

#7
Replacement

New England Fishery Management Council

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DRAFT MEETING SUMMARY

Herring Committee Meeting

Radisson Hotel, Plymouth MA

June 6, 2012

The Herring Committee met on June 6, 2012 in Plymouth, MA to: review/discuss public comments received regarding measures under consideration in Draft Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP), review/discuss Enforcement Committee, Herring Plan Development Team, and Herring Advisory Panel recommendations regarding measures under consideration in Draft Amendment 5, Develop Herring Committee recommendations regarding the final selection of management measures for Amendment 5, scheduled for the June 19-21, 2012 Council meeting, and to address other business as necessary.

Meeting Attendance: Doug Grout, Herring Committee Chairman, Frank Blount, David Pierce, Mary Beth Tooley, Mark Gibson, Rodney Avila, Terry Stockwell, Glenn Libby, Peter Kendall; Erling Berg and Howard King (MAFMC); Rip Cunningham, Council Chairman; Lori Steele and David Thomas, NEFMC staff; Carrie Nordeen, Lindsey Feldman, and Pete Christopher (NOAA NERO); Jamie Cournane (ED/UNH); Chris Vonderweidt and Kate Taylor, ASMFC Staff; Jeff Kaelin, Herring Advisory Panel Chairman; Roger Fleming, Patrick Paquette, Paul York, Peter Mullen, and several other interested parties.

After a brief round of introductions, public comments were reviewed and several reports were received by the Committee – Enforcement Committee, Herring Plan Development Team (PDT) and Mackerel Fishery Management Action Team (FMAT), and Herring Advisory Panel (AP).

Review/Discussion of Public Comments, Enforcement Committee Report, Herring PDT/Mackerel FMAT Report, and Herring AP Report

Ms. Steele briefly summarized the comments received during both the Council's comment period on Draft Amendment 5 and the 45-day comment period required by the National Environmental Policy Act (NEPA). She also summarized the Enforcement Committee report and the Committee's recommendations on Amendment 5, which were presented at the April 2012 Council meeting.

Following an overview of the Herring AP Report by newly-elected AP Chairman Jeff Kaelin, Dr. Pierce asked why there was no motion made by the advisors regarding the measures to address slippage. Mr. Kaelin answered confirmed that there was no agreement between the advisors regarding these measures. No motions were provided during their discussion. Terry Stockwell asked if the AP had any discussion on Jim Ruhle's performance-based proposal for allocating observer coverage. Jeff confirmed that the AP did not discuss this issue.

David Pierce asked for clarification on the updated slippage information presented in the PDT/FMAT Report. Ms. Steele clarified that the data in the table represent released catch events outside of Closed Area I and just the reasons for why the fish were released. David Pierce asked if the PDT and the FMAT had any opportunity to look at the river herring assessment and see if it provides any information regarding the river herring catch cap. Ms. Steele said that there was no time to discuss the assessment at the May 22 meeting.

Mary Beth Tooley pointed out that the Council has struggled on getting information on different categories of vessels and felt that the call-in system for observer notification is helpful for this purpose. She asked for clarification regarding the PDT/FMAT recommendation. Ms. Steele stated that the PDT and FMAT recommend that the call-in system be consistent with the vessels that are subject to the limited access requirements in Amendment 5. Jeff Kaelin asked if the PDT/FMAT took a position regarding the usefulness of a pelagic call-in (for mixed herring/mackerel trips). Ms. Steele said that the PDT/FMAT felt that in order to simplify things, it may be helpful for the mixed fishery to have a pelagic declaration to identify mixed or non-directed trips. Mr. Cunningham asked if there was discussion of what the implications would be if the Mid-Atlantic Council implemented a catch cap for river herring and if the New England Council implemented area-based measures. Ms. Steele said that the PDT and FMAT were concerned about the impacts on both fisheries if the two Councils adopted different measures to address river herring bycatch. She emphasized the need to coordinate the management of bycatch between the two councils in these two plans and fisheries. Ms. Tooley reminded the Committee that there is a significant herring fishery in the Gulf of Maine that does not overlap the mackerel fishery at all.

Ms. Van Atten from the Northeast Fisheries Observer Program (NEFOP) presented an overview of the observer program and a breakdown of costs associated with observer coverage and at-sea monitoring. Howard King asked what the single most important task of an observer is, and in the NEFOP program what percent of their time is devoted to it. Ms. Van Atten said their most important task is to accurately record discards and the proportion of time going into that is the majority of their time, about 80%. Mr. Cunningham asked if the intent of the presentation was to be informational or was there an overall message. Amy said some messages to be noted are to not be bogged down with details of the program and to focus on goals and objectives for what the observers should be doing while at-sea. She said also that there are difficulties in starting up a new observer program. She emphasized the importance of clear goals and objectives. She suggested to try to coordinate efforts for any industry-funded program that could be established in the northeast.

