



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
 John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

DRAFT MEETING SUMMARY

Herring Committee Meeting (Two Days)

Clarion Hotel, Portland ME

June 4/June 5, 2009

The Herring Committee met on June 4 and June 5, 2009 to: continue discussions and development of management alternatives to the Atlantic Herring Fishery Management Plan(FMP); review and discuss catch monitoring measures, address maximized retention(MR) and net slippage, review and finalize annual catch limits (ACLs) and accountability measures (AM); develop committee recommendations.

Meeting Attendance (both days combined): Frank Blount, Chairman; Dana Rice, Rodney Avila, Doug Grout, Mike Leary, Sally McGee, Mark Gibson, Jim Odlin, Terry Stockwell, Mary Beth Tooley, David Pierce, Mark Gibson, Herring Committee Members (Erling Berg not present); Dave Ellenton (Herring Advisory Panel Chairman), Peter Moore (Herring AP Vice-Chair), Peter Baker, Chris Weiner, Jennie Bichrest, Al West, Jeff Kaelin (Lund's Fisheries), Herring Advisory Panel Members; Lori Steele, Lou Goodreau, NEFMC Staff; Carrie Nordeen, Hannah Goodale, NMFS NERO; Gene Martin (NOAA GC), Sara Wetmore, Amy Van Atten (NEFMC Observer Program) Matt Cieri (ME DMR), Herring Plan Development Team Members; Roger Fleming(Earth Justice), Lara Slifka and Tom Rudolph (Choir/CCCHFA), Gary Libby, Shaun Gehan (Kelley, Drye, and Warren), Patrick Paquette (Mass. Striped Bass Association), Sean Mahoney (Conservation Law Foundation), Brad Schondelmeier (MA DMF), Geir Munsen (Seafreeze. Ltd.), Pam Gromen (NMC), Al West (Bumble Bee), Ray Kane, Gary Hatch, Steve Walima, and other interested parties.

Thursday, June 4, 2009 (Day 1)

The meeting began with brief introductions, announcements, and a review of the agenda. Terry Stockwell proposed that the timeline be discussed at the beginning of the second day rather than the end of the Committee meeting. The Chairman invited members in the audience (Ms. Goodale, and Ms. Nordeen) to sit at the table and for the purpose of contributing to the discussion, with the understanding that they are not authorized to make motions or vote during the meeting.

Enforcement Committee Report

Rodney Avila gave the Enforcement Committee Report related to the Atlantic Herring Amendment 4 Draft. The Enforcement Committee met in Danvers MA on May 8, 2009.

The enforcement committee approved the following motions: As an option to address slippage, affidavits be signed by the master under penalty of law that describes the slippage event, including: 1) reason for slippage, 2) estimated amount of catch and composition of species, 3) location and time of dumped fish.

Captain McGuinness addressed the Coast Guard's primary stance on promoting safety aboard all vessels and that it is not their position to ensure the monitoring of bycatch. He mentioned that the current proposal puts the decision making in the observer's hands about whether or not a load is brought on board. He expressed the importance of the master having options for giving access to the load for the observer to sample. The primary concern is the safety of the vessel and it may be compromised if the observer is given authority to require a load to be brought on deck in unfavorable conditions.

- Ms. Steele mentioned that the proposed affidavit measures are not currently a measure in the Amendment 4 Herring FMP document, and there is opportunity if the Committee would like to do so.
- Dr. Pierce asked what kind of options there would be for the vessel master to choose from in the event that the load can not be brought on board.
- Mr. McGuinness posed to the committee a scenario where a fully loaded or almost fully loaded boat runs into a big net and the catch needs to be sampled. Another scenario that would complicate the situation would be the countless changing weather variables that could hinder the vessels ability to safely provide the observer with a sample.
- Ms. Tooley agreed and addressed the previously discussed potential of pumping the catch across the deck, which she emphasized, would not be safe. She also added that a lot of this discussion stemmed from the Area 1 recommendation
- Mr. McGuinness completed the discussion by articulating the importance of giving the master multiple options to satisfy the observer's needs, and that this was mostly applicable to extreme scenarios.

Herring Advisory Panel (AP) Report

Dave Ellenton gave the report from the Herring Advisory Panel Meeting held in Portsmouth NH on Thursday, May 14, 2009.

- Ms. McGee asked for a clarification on Motion #2 of the Herring AP meeting which recommended that the issue of full retention be first addressed by the Multispecies Committee before it is given further consideration by the Herring Committee.
- Ms. Steele clarified that the intent of the motion was to have the Multispecies committee address maximized retention (MR) before the Herring Committee.

- Mr. Ellenton responded to a question posed by the chairman regarding the safety exclusions of the current proposal and added equipment failure as another means for exemption for MR.
- Dr. Pierce addressed the conclusions of both the Enforcement Committee Report and the Herring Advisory Panel Report and was unclear on how to reconcile the two. He pointed out the ECR's consensus to consult the NOAA Groundfish Committee regarding MR, but the Herring AP Report had a recommendation that MR be rejected based on the recommendation of the ECR. The implications of these reports don't provide the Committee with a clear recommendation as to how to proceed with MR.
- Ms. Steele informed the Committee that her intern (Mr. Alan Lovewell) will undertake a project comparing the NE herring fishery with similar high volume pelagic fisheries globally.
- Ms. Tooley gave several examples of high volume pelagic fisheries in the United States like the pacific whiting fishery and pointed out the various similarities and differences.
- Mr. Walima assured the Committee that there are options for effective net sampling, and that the committee should pioneer their own expertise and believes there are various ways in which we can monitor bycatch in the codend and they should be explored.
- Mr. Libby expressed his belief that the Multispecies Committee and the Herring Committee should both have their hands in MR instead of putting the responsibility on just the Multispecies Committee.
- Mr Rudolph emphasized the importance of safety while not compromising the data by controlling net slippage. He encouraged the Herring Committee to consider capping new slippage events, either fleet wide or per vessel.
- Mr. Kaelin expressed his belief that fishermen want to gather accurate data for NOAA, but don't believe in MRs based on the bycatch levels of the Atlantic herring fishery, but believes that all fisheries should go towards MR starting with the groundfish fishery.
- Ms. Steele pointed out that accuracy is more important than precision and best way to monitor ACLs is with appropriate observer coverage. With that, it is important to know what kind of observer coverage would be necessary to reach that level of accuracy.
- Ms. Van Atten clarified a statement by Mr. Kaelin that observers could see what was in the net, she said you could get an idea based on fish stuck in the net, but that you certainly don't know. She also reiterated that slippage events are rare on observed trips approximately 79 out of 906 or 1.86%.

