

**FINAL REPORT
JOINT ASMFC/NEFMC HERRING ADVISORY PANEL MEETING**

**Holiday Inn, Portsmouth NH
Wednesday, October 26, 2005**

The ASMFC and NEFMC Herring Advisory Panels (APs) met jointly on October 26, 2005 to: 1) review ASMFC Draft Amendment 2 and develop AP recommendations for Section consideration regarding the selection of final management measures for Amendment 2; 2) review the NEFMC Draft Amendment 1/DSEIS document and public hearing document and develop AP recommendations for Committee/Council consideration regarding the selection of final management measures for Amendment 1; and 3) provide AP comments on the herring specifications proposed for the 2006 fishing year.

ASMFC Advisor Attendance: Peter Moore, Herring AP Vice-Chair; Jennie Bichrest, Glenn Robbins, Mary Beth Tooley, David Turner, Al West, and Chuck Casella (7 of 15 ASMFC advisors present)

NEFMC Advisor Attendance: Peter Moore, Herring AP Vice-Chair; Jennie Bichrest, Gib Brogan, Spencer Fuller, Jim Kendall, David Reingardt, Glenn Robbins, Rich Ruais, Mary Beth Tooley, David Turner, Al West (11 of 15 NEFMC advisors present)

Staff Attendance: Lori Steele, NEFMC; Ruth Christiansen, ASMFC

Other Attendance: Eric Dolin and Peter Christopher (NERO Staff); Drew Kitts (NEFSC and Herring PDT); Jeff Kaelin (Bumblebee/Stinson); Sarah Gallow (CCCHFA); Maggie Raymond (Associated Fisheries of Maine); Sarah Gurtman (NMFS); Jay Cox; and other members of the public

The Herring Advisory Panel Chairman was not present at this meeting due to unforeseen business matters that required immediate attention, and the Herring Advisory Panel Vice-Chairman declined to Chair the meeting because he wanted to reserve his right to actively participate in the AP discussion. As a result, Ms. Steele chaired the meeting in order to facilitate discussion and communicate some of the AP members' concerns and recommendations regarding the herring amendments to the Herring Section and Committee and Council.

**Advisory Panel Recommendations re: ASMFC Amendment 2 and NEFMC Amendment 1
Overlapping Management Measures**

Maximum Sustainable Yield (NEFMC/ASMFC Overlapping Measure)

Mr. Moore stated that the controversy surrounding the proposed MSY proxy highlights the need to review the fishery specifications on an annual basis in order for the specification process to be more responsive to new stock assessment information.

**Advisory Panel Vote on MSY Option 2 – Preferred Measure of 220,000 mt MSY Proxy (12 NEFMC/ASMFC advisors present):
9 Yes, 0 No, 3 Abstain.**

Determining the Distribution of Area-Specific TACs (NEFMC/ASMFC Overlapping Measure)

Ms. Tooley noted that under the no action option (non-preferred), the formula for determining the area-specific TACs is very rigid and does not provide flexibility to new stock/fishery information. She stated that ongoing research should provide better information on the fishery and that management would be in a better position under the preferred measure to utilize new information as it becomes available.

**Advisory Panel Vote on Distribution of Area TACs Option 2 – Preferred Measure to allow for the Consideration of Other Analytical Approaches (11 NEFMC/ASMFC advisors present):
11 Yes, 0 No, 0 Abstain. Unanimous.**

TAC Set-Asides for Research (NEFMC/ASMFC Overlapping Measure)

Ms. Steele clarified that any TAC set-asides for research, if established, would not allow landings above and beyond any of the management area TACs, but instead would be a percent set-aside in addition to the current 5% set-aside for bycatch when the directed fishery in an area closes. She also emphasized that the measure proposed in Amendment 1 and Amendment 2 would simply authorize the establishment of set-asides for research as part of the specification process and that the details of the set-aside and its administration would need to be fleshed out once the determination to establish and specific set-aside is made.

Ms. Tooley stated that she cannot support the research set-asides based on the comment letter provided by NMFS. She feels that the recommendations provided by NMFS regarding the administration of the set-aside indicate that any set-aside program would be burdensome and complicated and that the costs of administering such a program would outweigh the benefits relative to the herring fishery.

Mr. Kendall expressed support for the concept of allowing a research set-aside but stated that additional work needs to be done regarding the administration of the set-aside program, particularly the release of TAC that is set-aside for research purposes. He recommended that the Advisory Panel be involved in the development of a research set-aside program.

Mr. Fuller expressed support for the concept of allowing a research set-aside but only if the industry can retain control over the program. He was skeptical that the industry could retain control of this program based on the comment letter provided by NMFS.

Advisory Panel Vote on Research Set-Aside Option 2 – Preferred Measure to allow for the establishment of research set-asides during the herring fishery specification process (12 NEFMC/ASMFC advisors present):
5 Yes, 6 No, 1 Abstain.

Timing of Herring Fishery Specification Process (NEFMC/ASMFC Overlapping Measure)

Mr. Kendall suggested that efforts be made to better coordinate the review of herring fishery specifications in conjunction with stock assessments. If the specifications were to be set every three years, for example, he felt that they should be set following a stock assessment, which also should occur every three years.