Ms. Nordeen summarized comments received from the NMFS NERO in a letter from Dan Morris, dated June 5, 2012. David Pierce asked for clarification regarding NMFS' position on time-area closures for river herring protection. Carrie stated that NMFS' position was that they would like to see the measures simplified. NMFS also supports consideration of a catch cap. Glen Libby asked for clarification regarding the use of States as service providers; Ms. Nordeen emphasized the importance of ensuring data quality, i.e., the service providers are collecting the same quality data that the observer program is collecting. Terry Stockwell pointed out that Maine does have an at-sea observer for river herring, but the data are not identical. Mr. King asked about how the SMAST/SFC program is addressing river herring bycatch issue. Mr. Kaelin responded that the program has been focused primarily in Area 2 and they have been very active in the herring fishery this year.

Ms. Tooley stated that the Council could address the issue of observer quality for States so that they could be authorized as service providers. She asked for clarification regarding legal concerns related to the measures to address net slippage. Ms. Nordeen and Mr. Martin said that the Administrative Procedures Act, an action cannot be arbitrary and capricious. The law requires a rational and reasonable basis for an action. Mr. Cunningham expressed concern that the Council has been given this letter late in the process. Related to Sub-Option C, Mr. Grout asked how landings data in the dealer database are reconciled now if they differ from the fishermen's reports. Ms. Nordeen said that the Agency has been working through discrepancies with the dealers. Ms. Tooley expressed concern about implementing the FishOnline cross-check as a requirement because it could create an unwanted situation where vessels/dealers may be found out of compliance for not double-checking each other's reports.

Amendment 5 Alternatives to Allocate Observer Coverage – Catch Monitoring At-Sea (Section 3.2.1 – Pink)

The Committee discussed the alternatives in Amendment 5 to allocate observer coverage on limited access herring vessels first (pink section) because this is one of the most significant decisions to be made in Amendment 5, and the choice of alternative determines many of the decisions to be made in the FMP Adjustments section (blue).

1. MOTION: TERRY STOCKWELL/MARY BETH TOOLEY

Recommend to the Council as a preferred alternative for Section 3.2.1 Alternative 2, 100% coverage on Category A and B herring vessels, coupled with the Herring AP recommendation for Funding Option 2 – Federal and Industry Funds– with a maximum contribution of \$325 per sea day by the fishing industry

Discussion on the Motion: Mr. Stockwell explained his rationale was that the Amendment has been under discussion for many years and this is a good way to incorporate socioeconomic concerns of the industry. Mr. Blount asked what happens if the federal funding doesn't come through with 100% observer coverage. Mr. Stockwell responded by saying that the gravity and importance of the situation make it a shared venture and that the federal government will have to be involved. Mr. Blount followed up by asking how a set industry contribution could be changed in the future. Mr. Martin answered by saying that it could be framework-able if it was made so. Mr. Martin also commented that if the federal government does not have the funds, they cannot approve the measure and implement it as a requirement without the additional funding. He

suggested that the Committee specify what would happen in the event that funds are inadequate to provide 100% coverage. Mr. Stockwell said that he would not want this to tie the fishery to the dock and would address it in a subsequent motion.

MOTION 1 PERFECTED THROUGH A FRIENDLY AMENDMENT:

Recommend to the Council as a preferred alternative for Section 3.2.1 Alternative 2, 100% coverage on Category A and B herring vessels, coupled with the Herring AP recommendation for Funding Option 2 – Federal and Industry Funds– with a maximum contribution of \$325 per sea day by the fishing industry, and Option 2 to authorize the States as service providers

Discussion: Mr. King supported the motion and asked about bycatch differences between different categories of vessels. Ms. Steele said that in terms of occurrence and number of events, the Category C and D vessels are higher, but the A and B boats have larger quantities of bycatch across fewer events, due to the size of the vessels and the nature of the fisheries in which they operate.

1A. MOTION TO AMEND: DAVID PIERCE/HOWARD KING

To include Category C vessels in the above motion

Discussion on the Motion to Amend: Ms. Tooley asked what the greatest concern is with respect to Category C vessels. Dr. Pierce answered that river herring is the primary concern, and that more information on the bycatch of other species is necessary. Mr. Stockwell stated that he was considering including the C vessels in a motion specific to the river herring measures. Mr. Kendall expressed concern about the burden this motion would place on C vessels. Several Committee members expressed support for moving forward with inclusion of the C vessels for the time being, recognizing that the motion could be revisited or modified after subsequent decision-making on the other measures in Amendment 5. Mr. Grout asked what the basis is for the \$325 rate and how the figure was derived. Ms. Tooley answered that the observer rate came from estimates of costs borne by the fleet in the Bering Sea.