Planning Development Team Report (PDT)

Ms. Steele gave the PDT report which was developed on May 26, 2009 in Mansfield, MA. The document covers Maximized Retention/ Net Slippage, Potential Challenges, Other Alternatives as well as Dockside Monitoring/Sampling.

- Dr. Pierce mentioned sampling protocol, and whether or not that was something the PDT needed to go into further depth with.
- Ms. Van Atten informed the Committee that the observer program is adding more detailed set of questions to the haul log. They would be asking why the slippage is occurring, which is not systematically collected. They have also implemented a pre-brief so they can inform the observer. Samples of Herring are also routinely brought back to confirm fish ID, and use them to train and certify. Potentially they would look at what proportion of the catch they need to look at to get a statistically reliable estimate of bycatch.
- Mr. Pierce continued the discussion by asking if there was protocol for addressing the need for sampling the entire bag, or if the Council would have to do it through regulation.
- Ms. Van Atten confirmed that in most cases they are dealing with a partial slip, and they are sometime unable to subsample the partially slipped catch. If they want to sample a portion of the tow, they need to get a more accurate estimate of the weight of the entire tow, so they can extrapolate the composition of the entire tow.
- Ms. McGee brought up the issue of accuracy regarding extrapolation, and if infact, there is a way to make sure that the partial sample is a representative of the whole.
- Ms. Van Atten informed the Committee that there are indications that stratification occurs in the bag, and it is subject to many variables, like how long the bag has been on the surface, what the sea state is, how the bag is being pumped.
- Ms Slifka addressed the concern of the CCCHFA that there should be penalties for a slipped net. One possibility would be the termination of the trip. She also reiterated the remaining unknown contents of the bag after it has been pumped since larger animals like bluefish, striped bass, dogfish that are unable to be pumped out of the bag.

Annual Catch limits (ACLs) and Accountability Measures (AMs)

Ms. Steele provided an overview of the ACL/AM provisions as well as the PDT recommendations and specifically addressed the need to establish scientific uncertainty.

- Ms. Tooley mentioned that she attended the Science and Statistical Committee (SSC) meeting and the ACL and AM process was not discussed. Ms. Steele explained that it may be because it is the same process, just described differently and renamed.
- Ms. Steele reiterated the interconnectedness of match monitoring and having accurate ACLs, and that the better the monitoring system the less more likely you will have a small buffer in catch limits.
- Dr. Pierce felt that AM Option 1 was not needed because the PDT has made it clear that it is concerned about effectiveness of this option. He also didn't feel that AM Option 2 is necessary because of concerns about monitoring the fishery and it would only amount to less than a days worth of fishing. He supported AM

Options 3A and 4 for Alternative 2. Ms. McGee agreed that AM Option 1 would make the deductions smaller which is preferable rather than letting the deductions get too large.

- Ms. Goodale made it clear that if there was going to be an overage deduction for the following year that they would have to consider how that was going to be done. Mr. Cieri pointed out that the Vessel Trip Reports (VTRs) come out much later than the Interactive Voice Response (IVRs) which are more preliminary. IVRs also tend to be higher than VTRs. He also pointed out that overages can also be fairly large, for example; Area 1B went over by 30% in one year.

1. MOTION: DAVID PIERCE/MARK GIBSON

That the Council adopt AM Alternatives 1 and 2 for consideration in Amendment 4 – for AM Alternative 2, the Council should adopt Options 3A and 4

Additional Discussion on the Motion: Mr. Gehan stated that the language in the SSC states that ACLs should be set so that overfishing does not occur in the fishery. He noted that preclosure is a form of management uncertainty, and as you devise accountability measures, you must account for overages and uncertainty. Mr. Kaelin addressed the 1% quota allocation for haddock in closed areas and the redundancy of having a catch cap when they aren't taking it. Mr. Odlin made aware that the directed fishing for herring is currently at 2000 pounds, and that it is important to watch that because those numbers tend to inflate. He also mentioned that Category A and B vessels may have groundfish permits, and that the motion needs to say: "Except in the case where they have Multispecies permits and are on a directed multispecies trip."

MOTION #1 PERFECTED

That the Council adopt AM Alternatives 1 and 2 for consideration in Amendment 4 – for AM Alternative 2, the Council should adopt Options 3A and 4 (with clarification to Option 4 that haddock possession would be prohibited unless the vessel has a multispecies permit and is fishing on a declared groundfish trip).

Additional Discussion on the Motion: Mr. Rudolf asked for clarification about whether or not Option 3B was voted down, and if the current Motion would eliminate Option 3B. Mr. Libby stated that haddock is a rebuilt stock, and are hard to avoid. He expressed concern about caps on other species in the future and if the current FMP should focus on other species. Ms. Steele confirmed that the Council can make recommendation for bycatch caps for any species, with the consultation of other committees in accordance with FMP.