Mr. Ruais and Mr. Brogan both expressed opposition to multi-year specifications due to the dynamic nature of the fishery and the need to be able to respond to issues that arise in a more timely manner (bycatch, for example). Mr. Brogan stated that even though an annual review of stock and fishery conditions would continue, workload issues for the Council are such that adjustments to the specifications in interim years seem highly unlikely.

Ms. Tooley agreed that unless the Council is required to revisit the specifications, it is unlikely that any adjustments during the interim years would make the Council's priority list.

Advisory Panel Vote on Timing of the Specification Process Option 3 – Preferred Measure to establish three-year fishery specifications (11 NEFMC/ASMFC advisors present):
1 Yes, 6 No, 4 Abstain.

Advisory Panel Vote on Timing of the Specification Option 1 – No Action, maintain current annual process (11 NEFMC/ASMFC advisors present):
5 Yes, 3 No, 3 Abstain.

Adjustments to Management Area Boundaries (NEFMC/ASMFC Overlapping Measure)

Mr. Ruais expressed opposition to adjustments to the current management areas for the herring fishery because of the potential impacts on the tuna fishery. He noted that the proposed redefinition of Area 3 includes some important tuna fishing grounds that would then be available for herring fishing under a much larger TAC (currently 50,000 mt) and expressed concern about the impacts of the fishery on tuna in that area.

Ms. Tooley expressed support for the preferred measure and noted that this measure is derived from stock assessment information for the herring resource and is based on the best available scientific information to better reflect the distribution of the offshore spawning component. She stated that concerns about the tuna fishery should not justify taking no action on this measure and suggested that those concerns should be addressed through other measures.

Mr. Moore expressed support for the preferred measure and suggested that the best science be applied to reflect the distribution of the offshore spawning component.

Mr. Kendall expressed concern that changes to the TACs are not proposed in conjunction with changes to the management area boundaries. Ms. Steele noted that the TACs would be reconsidered in 2006 during the specification process, once decisions are made relative to the measures in Amendment 1.

**Advisory Panel Vote on Management Area Boundaries Option 2 – Preferred Measure to Redefine Area 3 Based on TRAC Recommendations (11 NEFMC/ASMFC advisors present):
8 Yes, 2 No, 1 Abstain.**

Measures to Address Fixed Gear Fisheries (NEFMC/ASMFC Overlapping Measure)

Mr. Kendall emphasized the need to coordinate management of the herring resource with Canada to ensure that the Downeast fixed gear sector maintains opportunities in the fishery and is not excluded from the fishery, for example, through management adjustments by the Canadians.

Mr. Turner suggested that the Advisory Panel support Fixed Gear Options 2 and 3 combined – the Downeast ME fixed gear fishery east of Cutler would be included in the New Brunswick weir fishery catch and therefore exempt from the Area 1A TAC, and fixed gear fisheries in Area 1A west of Cutler would have a 500 mt set-aside of the Area 1A TAC, to be released back to the remainder of the fishery if it is not caught by the fixed gear fishery prior to November 1.

The Advisory Panel voted on Fixed Gear Options 2 and 3 separately.

**Advisory Panel Vote on Fixed Gear Option 2 – Include the Downeast Maine fixed gear fishery catch in the New Brunswick weir fishery catch (11 NEFMC/ASMFC advisors present):
11 Yes, 0 No, 0 Abstain. Unanimous.**

Ms. Tooley expressed concern about Fixed Gear Measure 3, particularly the provision that would return the 500 mt set-aside to the remainder of the 1A fishery after November 1. She wondered how the determination would be made regarding which vessels would have the opportunity to catch that 500 mt and noted that the capacity in the fishery is such that catch rates can sometimes reach 5,000 mt in one week, although this is unlikely in November; some vessels have the capacity to catch almost 500 mt in one trip. She noted that this could be very problematic if the directed fishery in 1A was already closed by November 1 and the return of the 500 mt set-aside allowed for a reopening of the fishery.

Mr. Casella expressed concern about the monitoring burdens and administrative issues associated with returning such a small portion of the TAC back to the 1A fishery.

**Advisory Panel Vote on Fixed Gear Option 3 – Establish a 500 mt set-aside for fixed gear fisheries in Area 1A (11 NEFMC/ASMFC advisors present):
2 Yes, 7 No, 2 Abstain.**

Advisory Panel Recommendations re: ASMFC Amendment 2 Management Measures Only

Effort Controls/Days Out (ASMFC Amendment 2)

Mary Beth Tooley noted that Option 2 under Effort Control Measures (Section 4.3.1) was brought forward by the industry. The days out provision as it is written in Amendment 1 proved unsuccessful and burdensome after a year of implementation. As such, she would like to see Effort Controls in Amendment 2 reflect the way the provision is currently implemented.

Advisory Panel Vote on Effort Controls Option 2 – Adopt the days out provision as it is currently implemented by industry (7 of 7 ASMFC advisors present):
7 Yes, 0 No, 0 Abstain.

Advisory Panel Vote on Effort Controls Option 2a - Allow an exemption for fixed gear fishermen from the days out provision (7 of 7 ASMFC advisors present):
7 Yes, 0 No, 0 Abstain.