MOTION 1A TO AMEND CARRIED 6-4-1.

1B. AMENDED MAIN MOTION:

Recommend to the Council as a preferred alternative for Section 3.2.1 Alternative 2, 100% coverage on Category A and B and C herring vessels, coupled with the Herring AP recommendation for Funding Option 2 – Federal and Industry Funds– with a maximum contribution of \$325 per sea day by the fishing industry, and Option 2 to authorize the States as service providers

Further Discussion on the Motion: Jim Ruhle pointed out that the \$325 derived from the trawlers and stated that \$325 may not be a reasonable rate for all vessels. He reminded the Committee that the herring permit categories do not relate to vessel size, but tonnage of landings and that there are some smaller Category A vessels that operate differently from the large trawlers. Patrick Paquette expressed opposition to putting any number in the motion because of the constraints it may lead to.

AMENDED MOTION 1B CARRIED 7-3-1.

2. MOTION: DAVID PIERCE/TERRY STOCKWELL

Move that a waiver for an at-sea observer be granted for a fishing trip if NEFOP cannot provide an observer within 24 hours of the vessel's notification of the prospective trip. A waiver will not be granted if the trip is to include tows in areas and at times associated with measures to avoid or protect river herring.

Discussion on the Motion: Ms. Tooley stated that no decisions have been made to protect or avoid river herring yet and that the Committee should revisit this.

MOTION 2 CARRIED 9-0-1 (Berg missing).

Ms. Steele suggested that the Committee discuss the elements of an industry-funded program. Ms. Tooley suggested that if the Committee can determine the general process and lay out the groundwork for an industry-funded program, the details would need to be developed over more time. Mr. Libby emphasized the importance of monitoring the TAC and watching for discards and slippage events. Mr. Martin again suggested that the Committee address what happens if 100% coverage cannot be funded and reminded the Committee that with Category C added, there may be a great number of trips that won't be covered. Those details may be essential for NMFS in deciding if they can approve the measures in Amendment 5. Mr. Stockwell stated that the details should be tackled after the rest of the important issues are addressed. Mr. Grout suggested that this issue be revisited by the Committee at the end of the meeting. Mr. Kaelin reiterated AP recommendations about a sunset clause. Mr. Avila expressed concern about the interpretation that if funds are limited, then there is no herring fishery. Ms. Steele stated that the analysis in the document shows that \$325 is not going to cover a sea day for observer coverage. The federal funds are not going to cover 100% of the observer coverage. She emphasized the need to address what is going to happen if funding is not there to meet the requirements of the amendment. She also stated that an industry-funded program will take some time to develop and implement and suggested that the Committee address observer requirements for the interim period when Amendment 5 is implemented and the details of the industry-funded program are being fleshed out.

Other Amendment 5 Measures to Address Catch Monitoring At-Sea (Sections 3.2.2, 3.2.3, and 3.2.4 – Pink)

The Committee addressed the three additional sections of the catch monitoring at-sea portion of Amendment 5 individually through motions.

3. MOTION: MARY BETH TOOLEY/TERRY STOCKWELL

That the Committee recommend as a preferred alternative, Section 3.2.2, Option 2, Sub-Options 2A-2F, p. 30 of the public hearing document

Discussion on the Motion: None.

MOTION 3 CARRIED 9-0-1 (King missing).

4. MOTION: MARY BETH TOOLEY/TERRY STOCKWELL

That the Committee recommend as a preferred alternative, Section 3.2.4, Option 1 – No Action

Discussion on the Motion: None.

MOTION 4 CARRIED 9-1-1.

The Herring Committee spent time discussing the measures proposed in Amendment 5 to address net slippage. Ms. Tooley asked a question concerning Option 3 and a possible requirement that vessels clip the bag following a pumping operation (as is perceived to be the requirement in Closed Area I - CAI). Dr. Pierce expressed support for trip termination measures in the event of multiple slippage events.

5. MOTION: DAVID PIERCE/GLENN LIBBY

That for Section 3.2.3, Measures to Address Net Slippage the Committee recommend Option 4, Sub-option 4B Closed Area I Provisions with Catch Deduction (100,000 pounds) and Trip Termination after ten slippage events

Discussion on the Motion: David Pierce explained that with this motion, the 100,000 pounds would be deducted against sub-ACL in the area where the event occurs. Ms. Tooley stated that more rationale must be included since 100,000 lbs. is not tied to any analysis in the document. She pointed out that it seems to be contrary to apply consequences to an action such as the captain choosing to release fish for safety. Mr. Stockwell expressed concern in the catch deduction, pointing out that Category C vessels do not catch that amount, and many do not even have the capacity to hold that amount of fish. Mr. Kendall opposed the motion, reiterated that the C vessels do not catch that amount and felt that it would be unfair to punish them.