- Mr. Odlin. Posed a scenario where in May the Council finds out the fishery went over their TAC by 10,000 tons. He then recommended that the deduction occur from the total a year after the data was gather. He emphasized the logistical complexity of making the adjustment in that current year.
- Ms. Goodale gave an example of the summer flounder fishery. In one specific year a lot of landings were made at the end of year. After overages were incurred, a judge found that the fishermen needed to know their overages in the beginning

of the season. The result was an overage reduction based on current information, any additional overage that is found throughout the year is rolled into the next year.

- Ms. Steele followed up with a clarification that an overages incurred would have to be really significant, and with a 2,000lb limit, the chances of having that kind of overage and that kind of effect would not likely happen.

MOTION #1 CARRIED 9-1-0

Presentation of NEFSC Study Fleet technology by Michael Palmer and Jonathan O'Neill

- Mr. Walima asked for clarification as to whether or not the operator of the vessel initiates the data collection, and if it is all self-reported data. Mr. Palmer explained that there is a behind the scenes software that pings the GPS on a regular basis create a cruise paths for the vessel. Mr. Walima continued and asked if the system is compatible with net triggers.
- Mr. Palmer described the current system and its compatibility with GPS, depth sounder, and radio ID for cooperative research. Configuring the software to accept other feeds is not a major issue. He pointed out that the system would not be tamper proof. It could be designed to replace current VTR.
- Mr. Hoey pointed out that as it stands now, the boats that are using this software are consistent with current VTR requirements. He also commented on the current legal/management issues that exist that need to be resolved
- Ms. Goodale told the Committee that the Regional Office is in test mode right now, with pilot programs under way.
- Ms. Tooley asked the NEFSC if they have the capacity to add a new fleet to their study group. Mr. Hoey stated that they are planning on trying to expand the pilot program and identify priority topics to use for completing the development of those operations that they haven't work with, for example: fixed gear etc. He said they plan to expand and add up to 40 boats. Ms. Tooley pointed out that the herring fishery is a small fleet, and they could capture the whole fishery very easily. She was also interested in daily reporting for quota tracking. She asked Mr. Palmer if the NEFSC was reviewing the data on a daily basis, and if not, if it could be a function that was possible. Mr. Palmer responded by saying it was possible, specifically for fulfilling a vessel's reporting requirements, but they would have to have further discussion as to whether or not these data can be used for quota monitoring
- Ms. Tooley pointed out the importance of having the Regional Office on board with accepting the data.
- Mr. Hoey identified several barriers to speedy implementation which included: insurance contracts, and staff limitations. He said they could probably do 2-4 boats in a reasonable amount of time
- Mr. Libby advocated for the data to eventually be sent tow to tow to the dealers and fresh fish markets, which could be a better ways to sell the product.
- Ms. Steele pointed out the potential for monitoring net slippage with a sensor.

- Mr. Gehan stated that he hopes that they can develop applications to do more passive monitoring to address questions like: monitor when the net is deployed, tow times, etc to address concerns about self reporting.
- Mr. Rudolph – the potential to plug in additional sensors – mesh pressure sensors to determine what kind of weight is in the net... try to plug in net minders like footrope height... not temper proof but are they tamper evident? Can you tell if the data stream has been messed with? Mr. Palmer – no, neither tamper proof or tamper evident. Larger question we would have to wrestle with, need to think about whether or not to get into the enforcement realm. Doable but not in the current configuration
- Mr Kaelin brought up the possibility of integrating a notification system for the fleet, so that if they ran into an area of high bycatch, they would be able to report hotspots among the fleet to minimize bycatch.

2. MOTION: DAVID PIERCE/TERRY STOCKWELL

That the Council adopt for the range of ACL alternatives in Amendment 4, ACL Alternative 1 and Alternative 2, and Options 1 and 2

Additional Discussion on the Motion: Mr. Pierce noted that when the Council set up this allocation, they recognized the concerns and didn't want it to be unrestricted, there was some discussion of a zero specification but the regional office said that favors shoreside processors, and changed it. Mr. Fleming asked the Committee about establishing the control rule for the Allowable Biological Catch (ABC) in accordance with the NS 1 Guidelines that state that the council must include an ABC control rule in the FMP. He pointed out the importance of this specification in Amendment 4.

MOTION #2 CARRIED UNANIMOUSLY

Ms. Goodale suggested if you close the books on a fishing year as of October 31, then the landings for the current year from October 31 and landings from the previous year, are not included. If you get late data you can't account for it using last year's data. With summer flounder if the buffers work, then you don't have an overage, and you do the calculation at the end of October and you don't have a deduction. Mr. Odlin stated that this was overly complex and you should take the overage into the following year from when the calculation was completed. This would be a matter of several months, and the for example, the calculation gets done in April, the overage would be deducted in January. Ms. Goodale articulated that there just needs to be a clear process.

3. MOTION: JIM ODLIN/DANA RICE

That the intent of AM Option 3A is that after calculating the final catch for a fishing year around April of the next year, any overages be deducted from the following fishing year during which the following fishing year during which the final catch was tallied.

Ms. McGee stated that the current plan is for more efficient and timely catch reporting which would make the need to carry overages into the following year unnecessary, and that they could be integrated the year the final catch report is made. Mr. Mahoney pointed out that the intent is not consistent with the language in Option 3A.

MOTION #3 PERFECTED

To change AM Option 3A so that after calculating the final catch for a fishing year around April of the next year, any overages be deducted from the following fishing year during which the final catch was tallied (for example, 2009 overages would be tallied during 2010 and deducted from the 2011 ACL).