Advisory Panel Vote on Effort Controls Option 2b - Prohibit off-loading during the days out provision (7 of 7 ASMFC advisors present):
1 Yes, 5 No, 1 Abstain.

Advisory Panel Vote on Layover Days Option 4 - Allow for layover days in the fishery (7 of 7 ASMFC advisors present):
0 Yes, 7 No, 0 Abstain.

Advisory Panel Vote on Participation in Other Fisheries Option 5 - Maintain the status quo of allowing vessels to participate in other fisheries during the days out provision (7 of 7 ASMFC advisors present):
7 Yes, 0 No, 0 Abstain.

Spawning Restrictions (ASMFC Amendment 2)

Rich Ruais believes a spawning tolerance (Section 4.3.2.3) encourages waste (mortality) on midwater trawl vessels. For purse seine vessels, they are able to check their catch and let the bag go (catch released alive) if necessary; therefore, a 20% tolerance makes sense for purse seine vessels. The spawning tolerance should be structured more as a closure for midwater trawl vessels.

Mary Beth Tooley feels the current spawning area boundaries are correct (Section 4.3.2.1). She also feels that working within a spawning tolerance (Section 4.3.2.3) provision requires all vessels to work together to avoid full closure of an area because different vessels have different tolerance levels.

In general, Jim Kendall does not support a spawning tolerance. If vessels are in a position of releasing fish alive, why should a tolerance provision be allowed? He feels everyone should be kept off spawn herring, but a zero tolerance will not work either by encouraging violations.

Peter Moore referenced page 67 of the Amendment 2 document. Given what is stated in the italicized paragraphs, allowing for a spawning tolerance makes no sense. Both midwater trawls and purse seine vessels have the ability drag across spawning beds. Mr. Moore and Mr. Casella expressed support for a total ban on fishing by any gear type during spawning closures.

Glenn Robbins believes a zero spawning tolerance will not work. There needs to be some supply of herring for the bait markets during the spawning restrictions time period. Monitoring of vessels landing spawn herring does not work.

Dave Turner noted that the East of Cutler fixed gear fisheries used to be exempt (Section 4.3.2.4) from spawning restrictions and he would like to see that exemption implemented again. There are no spawning restrictions in Canada, so spawn herring that are not taken in US waters will only be caught in Canada.

Advisory Panel Vote on Tolerance Provision Option 1 - Maintain the status quo and allow for a 20% tolerance provision for herring vessels during spawning closures (7 of 7 ASMFC advisors present):
3 Yes, 2 No, 2 Abstain (1 member abstained because he felt neither percentage was correct).

Advisory Panel Vote on Fixed Gear Fisheries Exemption Option 1 - Allow an exemption for East of Cutler fixed gear fishermen from spawning restrictions (7 of 7 ASMFC advisors present):
3 Yes, 0 No, 4 Abstain.

Internal Waters Processing (IWP) Provisions (ASMFC Amendment 2)

Advisory Panel Vote on IWP Option 3 - Preferred Option to prohibit IWPs from processing herring in all state waters (7 of 7 ASMFC advisors present):

7 Yes, 0 No, 0 Abstain.

Advisory Panel Recommendations re: NEFMC Amendment 1 Management Measures Only

TAC Set-Asides for Incidental Catch in the Mackerel Fishery (NEFMC Amendment 1)

The advisors discussed the implications of this measure on vessels participating in mixed trawl fisheries and recommended that a clear way to determine which vessels are targeting mackerel be identified (for example, more than 50% of weight on board, declaration into the mackerel fishery through VMS, letter of authorization, etc.).

Mr. Moore noted that this measure relates to the limited access incidental catch permits, as mackerel vessels would still be required to possess a limited access herring permit to fish under the set-aside and again expressed concern about the qualifying time periods for limited access incidental catch permits (through 2002 only).

Maggie Raymond expressed concern that incidental catch of herring may be an issue for fisheries other than just the mackerel fishery (squid and whiting fisheries, for example).

Advisory Panel Vote on Mackerel Measure 2 – Preferred Measure to allow for the establishment of set-asides for incidental catch in the mackerel fishery during the herring fishery specification process (10 NEFMC/ASMFC advisors present):

10 Yes, 0 No, 0 Abstain. Unanimous.

Open-Access Incidental Catch Permit (NEFMC Amendment 1)

Ms. Bichrest expressed concern that an open-access incidental catch permit could encourage directed fishing for herring by smaller vessels, especially if the price increases. Mr. Reingardt echoed this concern.

Maggie Raymond stated that although the Associated Fisheries of Maine expressed support for OA Measure 3 (3 mt) in their written comments on Amendment 1, the group may prefer OA Measure 4 (5 mt) for reasons related to bycatch and the need to minimize discarding. She cited recent events related to the bycatch of haddock in the herring fishery and emphasized the need to avoid similar situations in other fisheries that may catch herring incidentally.

Mr. Kendall expressed concern that this measure may establish a “general category” fishery similar to what has happened in the scallop fishery.