5A. MOTION TO SUBSTITUTE: TERRY STOCKWELL/PETE KENDALL

That for Section 3.2.3, Measures to Address Net Slippage the Committee recommend Option 2 (Released Catch Affidavit) AND Option 4, Sub-option 4C Closed Area I Provisions Trip Termination after ten slippage events (with an added exception for #3 spiny dogfish clogging the pump)

Discussion on the Motion: Mr. Stockwell stated that the motion removes the catch deduction component and sees value in adding the release catch affidavit. Dr. Pierce responded that this option misses something important, asking Mr. Stockwell to modify his motion to reference option 1 and 2 but not spiny dogfish. Ms. Steele clarified that option 4A, when developed, was chosen to only apply to option 1 and 2. The motion was modified to include (with an added exception for #3 – spiny dogfish clogging the pump). Mr. Stockwell also suggested that the language in the motion specify gear types.

MOTION TO SUBSTITUTE 5A PERFECTED (WITHOUT OBJECTION):

That for Section 3.2.3, Measures to Address Net Slippage the Committee recommend Option 2 (Released Catch Affidavit) AND Option 4, Sub-Option 4C Closed Area I Provisions Trip Termination after ten slippage events by each gear type – midwater trawl single, midwater trawl paired, purse seine, and bottom trawl (with an added exception for slipping under #3 spiny dogfish clogging the pump)

Discussion on the Motion: Mr. Martin expressed some initial concern that the breakdown by gear type had not been previously considered in the amendment and asked for further clarification. Mr. Stockwell explained that there are multiple gear types fishing in the same areas during different time periods and felt that the actions of a particular component of the fleet should be held accountable by themselves and not impact the rest of the fishery.

MOTION TO SUBSTITUTE 5A FURTHER PERFECTED (WITHOUT OBJECTION):

That for Section 3.2.3, Measures to Address Net Slippage the Committee recommend Option 4, Sub-Option 4C Closed Area I Provisions Trip Termination after ten slippage events by each gear type – midwater trawl single, midwater trawl paired, purse seine, and bottom trawl (with an added exception for slipping under #3 spiny dogfish clogging the pump).

Discussion on the Motion: Patrick Paquette pointed out that the Committee decided to go with permit categories rather than gear type; he felt that midwater trawl single and paired are not different gear types. Tom Rudolph expressed opposition to the motion because he supports Option 4D as proposed in the document He emphasized that accountability measures are necessary and that the exceptions in the Closed Area I rules had been tested and appear to be sufficient. He also expressed concern about splitting by gear type and referenced the analysis in the Amendment 5 document to support a ten-event cap by management area for trip termination.

MOTION TO SUBSTITUTE 5A FURTHER PERFECTED (WITHOUT OBJECTION)

That for Section 3.2.3, Measures to Address Net Slippage the Committee recommend Option 4, Sub-Option 4C Closed Area I Provisions Trip Termination after ten slippage events by each gear type – midwater trawl (single and paired), purse seine, and bottom trawl (with an added exception for slippage under #3 spiny dogfish clogging the pump for all gear types).

Language will be modified to reflect requirements for all gear types and for vessels that do not pump fish.

Ms. Tooley felt that there is no link to the effort in the fishery and the number of slippage events proposed in the options. Ms. Steele summarized the Closed Area I provisions and the evolution of the options in Amendment 5; she attempted to explain why the dogfish exemption was originally included. Ms. Tooley stated that the motion lacked rationale. Mr. Martin said that he did not know if the breakdown by gear type represented a significant change. He also expressed concern over whether or not 10 events made sense over the gear subcategories and said that these issues will require further discussion by NOAA General Counsel and the Regional Office.

MOTION TO SUBSTITUTE 5A (PERFECTED) CARRIED 7-1-2.

5B. SUBSTITUTED MAIN MOTION:

That for Section 3.2.3, Measures to Address Net Slippage the Committee recommend Option 4, Sub-Option 4C Closed Area I Provisions Trip Termination after ten slippage events by each gear type – midwater trawl (single and paired), purse seine, and bottom trawl (with an added exception for slippage under #3 spiny dogfish clogging the pump for all gear types).

Language will be modified to reflect requirements for all gear types and for vessels that do not pump fish.

MAIN MOTION 5B CARRIED 7-1-2.

Proposed Adjustments to the Fishery Management Program (Section 3.1 – Blue)

6. MOTION: DAVID PIERCE/TERRY STOCKWELL

Recommend that the Council adopt Section 3.3.1B – Proposed Regulatory Definitions

Discussion on the Motion: None.