MOTION #3 CARRIED 7-3-0

Mr. Pierce supported the original Option 3A because the directed fishery takes the lion's share of the catch, which is a significant amount. Mr. Mahoney continued by suggesting a split in directed fishery overages and incidental overages.

Ms. McGee reiterated the importance of finding out from the SSC Report what the specific guidelines are on how the ABC should be set.

Presentation of Video from North East Fisheries Observer Program

The Committee received a presentation by Amy Van Atten on the observer program aboard a pair trawl trip on 4/24/08 to 4/26/08. Many questions were raised after the presentation; the key questions were regarding the accuracy of identifying the multitude of small species fish, bycatch, and the inspection of the codend.

- Ms. Van Atten mentioned several key components that address accuracy. First being the level of training received, second, the requirement that all observers bring back samples to confirm accurate species ID, third the shadow trip program that supplies two observers for the purpose of overseeing effective observation.
- Ms. Van Atten pointed out that many things are happening on the vessel at one time which could allow for things to take place on the vessel that go unnoticed, which would compromise the accuracy of the observers data collection.
- Ms. McGee addressed the rate at which the observers can sort the various species specifically identifying the alewife, and river herring. She questioned the accuracy of this process, but Ms. Van Atten assured her that they can work that fast and faster with excellent results. She also pointed out that no river herring were found on that trip.
- Mr. Fleming mentioned the previous discussion about inspecting the codend, and commented on the uncertainty based on the video, about what happened with the codend after they finished pumping, and what the remnants were. Ms. Van Atten replied by saying nothing was left in the codend and nothing was slipped.

Friday, June 5, 2009 (Day 2)

The Committee began day 2 by revising the agenda, prioritizing the timeline first and moving Alternative 3 up so that Alternative 4 would be discussed first then Amendment 3, 1 and then 2.

- Mr. Stockwell commented on the various duties outside of the PDT's responsibilities and that they don't have time to do everything at once, he proposed that they split Amendment 4 due to time constraints and complexity. He expressed concern that he doesn't want the Committee to do a bad job on catch monitoring in particular. He voiced the relative importance of the ACLs, AMs and fishery specifications for this amendment.
- Mr. Grout commented on the timeline and asked Ms. Goodale when the regional office would publish the quota for 2010, assuming they meet the timeline. Ms. Goodale stated that it was dependant on the stock assessment, and they would review the specs, publish the PR, and have a 30 day comment period and final rule.
- Mr. Grout commented on the mackerel provisions and whether or not they would trigger and environmental impact statement (EIS). Ms. Steele, responded by stating that it would depend on the cumulative impact. Based on her own assessment, probably not, because there would be little biological impact. Mr. Grout pointed out river herring, and asked what kind of impact that would have if they included those provisions. Ms. Steele stated that the PDT was focused on other specifications.
- Mr. Chairman asked the Committee if they would need to have public hearing on Amendment 4 if it was split. Mr. Martin answered, informing the Committee that a public hearing would have to occur if the substance of Amendment 4 was significantly changed.
- Ms. McGee felt that the Committee should be aware of what splitting means in terms of what the Council has done in the past. She cited Amendment 16 and 17 of the groundfish plan, which was initiated on June 2008 with the intent of it being picked up this summer. Her concern being that whatever the Committee takes out of Amendment 4 of the herring FMP would not be revisited in Amendment 5. She also noted that if the Council wanted to move towards Limited Access Privilege Program (LAPPs) it would be delayed even further.
- Mr. Stockwell decided he would hold off the motion until the end of the day.
- The Committee discussed the timeline for reporting to VMS and shortening it from 72 hours to as little as 18 hours. According to Ms. Van Atten 18 hours would be the minimum. Ms. Tooley commented on carriers and if they are required by their Letter Of Authorization (LOA) to allow observers. Ms Van Atten stated that carriers don't qualify.

Review and Discuss Catch Monitoring Measures that Can be Incorporated into Any Alternative

3.3.1.1 Regulatory Definitions and Vessel Permits.

The Committee discussed the two options in the discussion document regarding changing several definitions and agreed to move the measures forward.

Agreed by Consensus

3.3.1.2 Modifications to the Interactive Voice Response (IVR) Reporting Requirements

Ms. Steele gave an overview of the IVR alternatives which the Committee agreed were well formed and ready to be moved forward.

Agreed by Consensus

3.3.1.3 Outreach Programs to Improve Compliance and Consistency

Ms. Goodale questioned the intent of this section. Ms. Tooley stated that this section came from scoping and represents the need for outreach for improved catch monitoring for the benefit of industry. Mr. Avila supported this motion because it stands as a recommendation by the Committee to emphasize the importance of outreach. Mr. Odlin opposed this motion because the provision is only a recommendation.

4. MOTION: DOUG GROUT/RODNEY AVILA

To include section 3.3.1.3 (Outreach Programs) with changes to the language to reflect recommendations instead of requirements.

MOTION #4 CARRIED 8-0-1

3.3.1.4 Measures to Address VTR Reporting and VMS Provisions

Ms. Steele explained the options for trip reporting and supported the moving forward of this section.

Agreed by Consensus.

3.3.2 Measures to address Transfers at Sea

The next measure that was discussed was transfers at sea. Ms. Tooley stated that this was mostly a Category C Issue, and would mostly affect transfers to tuna boats, but would apply to everyone. She noted that carriers may have dealer permits and may sell over the side to smaller vessels. Ms. Steele clarified that this would not apply to carriers with LOAs.

