, thank you very much for coming. I think we've covered a lot of ground.

WHEREUPON THE MEETING WAS CONCLUDED AT
4:20 P.M.

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF NORFOLK

I, PAUL T. WALLACE, a Professional Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing transcript represents a complete, true and accurate transcription of the audiographic tape taken in the above entitled matter to the best of my knowledge, skill and ability.

In witness whereof, I have set my hand and Notary Seal this 16th, day of February, 2000.

PAUL T. WALLACE, Notary Public
My Commission Expires
October 12, 2001

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