MOTION 6 CARRIED 10/0/1.

7. MOTION: TERRY STOCKWELL/MARY BETH TOOLEY

Recommend as a preferred alternative Section 3.1.2B – Proposed Administrative/General Provisions – Including 2A, 2B, and 2C

Discussion on the motion: None.

MOTION 7 CARRIED 10/0/1.

8. MOTION: MARY BETH TOOLEY/TERRY STOCKWELL

Recommend as a preferred alternative Section 3.1.3.2 Option 3 – Dual Option for Carriers (VMS or LOA)

Discussion on the motion: None.

MOTION 8 CARRIED 10/0/1.

9. MOTION: MARY BETH TOOLEY/ERLING BERG

Recommend as a preferred alternative Section 3.1.3.3 Option 3 – Prohibit Transfers At Sea to Non-Permitted Vessels

Discussion on the motion: Ms. Tooley commented that the point of this amendment is to better track fish; any vessel can get an open access permit, and this motion helps monitor all activity related to herring. Mr. Kaelin explained that the Herring AP supported No Action 5-1-3. He also pointed out that the Enforcement Committee said that Option 3 was not enforceable. Ms. Tooley expressed concern about the enforceability of possession limits in the fishery when transfers at sea are allowed. Mr. Kendall expressed concern about the increased reporting burden for vessels that don't currently have a federal permit and felt that it outweighed the benefit. Ms. Steele clarified that this option means that vessels with a herring permit to receive fish at-sea would be subject to all of the reporting requirements of the federal permit. It may be a substantial increase in the reporting burden for vessels that would obtain a permit unless the vessels are specifically exempted from some of the requirements.

9A. MOTION TO SUBSTITUTE: DAVID PIERCE/PETER KENDALL

Recommend as a preferred alternative Section 3.1.3.3 Option 1 –No Action

Discussion on the motion: Ms. Tooley felt that the Enforcement Committee had drawn rather odd conclusions about the measures to address transfers at sea. She suggested that bait can be purchased at the dock and felt that everyone should be held to the same standard for reporting fishing activity. Mr. Stockwell expressed opposition to the motion to substitute and felt that taking no action could leave a reporting loophole unaddressed. Mr. Libby opposed the motion as well based on the number of lobster vessels and the potential for bushels of bait purchased at-sea to add up over the course of the year.

MOTION TO SUBSTITUTE 9A FAILED 2/8/0.

MAIN MOTION 9 CARRIED 9/1/0.

10. MOTION: MARY BETH TOOLEY/ERLING BERG

Recommend as a preferred alternative Section 3.1.4 Option 2 – Modify and Extend Pre-Trip Notification Requirements AND in Section 3.1.4, Option 3 – Extend Pre-Landing Notification Requirement

Discussion on the motion: Ms. Nordeen confirmed for Mr. Kendall that the proposed pre-trip gear declaration would require a VMS software update.

MOTION 10 CARRIED UNANIMOUSLY.

11. MOTION: TERRY STOCKWELL/MARY BETH TOOLEY

Recommend as a preferred alternative Section 3.1.5 Option 2 with Sub-Option 2B – require dealers to accurately weigh all fish and require documentation for individual landings submissions on how species composition of mixed catch is estimated.

Discussion on the motion: Mr. Libby asked how would the fish be weighed under this measure. Mr. Grout answered that the dealers would be required to document how they would weigh the fish and determine species composition for mixed catch. Dr. Pierce questioned why sub-option 2C was not preferred based on the NERO advice. Mr. Stockwell stated that weighing fish has been discussed for a very long time, and the requirement is needed to enhance the data; he also reminded the Committee that Option 2 was the recommendation from the Herring AP. Ms. Tooley reiterated her concerns about Sub-Option 2C (see previous discussion).

MOTION 11 CARRIED UNANIMOUSLY.

12. MOTION: MARY BETH TOOLEY/RODNEY AVILA

That Atlantic herring vessels be required to file a single VTR per trip, by statistical area, that lists any at-sea transfers on that trip

Discussion on the motion: Ms. Tooley explained her reasoning for the motion by saying that there was confusion about the current reporting requirements in the fishery. She expressed the need to simplify the system and reduce the number of reports per trip. Ms. Nordeen clarified that vessels currently can file a VTR by trip and statistical area that lists the transfers. Ms. Tooley was under the impression that they had to file a new VTR every time they offloaded. Gene Martin said that this can be streamlined when implementing Amendment 5 requirements.

MARY BETH TOOLEY WITHDREW MOTION 12.

