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**New England Fishery Management Council**

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## **DRAFT MEETING SUMMARY**

### **Joint NEFMC Herring Committee/ASMFC Herring Section**

Sheraton Harborside Hotel, Portsmouth NH

November 10, 2009

The Herring Committee met jointly with the ASMFC Sea Herring Section on November 10, 2009 in Portsmouth, New Hampshire to: review the draft 2010-2012 Atlantic herring fishery specifications; discuss options for total allowable catches/annual catch limits, and review all available related analysis and recommendations from the Herring Plan Development Team (PDT); review/discuss NEFMC Herring AP recommendations related to 2010-2012 fishery specifications; develop final recommendations for domestic annual harvesting (DAH), domestic annual processing (DAP), joint venture processing (JVP), border transfer (BT), total allowable level of foreign fishing (TALFF), US at-sea processing (USAP), research set-asides (RSAs) and fixed gear set-asides, optimum yield (OY), and other related specifications; discuss/address management uncertainty and develop related recommendations; develop final recommendations for 2010-2012 quotas/annual catch limits (ACLs) for herring management areas, for Council consideration November 17-19, 2009; address any other issues related to 2010-2012 herring fishery specifications

#### ***Meeting Attendance:***

*Herring Committee:* Frank Blount, Herring Committee Chairman, Sally McGee, Doug Grout, Mike Leary, David Pierce, Jim Odlin, Mary Beth Tooley, Mark Gibson, Terry Stockwell, Glenn Libby; Erling Berg and Howard King (MAFMC); (Avila absent); Lori Steele and Talia Bigelow, NEFMC staff  
*Herring Section:* Terry Stockwell, Dennis Damon, Doug Grout, Ritchie White, Dennis Abbott (Chair), David Pierce, Bill Adler, Mark Gibson, Peter Himchak, Erling Berg, Jeff Marston, Matt Cieri (TC Chair), Chris Vonderweidt (ASMFC Staff), Bob Beal (ASMFC Staff) *Others:* Patricia Kurkul (NOAA/NMFS); Carrie Nordeen, Hannah Goodale and Gene Martin (NOAA NERO); Matt Cieri, ME DMR; Steve Correia, MADMF; Dave Ellenton (Herring AP Chair), Chris Weiner, Steve Weiner, Jeff Kaelin, Vito Calomo, Shaun Gehan, Ben Martens, Al West, Don Swanson, Sean Mahoney, Gary Hatch, Gary Libby, Ben Martens, Buddy Vanderhoop, Stephen Robbins, Stonington Lobster Co-op/Town of Stonington, ME and several other interested parties.

#### ***Options and Analysis of Impacts for the 2010-2012 Herring Fishery Specifications***

Ms. Steele presented an overview of the options and analysis of impacts with regards to the 2010-2012 Atlantic herring fishery specifications. This included an overview of the total

allowable catch (TAC) or sub-annual catch limits (ACLs) including projections for overfishing level (OFL) and acceptable biological catch (ABC). The presentation also included an outline of the risk assessment; both the methods used and an explanation of the results were presented. A detailed overview of the economic impacts which highlighted the potential implications of the planned reductions and increases in costs for the fisheries was also included. Ms. Steele noted the difficulties that the lobster industries may face as a result of the reduction. She summarized the issues that the Herring Committee/Section needed to address at the meeting, summarized the timeline and noted that the Committee would make its recommendations to the Council at the November 17-19, 2009 Council meeting in Newport RI. Several questions were asked by Committee and audience members following the presentation:

- Mr. Grout asked for clarification on Table 14 in the specification package, inquiring how the OFL is factored into the analysis. Ms. Steele replied by referring to page 28 in the specifications package, explaining that as total biomass goes down, OFL goes down, leaving less fish to be distributed amongst the TACs while the Canadian fishery maintains its removals. She further explained that as the total numbers to distribute go down less fish can be removed from those areas in which inshore fish are taken.
- Mr. Grout further inquired about the Options in Area 1A, where there are seasonal constraints. He asked that if there is a part of Canadian catch that isn't taken, can that catch be taken in November. Ms. Steele clarified that all Canadian catch is assumed to be inshore fish, so if fish are reallocated from Canada then they would be inshore fish. Dr. Cieri further explained that the reallocated Canadian catch could be moved into any month that is desired.
- Ms. Tooley inquired if any impact analysis had been conducted on the cumulative effects of moving from 60,000 mt removals to 45,000 mt, as was required in the previous specifications, and remarked that if no analysis had been done that it ought to be.
- Mr. Odlin asked if real time data could be obtained from Canadians. Ms. Steele replied that weekly quota reports are obtained for the Canadian catch.
- Mr. Stockwell begun another discussion on the Canadian buffer, asking that if the PDT were to recommend that there was to be no rollover of the Canadian catch until later in the year, what percentage of fish could be expected to be rolled over. Ms. Steele clarified that guidance would be needed from the service. She included that it would not be good to use 100% because if the ACL is exceeded the next year will be penalized, and further added that the Committee will need to think carefully and make a recommendation to that effect. Mr. Stockwell agreed that a balance was needed between helping the industry and being precautionous. Dr. Cieri suggested that a precautionary number, such as 75%, may be advisable, together with the input of current activity that occurs after Nov 1<sup>st</sup> from a report that occurs once every two weeks.
- Mr. Himchak commented that he perceived severe social consequences in the making.
- Mr. Gibson remarked that in the face of falling biomass it is questionable why the assumption would be made that catch would remain high and constant. With the fishery using fixed gear, and the fish needing to come to the net, the catch could be assumed to be proportional to how many fish are available. Dr. Cieri clarified that despite the fixed gear the analysis is not just based on year class strength but on projected market shares and environmental factors as well. In the analysis relation that is trying to be made is between effort and catch, and with fixed gear it is difficult to relate year class strength and fishing mortality. Dr. Cieri also clarified that the Canadian fishing was not modeled as a separate fleet.