- The Chairman commented on the logistical difficulties of requiring written receipts, or having a trip limit.
- Ms. Goodale wanted to know what the current plan was regarding groundfish. Ms. Steele stated that it was developed to track activity, and whiting did not have transfer controls at this time.
- Mr. Grout pointed out that Option 2 is the only option that addresses Open Access vessels. They land very small amounts of herring and are limited to 3 mt. we need an option that would require Cat D permit holders to have a letter of authorization, and when they make a transfer, they would have to specify the name of the vessel and the transfer amount in their VTRs
- Ms. Tooley stated that since Amendment 1 we have had a new group of vessels participating in the fishery, and we need to hold them to their specific trip limit restrictions.

5. MOTION: DOUG GROUT/TERRY STOCKWELL

To include a fourth option for transfers at sea, Section 3.3.2 that would allow transfers at sea of Atlantic herring for category D open access vessels, provided (1) the transferring vessel had an LOA issued by the RA on board the vessel; and (2) the transferring vessel identifies on the VTR the name of the vessel and pounds of herring transferred for each receiving vessel on a trip.

MOTION #5 CARRIED 7-1-0

6. MOTION MARY BETH TOOLEY/JIM ODLIN

To eliminate Transfer at Sea Option 3 from the document (Section 3.3.2.3)

Mr. Paquette asked the Committee how this would affect the state water recreational and commercial fishermen, specifically related to dockside and at sea transfer. The Chairman responded to his question clarifying that it is the responsibility of the seller to have a permit.

MOTION #6 CARRIED 5-3-0

7. MOTION: TERRY STOCKWELL/DOUG GROUT

To substitute the PDT and staff recommendations for measures to address trip declaration and notification requirements (both options on p.47 and 48) (PDT/staff consultation to fill in shaded areas on Option 1)

Additional Discussion on the Motion: Ms. Steele explained that the provision requires all permit holders to provide notification pre trip if they are to encounter herring. Ms. Gromen pointed out that any encountered herring should be allowed to be landed with or without notification. Mr. Rudolf agreed, stating that herring is encountered all the time if they are fishing with pelagic gear.

- Ms. Steele suggested that the language be modified to: if the operator encounters herring.
- Mr. Martin articulated to the Committee the current regulations which states that vessels must comply with VMS. If they want to participate in the herring fishery they need to call in prior to departure if you want to land it. He mentioned one way of clarifying this is to say; if you harvest possess or land then you need to call in under herring restrictions. Mr. Stockwell assured the Committee that was his intent.

MOTION #7 PERFECTED:

To substitute the PDT and staff recommendations for measures to address trip declarations and notification requirements (Section 3.3.3), eliminating “any trip where the operator expects to encounter and land Atlantic herring” and replacing it with “any trip where the operator may harvest, possess, and land Atlantic herring” (both options described on p. 47 and 48)

MOTION #7 CARRIED UNANIMOUSLY

The next section addressed was at sea monitoring, the Chairman stated that the Committee received good feedback regarding this issue. The Enforcement Committee PDT went through measures on page 55, 56, 57 of the Draft Discussion Document. The only exception was measure H (pumping of all catch across the deck for sampling).

- Ms. Tooley stated her concerns under the first bullet of “Proposed Measures to Improve Observer Safety” pg. 55. She emphasized the difficulty of providing a 3’x3’ table aboard the fishing vessel.
- Mr. Stockwell asked Ms. Van Atten whether or not they wanted to specify where the table was indoors or outdoors on. Ms. Van Atten clarified that it should be outside in the proximity of the deck. She also noted that they didn’t want to include too many specifications, and in fact the actual intent was to create some sort of space for the observer.
- Mr. Stockwell brought up the issue of dry space as a requirement for observers and what that entailed. Ms. Van Atten clarified that the dry space was a place for the observers gear, and the table had to be the as long as the length frequency board and must be able to support 7,000 platform scales.
- Mr. Avila asked Ms. Van Atten if an observer goes down to the dock for an observed trip and there isn’t enough space, could the trip be terminated. She stated that safety is priority, and if their check list is not met there would be a hard-fast trip refusal. She pointed out that the sampling station is included in that safety check list.
- Mr. Kaelin asked the Committee what are the omnibus requirements are among all the other fisheries for at sea monitoring. Ms. Steele explained that there are general requirements among all fisheries and that this section is more specific to the herring fishery. Mr. Kaelin opposed this provision based on the principle that it should be equitable across all fisheries. Ms. Van Atten pointed out that this should be applied to all fisheries, and this provision could initiate it. Mr. Avila clarified by stating that the herring fishery is a different from other fisheries and has specific requirements unique to its industry.

3.3.4.2 Options to Improve At-Sea Monitoring

8. MOTION: MARY BETH/TERRY STOCKWELL

To eliminate bullet 1 pg. 55, Observer Measure IA from the document.

MOTION #8 CARRIED UNANIMOUS

Ms. Tooley proposed a motion to delete, under Section 2 **Proposed Measures to Ensure the Accurate and Complete Collection of Catch Data**, measure A Requirements to bring closed codend on board whenever possible and open it onboard for the observer to inspect. She cited the EFCs statement that it is not enforceable.