Advisory Panel Vote on Open Access Measure 4 – Establish a 5 MT Open Access Incidental Catch Permit, no preferred measure identified by the Council (11 NEFMC/ASMFC advisors present):

4 Yes, 6 No, 1 Abstain.

Advisory Panel Vote on Open Access Measure 3 – Establish a 3 MT Open Access Incidental Catch Permit, no preferred measure identified by the Council (10 NEFMC/ASMFC advisors present):

6 Yes, 0 No, 4 Abstain.

Vessel Monitoring System (VMS) Requirements (NEFMC Amendment 1)

Mr. Kendall recused himself from the vote on this measure due to his business relationship with Boatracs, the company that supplies VMS.

Advisory Panel Vote on VMS Measure 2 – Preferred measure to require VMS on all limited access directed and incidental catch vessels (10 NEFMC/ASMFC advisors present):

9 Yes, 0 No, 0 Abstain, 1 recuse. Unanimous.

Vessel Upgrade Restrictions (NEFMC Amendment 1)

Mr. Turner expressed opposition to vessel upgrade restrictions and feels that they are not appropriate for the herring fishery and would not effectively control capacity. He said that herring vessels can hire additional carriers if they want to increase capacity and expressed concern about potential safety issues associated with upgrade restrictions.

Ms. Tooley agreed with Mr. Turner but noted that the offshore herring fisheries are very different from the inshore fisheries. She feels that if the TACs control removals from the fishery, vessels should have the flexibility to make adjustments and upgrades to their operations in order to fish more safely in an offshore environment.

Mr. Brogan asked whether the maximum size/length/HP restrictions in the Herring FMP would remain effective under the vessel upgrade options. (Yes)

Advisory Panel Vote on Upgrade Measure 2 – Preferred measure to establish upgrade restrictions consistent with other limited access fisheries in the region (11 NEFMC/ASMFC advisors present): 6 Yes, 4 No, 1 Abstain.

Measures to Address Bycatch and Bycatch Monitoring (NEFMC Amendment 1)

The Advisory Panel discussed the proposed provision for full retention of bycatch to the extent practicable. Mr. Ruais suggested that the phrase “to the extent practicable” is vague and leaves too much room for discretion; he suggested that this phrase be eliminated from the measure. Ms. Tooley noted that it will not always be practicable to retain all catch and bycatch.

Advisory Panel Vote on Bycatch Measure 3 – Preferred measure to establish 1% catch cap for Gulf of Maine and Georges Bank haddock (10 NEFMC/ASMFC advisors present): 9 Yes, 0 No, 1 Abstain.

Mr. Brogan expressed support for Monitoring Option 1 and stated that extrapolation is an acceptable analytical approach that has been utilized in many other fisheries.

Maggie Raymond noted that recent experience in the groundfish fishery indicates that the extrapolations can be made using very small sample sizes and suggested that the Advisory Panel recommend that a provision be included to require scientists to report sample size and characterize the reliability of the bycatch estimates for managers prior to using them to close the herring fishery.

Some advisors expressed concern about the level of observer coverage that would be required for a monitoring program using extrapolations to be effective and discussed issues and potential problems related to mandating a minimum level of coverage in the fishery. Mr. Brogan suggested that the AP may want to consider recommending that the monitoring options for a catch cap be directly tied to a measure that would require NMFS to develop a bycatch monitoring (observer) program adequate to characterize the nature of bycatch in the herring fishery *and* monitor the catch cap.

The advisors briefly discussed the options in Amendment 1 related to bycatch reporting (observer coverage) and the letter from NMFS that suggests that an omnibus amendment may be initiated to address this issue and develop a standardized bycatch reporting methodology (SBRM) across all fisheries. In light of this new information, the advisors agreed to address bycatch reporting and observer coverage at a later date, once additional information is provided by NMFS about the SBRM and the potential omnibus amendment. Ms. Tooley expressed some reservation about supporting Bycatch Measure 2 in light of the uncertainty associated with developments related to the SBRM.

Advisory Panel Vote on Monitoring Option 1 for a Catch Cap – Extrapolate from observer data, no preferred option identified by Council (10 NEFMC/ASMFC advisors present): 4 Yes, 5 No, 1 Abstain.

Advisory Panel Vote on Monitoring Option 2 for a Catch Cap – No extrapolations from observer data, similar to emergency action, no preferred option identified by Council (10 NEFMC/ASMFC advisors present):

5 Yes, 4 No, 1 Abstain.

Ms. Tooley highlighted the proposed provisions for advanced notice of landing and cull of bycatch by herring processors and indicated that ECPA provided comments relative to the advanced notice requirement. She feels that the length of time required for advanced notice (12 hours) is problematic because vessels are often fishing less than 12 hours from their home port and do not know in advance what time they will be landing. She suggested that the Council consider an adjustment to the time required for advanced notice of landing that better reflects the realities of the herring fishery. Mr. Robbins agreed.

Regulatory Definition of Midwater Trawl Gear (NEFMC Amendment 1)

Ms. Tooley expressed concern that this definition would apply to vessels participating in other fisheries and could have a significant impact on vessels in the mackerel fishery. She noted that ECPA proposed a similar definition that allows for discs and chafing gear and stated that many vessels in the southern area use chafing gear to protect the net as they are brining the fish on board a stern ramp. She feels that if vessels are modifying their nets to protect them and not to fish the gear on the bottom, they should not be prohibited from doing this.