13. MOTION: TERRY STOCKWELL/MARY BETH TOOLEY

To require that all herring vessels must offload all fish before leaving the dock prior to the start of the next fishing trip

Discussion on the motion: Mr. Stockwell felt that this motion could improve the tracking of incoming landings. He clarified that this requirement would refer to offloading all fish before leaving the dock prior to the start of the next fishing trip, in the event that vessels fill their market and take fish back out to discard. Mr. Ruhle expressed opposition to the motion because he was concerned that it could restrict smaller operations. He suggested that observers should be required to ask whether there are fish on board instead, to reduce data discrepancies and better track catch. Mr. Martin said that this should be investigated further.

**13A. MOTION TO TABLE PREVIOUS MOTION UNTIL AFTER THE BREAK:
DAVID PIERCE/PETER KENDALL**

MOTION TO TABLE MOTION 13 CARRIED UNANIMOUSLY.

The Committee discussed the options under consideration to increase the incidental catch allowance in Areas 2/3 for limited access mackerel vessels with open access herring permits. Ms. Tooley expressed the Herring PDT's initial concern for the large number of vessels that qualify for limited access mackerel permits across the different tiers. Ms. Steele pointed the Committee toward the May 22 PDT/FMAT report and pointed out that across all three tiers, the expected number of vessels to qualify for limited access mackerel permits has decreased significantly since the initial estimates were provided in the Amendment 5 DEIS (now closer to 65). The public hearing document shows the number of vessels to be estimated around 400.

14. MOTION: MARY BETH TOOLEY/HOWARD KING

Recommend as a preferred alternative Section 3.1.6 Option 2 for Limited Access Mackerel permit holders (all three tiers) – 20,000 pound possession limit in Areas 2/3 for vessels that also possess a limited access mackerel permit, and that the possession limit could be adjusted in the future through the specifications process

Discussion on the motion: Mr. Didden reminded the Committee that there are still about six months left in the mackerel limited access permit application process. It was suggested that the possession limit for this permit be added to the list of measures that could be reviewed/adjusted during the specifications process, and this was added to the motion. Mr. Martin asked for the basis of adjusting the possession limit, and Ms. Tooley stated that the possession limit should be based on incidental catch in the mackerel fishery without increasing directed fishing for herring. Gene – what would be the basis for adjusting the PL?

MOTION 14 CARRIED UNANIMOUSLY.

15. MOTION TO RECONSIDER THE TABLED MOTION 13: RODNEY AVILA/MARK GIBSON

MOTION TO RECONSIDER CARRIED UNANIMOUSLY.

**16. TABLED MOTION 13 RECONSIDERED:
TERRY STOCKWELL/MARY BETH TOOLEY**

To require that all herring vessels must offload all fish before leaving the dock prior to the start of the next fishing trip.

RECONSIDERED MOTION 16 PERFECTED:

To require that all herring vessels must offload all fish before leaving the dock prior to the start of the next fishing trip unless there is confirmation by an observer or enforcement of weight on board that will be offloaded at the time of the next landing event.

Discussion on the motion: Mr. Ruhle suggested that this may need to be revisited in the event that there is not 100% observer coverage in the fishery.

MOTION 16 CARRIED 6/1/2.

Management Measures to Address River Herring Bycatch – Section 3.3 (Green)

Dr. Pierce addressed the importance of taking significant steps to provide protection for river herring. He expressed optimism that vessels are avoiding areas of high concentrations of river herring bycatch suggested promoting cooperative efforts in this research, i.e., the SMAST/SFC/DMF river herring bycatch avoidance program. He expressed concern about high bycatch levels on the backside of the Cape, as well as areas off Cape Ann. He explained that his proposal blends the protection and avoidance measures with special attention to the inshore Gulf of Maine and the backside of Cape Cod. He also proposes to include a fallback position if the SMAST project fails to work.

17. MOTION: DAVID PIERCE/MARK GIBSON

That for Measures to Address River Herring Bycatch the Committee recommend:

(1) Alternative 3: River Herring Protection Section 3.3.3.2 Option 1 (Closed Areas) for the three designated ¼ degree squares north of 41°30' N Latitude to be closed during the bimonthly periods described on page 54 of the public hearing document for Amendment 5, and

(2) Alternative 2: River Herring Monitoring/Avoidance Option 4 (Two-Phase Bycatch Avoidance Approach Based on SFC/SMAST/DMF Project) applied to bimonthly monitoring/avoidance areas described on page 41 of the public hearing document for Amendment 5 (except for three designated ¼ degree squares north of 41°30' N Latitude where river herring protection measures apply).