- Mr. Avila asked if it is possible to re-tie the codend after it has been pumped. He pointed out that if there is no way to do it, then it is not enforceable.
- Ms. McGee pointed out that some captains say they can do it and some say they cannot. Mr. Odlin stated that it depends on the captain's intent, usually they will say it is not possible.
- Mr. Rice reiterated that sometimes the codend can be brought on board right after pumping and sometimes it cannot. He asked the Committee if there are other ways to account for what is in the bag, and if there is a way to gather that information another way.
- Mr. Libby commented on the amount of public opinion regarding the codend, and the number of variables to take into account, and he stated that if the weather is sloppy then it can be hard to do, he confirmed that there may be other ways to do it, and the public doesn't understand all the conditions regardless if it is allowed or disallowed.
- Mr. Martin felt that you could require codend inspection whenever possible at the discretion of the captain, and there must document if he says no. The document could require an explanation for why he refused inspection; it could also be used to create additional requirements.
- Mr. Paquette emphasized the importance of allowing the observer to get an opportunity to see the codend. He believes that the measure should reflect that right.
- Ms. Van Atten clarified with the statistics from past observer trips aboard herring vessels. 49% said they couldn't see the codend, 28% said yes and 23% did not complete that section. The overall assessment is that they can't generally see what is in the net. It is possible in certain cases, but not most.
- Mr. Avila addressed the importance of identifying what the codend actually is.
- Ms. Van Atten described the process bringing the net onboard with the codend still onboard. This process requires a crane, and is one of the ways in which the net and remaining catch can be inspected.
- Mr. Gehan stated that he would support a motion on behalf of the mid water trawl. He believes that there is severe economic cost associated with this provision with little scientific gain, and that it would be better to replace it with something that gives the observer the opportunity to discuss the matter with the captain.
- Mr. Rudolf opposed this motion contenting that the original bullet doesn't go far enough. He stated that without strong disincentives this will create unacceptable

consequences. He continued by saying that there is no way of knowing whether or not this bycatch is significant, and the only way to know is to sample the catch in as many places as possible. He reiterated the pump as a size specific filter which provides potential for there to be bycatch left in the net. He cited the Mid Atlantic council, which states that there is certainly room for large body animals to be left in the codend. He urged the Committee to recognize that there is no way of knowing right now.

- Ms. McGee commented by saying the Committee shouldn't be scratching this measure off the list. She emphasized that they don't have to compromise safety to achieve their goal of improving data. She supported further development of ways that provide the observer access. The goal being, to improve the already low percentages of observable codend data.
- Ms. Tooley suggested the Committee look at Option C and adjust the language
- Mr. Stockwell agreed with Ms. McGee's statements and suggested the Committee address this issue in Option H.
- Mr. Rice pointed out that this motion doesn't work with the intent of its purpose which is to make a visual inspection of the codend.
- Mr. Rudolf emphasized the importance of complete sampling that maximizes sampling and maximizes retention. He stated that both of these motions have to find a way to maximize sampling.

9. MOTION: MARY BETH/JIM ODLIN

To eliminate Observer Measure IIA, the requirement to bring the closed codend on board whenever possible and to open it onboard for the observer to inspect.

MOTION #9 CARRIED 5-3-0

10. MOTION: MARY BETH TOOLEY/JIM ODLIN

To eliminate observer measure IIE requirement to use two observers on larger vessels and/or pair trawl operations. When both vessels and/or pair trawl operations

- Mr. Odlin requested a definition for large vessel. Mr. Avila described a large vessel as anything over 72ft.
- Mr. Libby pointed out that if there is a second boat bringing fish onboard he didn't think you need to have an observer onboard that vessel.
- Ms. Van Atten mentioned that observers record when a load is pumped to another vessel and note that it was unobserved. She added if they had funds then they would put an observer on both vessels all the time.
- Ms. Tooley noted that purse seine vessels have little fish on the wing vessel, but with mid water trawl the intention is to fill both vessels with fish.

11. MOTION TO SUBSTITUTE: SALLY MCGEE/MARK GIBSON

To Modify Measure IIE to require observers on both vessels in pair trawl operations when both vessels are taking on fish. (Intent is that when an observer is deployed to a pair trawl operation, there would be an observer deployed on each vessel if they are both taking on fish)

Additional Discussion on the Motion: Ms. McGee clarified that the intent of this provision was to require that observers are sent to both boats in a pair trawl operation if both boats are planning on taking on fish. She added that the intent is to fill the data gaps, and getting more information on paired trawling operations, when there is, right now, not a whole lot of data. One of the main reasons for this requirement is because there are instances when, in a pair trawl operation, the load is not pumped to the vessel with the observer on board, and the observer days are wasted. Mr. Ellenton confirmed that there are instances of this.

- Mr. Odlin pointed out that the observer program can require observers for any boat they choose and if they want to do both they can already.
- Ms. Goodale stated that when she reads the motion that sounds like it requires 100% coverage.
- Mr. Odlin pointed out that the provision would also include carrier vessels if it was left as it is.
- Mr. Gibson reiterated the goal which is, we want the observers to see the fish.
- Mr. Rudolph stated that they have to open the discussion because this is a unique fishery. He addressed the Committee and reminded them that they have been charged with the task of solving these problems, and closing loopholes.
- Mr. Ellenton pointed out the prosecution of this gear type. He emphasized the importance of this unique fishery to many people who depend on it.
- Mr. Rice expressed concern that there isn't enough money for the observer coverage, and that there are no measures that will get at this important fact. He stated that video monitoring could provide a unique solution but nobody wants to have a camera on board.
- Mr. Gibson pointed out that by requiring two observers on one fishing trip they will effectively be minimizing observer coverage. Mr. Cieri agreed with that statement.
- Mr. Grout asked the Committee if there were observer trips that were deployed but were not observable. Ms. Van Atten confirmed that this has certainly happened. She pointed out that the observers have learned to be asking specific questions before they begin the trip. From a problematic standpoint, Ms Van Atten expressed her concern they want to see in an observed trip, and this provision helps support that objective which is monitoring incidental takes.
- Ms. McGee stated that she wants the discretion to go to the observer program.