Mr. Brogan expressed support for the proposed measure and suggested that midwater trawl gear be re-evaluated as bottom-tending gear if any elements that allow the gear to contact the ocean floor are allowed (including discs and chafing gear).

Advisory Panel Vote on Definition Measure 2 – Preferred measure based on 1999 Enforcement Committee recommendations (10 NEFMC/ASMFC advisors present):

5 Yes, 3 No, 2 Abstain.

Sector Allocation Process (NEFMC Amendment 1)

Mr. Turner asked whether this measure could be added through a framework adjustment at a later date. Ms. Steele stated that this measure and the establishment of a detailed sector allocation process would likely require an action more comprehensive than a framework adjustment.

Mr. Casella expressed support for implementing a limited access program first in Amendment 1 and addressing a sector allocation process sometime in the future. Mr. Moore agreed and stated that including this measure in Amendment 1 is not likely to help for those who may be interested in completing this amendment quickly.

Mr. West had to leave the meeting prior to the discussion of the sector allocation measures and offered the following comments via email: he expressed support for Sector Allocation Measure 2 which would establish a process for sector allocations in the future. In particular, he supports Option 2 for a periodic adjustment process, allowing movement between sectors, Option 1 for allocating the TAC to sectors (sum of individual vessel allocations), and allowing the trading of quota between sectors.

Advisory Panel Vote on Sector Allocation Measure 1 – No action in Amendment 1, no preferred measure identified by the Council (10 NEFMC/ASMFC advisors present):

9 Yes, 1 No, 0 Abstain.

Advisory Panel Recommendations re: NEFMC Amendment 1 Management Alternatives

It became clear very quickly that the NEFMC Advisory Panel would not be able to reach consensus regarding the management alternatives under consideration in NEFMC Amendment 1. In order to communicate the advisor's concerns and recommendations to the Committee and Council, Ms. Steele offered each advisor an opportunity to comment on the Amendment 1 alternatives and express support for a particular alternative if they support one.

Four NEFMC advisors (and one additional ASMFC advisor) support the Council's preferred alternative (Alternative 7); six NEFMC advisors do not support any of the alternatives as they are currently written; one NEFMC advisor did not express an opinion regarding the management alternatives; six NEFMC advisors support some form of mixing and matching the management alternatives in Amendment 1.

David Turner: Supports the Council's preferred alternative, Alternative 7.

Glenn Robbins: Supports Alternative 7 as a starting point and suggested that additional steps may be necessary in the future.

Rich Ruais: Supports Alternative 7; in response to NMFS comment letter expressing concern about the biological basis for a purse seine/fixed gear area, he stated that when it comes to midwater trawl versus purse seine gear, the argument can be made that a dead fish is not a dead fish because purse seines can release unwanted catch alive, resulting in less waste and lower bycatch mortality. He believes that there is more mortality per metric ton (mt) of the TAC with midwater trawl gear than with purse seine gear and that there will be benefits to the inshore resource from reduced effort by midwater trawl gear and the mortality associated with it. He speculated that a 60,000 mt quota caught with midwater trawl gear could produce closer to 100,000 mt of mortality. He also expressed concern about some of the proposed limited access provisions and the fact that some current participants are excluded from the herring fishery, especially in Areas 2 and 3 where he is not convinced that overcapacity is a reality. He recognized the need for this amendment to be implemented by June 2006 in order to benefit the tuna fishery but expressed hope that some accommodations could be made for all vessels to maintain access to the herring fishery.

Gib Brogan: Supports Alternative 7; in response to NMFS comment letter expressing concern about the biological basis for a purse seine/fixed gear area, he suggested that NMFS' essential fish habitat (EFH) guidelines and the FMP for Highly Migratory Species may provide additional information to augment the rationale to establish a buffer zone in the inshore GOM.

David Reingardt: Does not support any of the alternatives as currently written; he stated that he could support Alternative 4 with the exception of the proposed purse seine/fixed gear-only area. He expressed concern about the potential negative impacts of a purse seine/fixed gear only area on both herring and tuna if this measure concentrates fishing effort in a smaller area.

Jennie Bichrest: Does not support any of the alternatives as currently written; she stated that she could support Alternative 6 if the landings criteria were 500 mt instead of 250 mt and suggested that the Council consider mixing and matching the measures in the alternatives.

Al West: Did not express an opinion relative to the management alternatives; he stated that while Bumblebee/Stinson is abstaining from expressing a preference relative to limited access, the company supports conservation and sound management of the herring resource. He also suggested that the Council consider a new control date for Areas 2 and 3 after completing Amendment 1 and implementing some form of limited access in Area 1.

Mary Beth Tooley: Does not support any of the alternatives as currently written and suggested that the Council consider mixing and matching the measures in the alternatives; she stated that she would support a modified version of Alternative 5 as reflected in the written comments submitted by the ECPA.

Jim Kendall: Does not support any of the alternatives as currently written and referenced the NMFS comment letter on the Amendment 1 DSEIS to corroborate his belief that the Amendment 1 document is incomplete and that additional issues need to be addressed by the Council. He also noted that many of the concerns expressed by NMFS in their comment letter on Amendment 1 reflect the same concerns that his clients (NORPEL, APA) have been expressing throughout the amendment development process.