If the Bycatch Avoidance Approach is discontinued for any reason (e.g., funding) then the following would be implemented in its place:

- (a) *Alternative 3: Protection Areas Option 1 (Closed Area) only for the ¼ degree square off the eastern shore of Cape Cod from November through February, and*
- (b) *Alternative 3, Option 2 (Triggered-Based Closed Area) Sub-option 3C (mean) for catch triggers in the Gulf of Maine (127,100 pounds) and Southern New England (478,500 pounds) to trigger closure of all other designated bi-monthly river herring protection areas. Reporting Option 1: Report Total Catch by Trigger Area is recommended.*

Discussion on the motion: Dr. Pierce said that he is attempting to be comprehensive and to offer a fallback for those who are concerned with the effectiveness of the SMAST program. Ms. Tooley opposed the motion due to the comments provided in the NMFS letter suggesting that this may not be the most effective way to protect river herring. Dr. Pierce responded that the Regional Office supports a catch cap instead yet does not provide information on how it would be administered and monitored effectively. He pointed out that his motion provides an alternative to a regional bycatch cap. Ms. Tooley suggested that the choice of areas in the Gulf of Maine would exclude some vessels from participating in the fishery altogether. She felt that the impacts of the measures proposed in the motion are not practicable and that administratively

it is very difficult. Mr. King said that avoidance is key, but the SMAST avoidance project is not something that is going to immediately happen and advised that the industry should be kept under a cap to make the program even more effective. Mr. Stockwell clarified and said that the SMAST project is operational and he has been leaning towards the implementation of a cap combined with the bycatch avoidance program. He expressed concern about the industry's ability to remain viable under the measures proposed in the motion. Ms. Steele clarified that according to the motion, the three areas north of 41°30' in the map (p. 54) would be closed, and then the monitoring and avoidance SMAST program would be applied to all other areas shown on p. 41. Mr. Kendall opposed the motion, suggesting that implementing a catch cap through a framework adjustment would be a better option.

MOTION 17 FAILED 3-7-0.

18. MOTION: DAVID PIERCE/FRANK BLOUNT

To recommend (1) Alternative 3, River Herring Protection, Option 1 – Closed Areas, for the ¼ square on the eastern side of Cape Cod from November-February, and (2) Alternative 2, River Herring Monitoring/Avoidance Option 4 – Two-Phase Bycatch Avoidance Approach based on SMAST, applied to all other bi-monthly Monitoring/Avoidance areas described on page 41 of the public hearing document for Amendment 5.

Discussion on the motion: Ms. Tooley expressed concern that the motion was focusing too much on the area east of Cape Cod and said there was no rationale for choosing that specific block for closure.

MOTION 18 FAILED 3-6-1.

19. MOTION: MARY BETH TOOLEY/GLENN LIBBY

Recommend Section 3.3.5 on p. 59 of the public hearing document for a river herring catch cap, which the Council would consider through a framework adjustment.

Discussion on the motion: Ms. Steele read the language from Amendment 1 to the Herring FMP that authorizes the implementation of catch caps and bycatch caps through a framework adjustment or the fishery specifications process. She suggested that the Council may already have the authority to take this action. Mr. Martin said that the current regulations allow frameworks for bycatch caps, but it would be more appropriate to specify the action for river herring in this amendment rather than trying to use something that was developed during a time when river herring bycatch wasn't a specific concern. Mr. King suggested that the Council get a more conclusive opinion on this matter at the June meeting when it selects final measures. Mr. Martin agreed to follow-up.

MOTION 19 CARRIED 6-0-3.

20. MOTION: TERRY STOCKWELL/PETER KENDALL

To recommend as a preferred alternative to address river herring bycatch Alternative 2, Option 4 – Two-Phase Bycatch Avoidance Approach based on SMAST/SFC Project.

Discussion on the motion: Mr. Stockwell mentioned that this was supported by the Herring AP and the industry.

MOTION 20 CARRIED UNANIMOUSLY.

Ms. Tooley commented that as far as establishing a river herring bycatch cap, there are many issues that need to be fleshed out. Mr. Martin asked if it is clear what happens when the cap is reached. Ms. Steele said that level of analysis is not provided in Amendment 5 because specific caps were not proposed, but the Herring PDT discussion paper and methodology to develop the numbers that became triggers are all part of the EIS; therefore, there is a full technical analysis of the development of initial catch caps, including projections of when those caps would be reached during the fishing year.

Management Measures to Address Midwater Trawl Access to Groundfish Closed Areas (Section 3.4 – Purple)

21. MOTION: TERRY STOCKWELL/HOWARD KING

Recommend Alternative 4, Option 4A for midwater trawl access to groundfish closed areas – Apply Closed Area I Provisions with 100% Observer Coverage, to all current year-round closed areas.

Discussion on the motion: Mr. Blount asked if this provision would carry over if the groundfish areas change in the future, and Mr. Stockwell stated that the provisions could be reconsidered as part of the action that changes the closed areas.

MOTION 21 CARRIED 9/1/0.