MOTION TO SUBSTITUTE FURTHER PERFECTED:

To modify Measure IIE – when observers are deployed on herring trips involving more than one vessel, require observers on any vessel taking on fish where/when possible

MOTION TO SUBSTITUTE CARRIED 5-2-1

MAIN MOTION SUBSTITUTED:

To modify Measure IIE – when observers are deployed on herring trips involving more than one vessel, require observers on any vessel taking on fish where/when possible

MOTION #11 CARRIED 5-2-1

12. MOTION: TERRY STOCKWELL/DOUG GROUT

To table decisions related to Observer Measure IIIH until after decisions are made regarding the development of catch monitoring alternatives

MOTION #12 CARRIED UNANIMOUSLY

13. MOTION: JIM ODLIN/RODNEY AVILA

To require that limited access Category A, B, and C vessels report daily by VMS Atlantic herring catch and discards, and statistical area (similar to the US/Canada area reporting requirements for multispecies)
Intent is that this is on a declared herring trip

MOTION #13 CARRIED 7-0-1.

The next section addressed by the Committee was Maximize Retention (MR) Alternatives 1 and 3. Based on the PDT recommendation, if the goal is full sampling, they believed it could be achieved through other mechanisms of management.

- Ms. Tooley asked Ms. Van Atten what the retention rate is now. The Chairman added that on observed trips it was very high, but it was also dependant on how much catch was slipped or how much of it was discarded.
- Ms. Slifka pointed out that observer coverage is so low that they shouldn't extrapolate the data across the whole fishery. She mentioned that most retention programs are created for different goals; she emphasized importance of minimizing waste and bycatch for the herring fishery.
- Mr. Rudolf pointed out that the 1.8% of observed trips that had slipped nets is low as a percent, but that it was important to recognize the actual numbers and pounds of fish discarded or slipped. He concluded by stating that it is important to look at retention not as rate, but as an overall number.
- Ms. Steele clarified the discussion by citing the referenced herring observer data from NMFS.
- Mr. Rice urged the Committee to bear in mind the intent of MR is to get more data, and that the Committee shouldn't get stuck on old numbers.
- Ms. Tooley expressed concern that they still need to identify what the problem is. She stated that she doesn't think there is a lot of waste, and that most of that waste is dogfish. She stated that they need a better goal to calculate catch. She suggested they develop a monitoring program that addresses those issues.

14. MOTION: DOUG GROUT/MIKE LEARY

That the PDT work with the observer program to develop a minimum portion of a slipped catch that would be required to be pumped on board a vessel for an observer to obtain a statistically valid sample to characterize the catch composition of slipped tows

MOTION #14 CARRIED UNANIMOUSLY

Additional discussion: The major concern is improving the characterization of catch and accounting for full catch. How to account for slipped tows how to require that everything is to be pumped across the vessel. Ideas that were generated were possibly requiring some portion of a slipped tow to be pumped to allow for characterization. Also making a motion that would ask the PDT to work with observer program to ask for a minimized portion of a slipped catch so that an observer can obtain a statistically significant portion of the tow.

The discussion of monitoring continued with a shift towards pumping the fish out of the codend. It was pointed out that when there isn't enough fish in the bag they can not pump the fish out. The issue of test tows was mentioned which led to a discussion of the various methods that test tows are conducted, and the complications of monitoring those catches.

- Mr. Odlin stated that if he does a test tow in 50 fathoms and fish are dispersed through the codend, they may not take the entire net on board and may try another depth without taking the gear onboard, which wouldn't allow the observer to see what was in that test tow.
- Mr. Rice stated that if you make a test tow, you can determine what is in the net without taking too much time. He emphasized the importance of you having to be able to see and know what is in the net of a test tow, which depends on the right observer coverage. He also pointed out that electronic monitoring would allow them to get a lot more data and direct them where to go with this process
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15. MOTION: DOUG GROUT/TERRY STOCKWELL

That an affidavit be created for slippage/dumping events, to be signed under penalty of perjury. When an observer is present, the event would be fully documented with photographs. This affidavit will contain (1) the reason for slippage; (2) an estimate of the quantity and species composition of the dumped fish; and (3) the location and time of the dumped fish.

MOTION #15 CARRIED UNANIMOUSLY

Addition Discussion Regarding Motion: Ms. Steele informed the Committee that the VTR is an affidavit, and that the intent is to create an additional form that has additional details which would encourage better compliance. Mr. Martin pointed out that making an affidavit does nothing to increase enforceability; the same barrier exists which is, having

evidentiary sources to prove it. Ms. Tooley stated that at least an affidavit would help answer some questions.

- Mr Rudolf pointed out that this provision would fit under measures to improve reporting. He mentioned the possibility for fully documented photography that could include underwater photography.
- Mr. Kaelin pointed out that observers already collect marine mammal data. In response to Mr. Rudolfs comment on underwater photography he pointed out that there is a lot of research and data that states that marine mammal encounters are rare. In defense he argued that it was unnecessary.

Ms. Steele handed out the CHOIR letter received that day and discussed the described options for maximized retention. Mr. Stockwell encouraged that the suggestions in that letter be added to the discussion document under Amendment 3. Mr. Rudolf pointed out that the letter was their attempt to respond to some of the questions and concerns the Committee had, in addition he stated that it strengthens the proposal as it moves forward for additional analysis.

- Ms. Steele articulated the proposed options like trip termination for when a slippage event occurs, species based options, phased in approach for a maximized retention approach, or a gradual phase in of video based monitoring. She pointed out that these options are not in document now, and if the intent is to still look at MR then they may want to consider these options.
- Ms. Goodale suggested that the Committee make a decision that they aren't going to maximize the retention of dogfish, and that they should be specifically looking at this as a species based approach.
- Mr. Rudolf stated that CHOIR made an adjustment of the cap, while minimizing the discount that is gradually reduced, which is taking into consideration the larger proportions of dogfish bycatch.