Peter Moore: Does not support any of the alternatives as currently written and suggested that the Council consider mixing and matching the measures in the alternatives; he stated that he could support a modified version of the preferred alternative if it included current participants in the fishery. He also stated that one

problem across all of the alternatives is that the qualification time period for limited access incidental catch permits ends in 2002 and that this measure would affect vessels in other fisheries and should be updated. He also feels that the capacity analysis in the Amendment 1 DSEIS document is flawed and is insufficient. He does not believe that any of the alternatives under consideration can effectively control effort in the fishery.

Spencer Fuller: Does not support any of the alternatives as currently written and suggested that the Council consider mixing and matching the measures in the alternatives; he feels that all of the alternatives are flawed relative to the goals and objectives identified in Amendment 1. He suggested that permit issues (discussed previously) need to be resolved in order to generate better estimates of capacity. He also suggested that the Council consider a new control date for the herring fishery, with specific restrictions to address outstanding permit transfer issues and potential overcapacity. Chuck Casella was the only non-overlapping member of the ASMFC Advisory Panel. Although the management alternatives are not included in the ASMFC amendment, Ms. Steele provided Mr. Casella with an opportunity to address the management alternatives. Mr. Casella expressed support for the Council's preferred alternative, Alternative 7, as he felt that this alternative would contribute greatly to the protection and overall integrity of the inshore Gulf of Maine.

Advisory Panel Questions Re. DSEIS Information/Analysis

Drew Kitts from the Northeast Fisheries Science Center (NEFSC), Herring PDT member, attended the meeting to address questions related to the economic information and analyses in the Amendment 1 DSEIS document.

Mr. Moore raised concerns regarding the capacity analysis in Amendment 1 and questioned how the participation of all vessels that may qualify for limited access permits can be considered equally in the analysis when he knows that many vessels that may qualify are not currently participating in the herring fishery and are very unlikely to participate in the future because of their current configuration and participation in other fisheries (for example, the scallop and groundfish fishery, which include 10/10/20 upgrade restrictions and restrictions on permit splitting). He also stated that many of these vessels are not equipped with refrigerated saltwater (RSW) tanks, do not have adequate horsepower to tow a midwater trawl net, and may be limited in their ability to rig for purse seining because of the upgrade restrictions. Mr. Moore referenced a list of vessels that formed the basis of the capacity analysis, which was provided to him by the NEFSC in 2003. Of the 51 vessels on the list, Mr. Moore believes that only 24 have been active in the herring fishery from 2002-2004.

Ms. Tooley asked questions regarding the dependency analysis and the fact that dependency for non-qualifying vessels increases significantly under Alternative 5, despite the relatively small difference in the number of non-qualifiers. Mr. Kitts clarified that the dependency analysis relates only to active vessels in the fishery and that the differences between the alternatives are not necessarily stepwise. Ms. Tooley and Mr. Kitts agreed to discuss this issue in more detail at a later time.

Mr. Moore requested an overview of the capacity analysis and the assumptions that were made in the analysis. Mr. Kitts explained the approach used in the "data envelopment analysis" – this analysis was completed before the Amendment 1 alternatives were developed, so it was not possible to eliminate or exclude vessels without knowing how the alternatives may be structured. The analysis considers herring fishing activity for all vessels from the most recent 2-3 years including the landings history associated with vessels that may have moved on to other fisheries. Mr. Kitts also explained the two potential catch measures that were applied to the qualifying vessels under each alternative (described in detail in the Amendment 1 document). He emphasized that this analysis was never intended to predict what is going to happen in the fishery in terms of catch under the alternatives, but rather it was intended to provide some perspective on what the physical capability of the fleet that qualifies for limited access permits may be.

Discussion of Limited Access Permit Provisions

The Herring Advisory Panel discussed the proposed limited access permit provisions as well as the related comments from NMFS in their comment letter on Amendment 1. One important issue that the Advisory Panel discussed is the requirement for vessels to possess a current herring permit, which is

included in all of the limited access alternatives. The advisors expressed concern that the NMFS comment letter identifies this provision as something that requires further clarification at this stage in the amendment development process because it may affect the analysis of limited access qualifiers. Ms. Steele clarified that the intent of the Herring PDT, when developing the details of the management alternatives and limited access qualification criteria, was simply to minimize the number of latent limited access permits that may be issued by requiring vessels to possess a current herring permit at the time when the limited access program is implemented. She also noted that this provision has been included in all of the limited access alternatives that were reviewed by the Herring Committee, Advisory Panel, and Council since mid-2003, and that the need to further clarify this provision was never raised during the development of the limited access criteria. The “current permit” requirement was generally assumed to mean that the vessel would be required to have an open-access herring permit during the year of Amendment 1 implementation. For example, if the qualification period for the limited access program occurs during 2006, vessels would be required to possess a herring permit for the 2006 fishing year as well as the history of landings specified under the alternative that is selected. The analysis in the DSEIS was based on vessels that possessed a herring permit (either category) during the 2004 fishing year. Many advisors expressed concern about the fact that vessels are currently not restricted by any provisions related to the transfer of history and the buying and selling of permits. Some advisors claimed that the current situation with permit and history transfers is such that there is no way to accurately gauge or control what the capacity of the fishery will be once a limited access program is implemented. Mr. West suggested that some of the “hysteria” about permit and history transfers may be unfounded because the economics of the herring fishery should help determine what will happen with the fleet after the limited access program is implemented. He noted that a TAC-controlled fishery with substantial market limitations will not be profitable for many vessels if they have all increased their size and capacity, especially if the result is that the TAC is caught more quickly. Because the Advisory Panel’s concerns are varying, and the permit issues are somewhat complicated, Ms. Steele offered the advisors an opportunity to send her their individual questions/comments regarding this issue so that the questions are adequately documented in this Advisory Panel Report. Eric Dolin from the NMFS Regional Office also provided follow-up discussion regarding this issue. The follow-up discussion and individual Advisory Panel comments, questions, and concerns are provided on the subsequent pages of this report, as indicated.