Additional Discussion Regarding Industry-Funded Monitoring Programs

The Herring Committee revisited the discussion of industry funding for observer coverage, given the recommendation of 100% coverage for A/B/C vessels. Ms. Steele suggested that the Committee address goals and objectives, circumstances when waivers should/should not be issues, and the intent with respect to the interim/transition period when Amendment 5 is implemented and the industry-funded program comes online.

22. MOTION: MARY BETH TOOLEY/TERRY STOCKWELL

Recommend that the industry-funded at-sea observer program be developed through a work group that includes the Agency, Council, and the industry. The work group shall meet to develop the initial recommendations to the Council by January 2013. When Amendment 5 is implemented, interim measures will include herring industry

contributions of \$325 per sea day to supplement federal funds. This will apply to all permit categories approved for observer coverage allocations in Amendment 5.

Discussion on the motion: Ms. Tooley commented that the observer program and the Herring PDT/Mackerel FMAT would like to see a more comprehensive industry-funded program developed. She also commented that the motion would initially apply to the herring fishery only with coordination with other fisheries in the future. Mr. Martin asked if the working group would develop measures to be included in Amendment 5 or through future Council actions. He suggested that because of legal constraints, an ad-hoc committee may be a more appropriate approach than a working group. Ms. Tooley responded that her intent is that a trailing action would be initiated by the Council to implement the full industry-funded program. Mr. Martin asked what would happen if the federal government can't make up the difference in the 100% observer coverage. Ms. Tooley said the intent is that the coverage would be whatever it is based on the funds that are provided for by the motion. Ms. Steele suggested that shifting to service providers will take some time, as NEFOP currently does the sampling, and that an interim or fallback approach still may be necessary. She reminded the Committee that Funding Option 1 specifies that while coverage may be desired or targeted at a specific rate, the realized rate under federal funds only would be whatever could be provided until such time that additional funds are available. Mr. Stockwell emphasized a need for waivers and suggested a friendly amendment for waivers to be issued when observers cannot be deployed during the development of the program. Ms. Tooley suggested to change the language in the motion from "working group" to "ad hoc Committee."

MOTION PERFECTED THROUGH A FRIENDLY AMENDMENT:

Recommend that the industry-funded at-sea observer program be developed through an ad-hoc Committee that includes the Agency, Council, and the industry. The ad-hoc Committee shall meet to develop the initial recommendations to the Council by January 2013. When Amendment 5 is implemented, interim measures will include herring industry contributions of \$325 per sea day to supplement federal funds. Waivers will be issued when observers cannot be deployed during the development of the program. This will apply to all permit categories approved for observer coverage allocations in Amendment 5.

22A. MOTION TO AMEND: PETER KENDALL/FRANK BLOUNT

To add:

Also, waivers would not be issued for midwater trawl vessels fishing in groundfish year-round closed areas (if 100% observer coverage is required in the closed areas)

Discussion on the motion: Ms. Tooley asked what the rationale for the motion was, since the information in the document as well as the comments provided by NMFS do not suggest that groundfish bycatch by herring midwater trawl vessels is impeding groundfish recovery. Mr. Libby stated that the current groundfish conservation problems are significant, and everything needs to be done to protect groundfish.] Ms. Tooley stated that they have recently seen high levels of observer coverage in the groundfish closed areas.

MOTION TO AMEND 22A CARRIED 5-3-1.

22B. AMENDED MAIN MOTION:

Recommend that the industry-funded at-sea observer program be developed through an ad-hoc Committee that includes the Agency, Council, and the industry. The ad-hoc Committee shall meet to develop the initial recommendations to the Council by January 2013. When Amendment 5 is implemented, interim measures will include herring industry contributions of \$325 per sea day to supplement federal funds. Waivers will be issued when observers cannot be deployed during the development of the program. Also, waivers would not be issued for midwater trawl vessels fishing in groundfish year-round closed areas (if 100% observer coverage is required in the closed areas). This will apply to all permit categories approved for observer coverage allocations in Amendment 5.

Discussion on the motion: Ms. Nordeen asked if the intent is for the industry-funded program to be implemented in a trailing action. Ms. Steele asked is there a possibility for delayed implantation of only this provision of Amendment 5. Mr. Martin responded that this is not an option. Ms. Steele again asked about using Option 1 (no action) as the fallback until the details of option 2 are developed and implemented. Mr. Rudolph expressed opposition to the motion. He stated his support for 100% coverage with industry funding and his surprise that this measure cannot be implemented immediately with the rest of Amendment 5. He said that this was the first mention of a trailing action to address industry funding and did not support this approach.

AMENDED MAIN MOTION 22B FAILED 3-6-0.

The Herring Committee meeting adjourned at approximately 6:30 p.m.