16. MOTION: TERRY STOCKWELL/MIKE LEARY

That the additional options proposed in the June 1 2009 letter from the CHOIR Coalition be added to Alternative 3.

MOTION #16 PASSED UNANIMOUSLY

Review and Discuss Catch Monitoring Alternative 4

The Committee, after a brief discussion on how to proceed without Dr. Pierce who had expressed intent to motion on Alternative 4, decided to proceed on behalf of previous discussion regarding a motion to put Alternative 4 in the considered but rejected file.

17. MOTION: TERRY STOCKWELL/RODNEY AVILA

Move Alternative 4 to the considered but rejected section of Amendment 4

MOTION #17 CARRIED UNANIMOUSLY

Review and Discuss Catch Monitoring Alternative 3

Mr. Rudolf began by thanking the Committee for shifting its agenda to accommodate him and his travel plans. He supported the contribution from other folks to help facilitate the discussion on Alternative 3. He stated that the Committee has heard a number of times that Alternative 3 is more developed than Alternative 1 and 2, and encouraged that other groups spend the time to bring the level of detail up to the level in Alternative 3. This, he continued would help so they can start with a robust comparison of all of the alternatives.

18. MOTION: JIM ODLIN/MARY BETH

That in Alternative 3, remove the goals and objectives section.

MOTION #18 CARRIED UNANIMOUSLY

Catch Monitoring Control Plans (CMCP)

Ms. Steele summarized the CMCP issues specified in the Discussion Document section 3.7.5. She mentioned the Regional Office and noted that the Committee needs to be more specific about what the plan is. She encouraged the RO to articulate what they need to make this feasible, if the details in the document are possible. Ms. Goodale responded by telling the Committee that RO does have concerns and that all the components required for the CMCPs are not clear. She noted that right now it is unclear what would be satisfactory and what would not be. She asked the Committee to outline the basic requirements for VBEM and their installation. She emphasized their need to get more standards to the RO and that they would then look at the feasibility issue.

- Ms. Tooley commented on the variability and diversity of the herring fleet specific the number of bait dealers the industry provides as well as the number of ports each vessel may unload at. She mentioned one vessel that she knows of that goes to island communities, in different ports in Maine, different ports down south, which illustrates the complicated nature of the fishery.
- Mr. Rice agreed that this is very complicated and asked if we are getting any better information on the amounts and poundage of fish. The way we have counted fish in the Gulf of Maine has worked very well.
- Ms. Slifka noted that CCCHFA went through and looked at the regulations for the Alaska fishery and everything they included for their processing plants. They proposed that CMCPs don't have to be for every single dealer, and that if a vessel is going to land in a lot of ports, the requirements should not be that burdensome.
- Ms. Steele asked Ms. Slifka if she thought that the requirements in the document are clear enough? Ms. Slifka suggested that a template would be easier to understand.
- Ms. McGee noted that this was supposed to be an olive branch, and that there needs to be close consultation with industry on what is needed to make sure that monitoring is happening in a way that makes sense for the way that operations are

taking place on the ground and accommodating the level of variety we have in this fishery. She emphasized the importance of communication in order to keep things moving forward.

- Mr. Moore replied by noting that they don't see this as an olive branch. He reminded the Committee that they are getting put out of business from a campaign to get rid of the herring fleet. He noted that they want to move the industry towards LAPPs and a monitoring program is essential for doing this.

19. MOTION: TERRY STOCKWELL/RODNEY AVILA

Recommend to the Council that Amendment 4 be split to address the ACL/AM provisions only, and that the remaining measures (catch monitoring, river herring bycatch, mackerel, and the groundfish closed areas) be incorporated into Amendment 5, and that the time period is as outlined in the draft strawman document dated February 3, 2009. Only the remainder of the Amendment 4 work would be considered in Amendment 5.

MOTION TO SPLIT THE QUESTION AT THE LAST SENTENCE – MARY BETH, NO SECOND

MOTION #19 CARRIED 6-2-0

20. MOTION: SALLY MCGEE/DOUG GROUT

To direct the PDT to develop assumed discard rates applied to all trips for the calculation of ACLs.

MOTION #20 CARRIED 7-0-1

Ms. McGee commented on the importance of the Atlantic States Marine Fisheries Commission letter dated May 27, 2009 that requested an emergency action plan for river herring. Mr. Stockwell responded by saying that he thinks that the Committee are stretched as it is already and if they were to incorporate this then they would compromise the quality and credibility of their work.

- Mr. Weiner Supported the inclusion of bycatch provisions in Amen 4
- Mr. Fleming asked the Committee why there was tremendous pressure for creating ACL and AM, when it can be completed in 2010. He urged them not to split amendment because they need to have effective monitoring.
- Mr. Grout agreed that the catch monitoring program has been important with ACLs and AMs, and the question to ask is whether they are better off or not. He noted that he was concerned that they may have a smaller quota in the future than what they have now. He also stated that if NMFS was to get sued as a consequence of not completing the ACLs and AMs by their deadline, by the time it was brought to court, everything would be in place, and the ACLs and AMs would be complete. He noted that he hadn't heard anything that would convince him to split the Amendment.

- Mr. Gieri reminded the Committee that the specification process could take a lot longer than they think, and to plan accordingly. He stated that members of the PDT may not get to it even by the November meeting.

21. MOTION: SALLY MCGEE/DOUG GROUT

Motion move PDT to adopt with appropriate discard rates.

MOTION #21 CARRIED 7-0-1

The Herring Committee meeting adjourned at approximately 5:00pm on June 5, 2009