Limited Access Permit Provisions: Follow-up Discussion Provided by NMFS Regional Office (Eric Dolin attended the Advisory Panel Meeting)

At the Atlantic Herring Advisory Panel meeting on October 26, 2005, a number of questions were raised about how the herring limited access permitting provisions would be implemented. To help the Council consider this issue, and make policy decisions that will affect implementation, the New England Regional Office (NERO) staff has provided the following information about the vessel eligibility determinations made in previous limited access programs. Regarding the consideration of limited access alternatives for the Atlantic herring fishery, it is important for the Council to define “current permit,” which is one of the criteria for all the limited access alternatives under consideration. This issue was raised in the Regional Administrator’s formal comments on the Amendment 1 DSEIS, and that discussion will not be repeated here. The key point is that the definition of “current permit” is likely to have a significant impact on determining which vessels will be able to qualify for a limited access permit. There are five scenarios we have traditionally faced when implementing limited access programs. Each of these is outlined below, along with an explanation of how we have responded (and would respond in the future), when applicants come forward with a particular set of facts.

- 1) The owner of a vessel applies with proof of eligibility (landings and permit) for that vessel; therefore, the vessel would be eligible for a limited access permit.
- 2) A vessel is sold, with its landings and permit history, to a new owner. If the new owner applies with proof of eligibility, the vessel would be eligible for a limited access permit.
- 3) An individual owns more than one vessel, but has only one vessel that has the landings and permit history required in order to be eligible for the fishery in question. That individual can replace the vessel that is determined to be eligible, with one of his/her other vessels, but may only use the eligibility on one vessel.
- 4) A vessel has been sold, and the seller has a purchase and sale agreement signed by both parties to the sale that clearly shows that the seller has retained the landings and permit history. If the

retained history meets the limited access criteria, the original owner (seller) could obtain a confirmation of permit history (CPH).

5) A vessel has sunk or has been destroyed. If a vessel that has been sunk or destroyed meets the limited access landings and permit criteria, the original owner could obtain a CPH.

Given these scenarios, one can see why it is so critical to define what it means to have a “current permit.” Other limited access programs implemented by the Council and NMFS have either had no permit requirement (i.e., they relied only on landings criteria), or have clearly defined the permit requirement. For example, the initial limited entry program for the Northeast Multispecies fishery required applicants to have a vessel that landed at least 1 pound of regulated multispecies between 1988 and 1990, and the vessel had to have been issued a multispecies permit as of the control date (February 21, 1991). Resolving the “current permit” issue in Amendment 1 is especially critical for scenarios 4 and 5 above, which deal with CPH. In order for a vessel owner to obtain a CPH, the subject vessel must meet all of the limited access criteria, including having a “current permit.” Because there were no permits for herring vessels prior to 2001, vessel owners who: (1) who sold their boat, and retained the history before 2001; or (2) had a vessel that had been sunk or destroyed before 2001, could not obtain a CPH, because they could not meet the “current permit” requirement, no matter how it is defined. We have received calls from industry members telling us that they are buying and selling “landings histories.” The scenarios above outline the precedents established in previous limited access programs, none of which appear to address such situations.

Limited Access Issues/Concerns Raised by Peter Moore, Herring Advisory Panel Vice-Chairman

Unless the Council provides full access to all current participants in the herring fishery (through December 31, 2005), the Council will likely eliminate active participants and reward individuals who have not participated in the fishery since 1988-1993. This would contradict the precedent set in Groundfish Amendment 13, which included all current participants and back-cast five years. This is the only accurate measure of capacity.

NMFS’ DSEIS comment letter on Amendment 1 (October 20, 2005) refers to this issue as a flaw in the Amendment 1 limited access provisions. These latent permits have the potential to overwhelm the fishery.

Several NEFMC members have asked APA members “why don’t you just buy a permit with herring history”? Through investigations based on this question, including conversations with individuals who have made such transactions as buyers and sellers, as well as with numerous officials within NMFS, it became clear to us that there are no rules for transferring permit “history” in an open access fishery, and that one could purchase (for hundreds of thousands of dollars) permit “history” that applied to a 50 foot vessel and proceed to apply that history to a 150 foot vessel currently active in the fishery, currently inactive, or simply on to a “keel” that one lays in a shipyard, as speculation on the fishery going “limited.” The upshot of this situation is that until the fishery goes “limited access,” no upgrade provisions apply, so the Council has no idea of what the fleet will look like after limited access is implemented. In the meantime, active participants may be eliminated. The irony is that the Council does have an exact picture of capacity of active participants from 2002-2004, contained in the 2004 Herring Specifications and in the IVR record.

Out of frustration, I asked to see the roster of vessels (by Limited Access Alternative 1-7) that would qualify for a limited access permit under each Alternative and was denied. I spoke with NMFS NERO/Sustainable Fisheries about this Permit Transfer issue in early October and they had no guidance for the public.

I (Peter Moore) suggest that this issue be addressed in the following manner:

1. Include all active participants in any limited access program that goes forward, just as Amendment 13 included all current participants;
2. Place a limitation on permit transfers (of vessels and of simple “histories”) prior to limited access that uses the original vessel baseline as the limitation on upgrades;
3. Limit the “back end” of qualifications criteria to the date when electronic reporting was implemented and required.

Limited Access Issues/Concerns Raised by Mary Beth Tooley, Herring Advisory Panel Member

One major issue is the definition of "current permit." The Committee should make a recommendation to the Council on what is meant by the requirement to possess a current permit – date specific, 12/31/04 (analysis) or some other date, and any permit or just Category 1? For example, if you intended to catch 500 mt in a given year (2000+), you needed a Category 1 permit. The qualification under Alternative 7 requires 500 mt in any year 88-99. So, is the intent to qualify vessels that caught 500 mt in any year 88-99 and possesses an active Category 1 permit as of XXX date to indicate some level of present participation?

Permit splitting came up. Under the groundfish regulations, permit splitting is not allowed, but there was a reference to carving out scup. We will need to know if splitting has been allowed in other plans, and the Committee should make a recommendation for this plan, though it seems that it would impact the analysis.

There was a discussion of establishing vessel baselines. At first Peter Christopher (NMFS NERO) seemed to indicate that the Council could recommend when they want to establish a vessel's baseline. However, the concern about retroactive measures was discussed. So, maybe they could use a future date (which doesn't make sense, but it should be clarified on the ability to go back in time).

Lastly, there was a discussion of confirmation of permit history. The permit measure in the document applies to a limited access program, whereby an owner can confirm permit history if a vessel sunk was sold, etc. In herring, a vessel owner would not have a permit, as NMFS doesn't issue permits to those without a vessel in open access fisheries. If the Council decides that this group be exempt from the "current permit" requirement, it opens the door to a lot of latent effort in the fishery. Also, how far back could a person go, my boat sank in 1988, but here I am. Perhaps the Council should consider a measure that allows owners with very recent vessel losses (not aware of any), to be exempt from the current permit requirement.

Advisory Panel Comments on the Proposed Specifications for the 2006 Fishing Year

The Advisory Panels were offered an opportunity to provide comments regarding the proposed herring fishery specifications for the 2006 fishing year. The Council already voted to maintain the 2005 specifications through the 2006 fishing year at its September 2005 meeting, but the following comments from the AP members will be communicated to NMFS as comments on the Proposed Rule for the 2006 fishery specifications, once it is published in the *Federal Register*.

Mr. Ruais expressed support for the proposed allowable biological catch (ABC) and optimum yield (OY), but not for maintaining the Area 1A TAC at 60,000 mt. He stated that the Council has heard from its Scientific and Statistical Committee (SSC) and other notable herring scientists that a 60,000 mt TAC for Area 1A is too high and could impact the spawning stock in the Gulf of Maine, particularly on Jeffrey's Ledge. He supports a 45,000 mt TAC for Area 1A as a more precautionary approach.

Mr. Kendall noted that the changes NMFS made to the fishery specifications in 2005/2006 – particularly the reduction of OY and some of the TACs – are precautionary in nature and are not reflective of the current status of the resource. Mr. Moore echoed this sentiment and mentioned that the changes made by NMFS related more to justifying the elimination of TALFF and had nothing to do with conservation of the resource, and that he is opposed to basing limited access justifications on the "politically-reduced" TACs.

Ms. Tooley reminded the advisors that the East Coast Pelagic Association (ECPA) submitted comments to the Council regarding the proposed specifications for 2006, suggesting that the Council re-submit its original recommendations for the 2005/2006 specifications. She stated that the ECPA does not support the changes to the specifications made by NMFS and proposed to be maintained through the 2006 fishing year. She also felt that some of the scientific advice alluded to by Mr. Ruais was taken out of context and was misunderstood when this discussion occurred during 2003 and 2004.

Mr. Ruais and Mr. Moore expressed objection to multi-year specifications for the herring fishery and felt that the specifications should be reviewed as often as possible in a fishery as dynamic as the herring fishery.

Mr. Moore indicated that he is not opposed to U.S. at-sea processing, as it provides an opportunity for offshore fisheries and may encourage effort in the offshore areas. He expressed support for the change that NMFS made to the USAP allocation for 2005 and 2006 (allocation of 20,000 mt instead of 0 mt, which was originally recommended by the Council).