- Dr. Pierce questioned if the specifications package included a discussion or analysis of the proposed numbers on the management of other species, specifically menhaden. Ms. Steele responded that there was no direct discussion of the impacts, but that menhaden are discussed as an alternative for bait. She further explained that it is difficult to predict what may happen as a result of alternatives proposed, and that the discussion focused more on mackerel and lobster. Dr. Pierce then stated that there had been questions to that effect at the panel meeting for menhaden, and went on to question how the interaction of different fisheries should be considered in the Council. Dr. Pierce then asked for clarification on if Option 6, Alternative 2 is low risk, to which Ms. Steele replied that although the alternative is close to the limit of 40%, it is still considered low, as shown in Appendix 3 of the specification package.
- Dr. Pierce then asked about reanalyzing the economic impacts based on quantitative results for loss of harvest provided in a letter from Stonington, ME, which stated a 10 to 15 million dollar loss in the town based on analysis from the University of Maine. He further inquired to what extent the PDT has incorporated that information, noting that he expected that the PDT estimates of impacts were underestimated. Ms. Steele answered that although she was glad the letter had been submitted, the analysis could not be redone based on information submitted via a letter for the meeting. Dr. Pierce replied that he did not mean to minimize the effort made by the PDT but emphasized the need to assimilate new data.
- Dr. Pierce also inquired if the specification package or other documents defined what constitutes overfishing on the inshore components of the fishery, to which Ms. Steele replied that there were no specific thresholds to adhere to, but that the objective is to minimize risk of overfishing. She further explained that analysis such as this is typically qualitative not quantitative, and that although the Committee has defined a range, it is really is up to the Committee and Council to define risk as well as the level of comfort with the risk and justify them.
- Mr. Odlin questioned if it was possible, with the fishing season ending by October and November, and that being when the information is received, for a projection of Canadian catch at that time so that a couple thousand tons of fish could be release in October. He pointed out that this would overcome the difficulty of waiting until the end of the year for the information to be released. Mr. Cieri noted that procedurally that idea would be difficult and that it would be problematic to have the Canadians take more than projected. Mr. Odlin then stated that the Canadians were unlikely to take 10,000 metric tons in two weeks, noting the lack of market, and suggested a phasing of release of the extra fish.
- Mr. Adler inquired how fishing mortality is underestimated, to which Mr. Cieri clarified that it is based on the retrospective pattern and is in the stock assessment.
- As the questioning was opened to the audience, Mr. Gehan asked clarifying questions about the risk assessment included in the specifications package. Mr. Gehan asked about the precision of the OF levels that had been calculated, to which Dr. Cieri answered that the risk assessment is not adjusted for retrospective numbers, and that it is based on fishing mortality (F) at maximum sustainable yield (MSY). Mr. Gehan then further asked what number the inshore stock risk is bound to, and Dr. Cieri clarified that the risk assessment considered a 10-30% range, and the larger the inshore component that is assumed, the closer to F at MSY should be. Mr. Correia then stated that the mixing ratios of the offshore and inshore fish make it very difficult to separate the catch out, therefore the risk assessment works with probabilities and a range.

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- Mr. Vanderhoop remarked that letting fish propagate is beneficial, and to that end did not feel that allowing the quota left over from the Canadian fishery to be rolled over would be a good idea.
- Mr. Moore asked why the Science and Statistical Committee (SSC) was recommending a new benchmark assessment, to which Ms. Steele replied that the retrospective pattern and other problems with the model and assessment caused a large scientific uncertainty buffer, but added that they agreed to accept the current assessment.
- Mr. Kaelin requested to know if any historical information was available on the exploitation rate at age, and Dr. Cieri replied that yes, it was in the assessment. Mr. Kaelin then wanted to know if it was common for the exploitation rate to be higher than  $F$  at MSY for some subcomponents of the stock by age. Dr. Cieri answered that it was indeed common but that the risk assessment does not normally use one age class. He further explained that  $F$  can go above MSY for some age groups, but that there is always a risk of wiping out an age class. Mr. Kaelin replied that he does not perceive the crisis suggested by the risk assessment for the inshore component.
- Mr. Correia then noted that in the herring stock the assumption is that all ages are fully recruited, and that although individual components may have a higher  $F$  there is very little lead time, so the projections assume average recruitment. Average recruitment doesn't happen that often, however, so for a stock like this a less than average assumption for recruitment could lead to a large problem. He further explained that the risk analysis therefore tried to prevent this from happening, so that if there is a really bad recruitment year, 4-5 years later the recruitment class is still alive.
- Dr. Pierce requested clarification from Dr. Cieri, stating that although the risk analysis does not include the retrospective pattern, any Option that uses the required 90,000mt has had the retrospective pattern factored in. Ms. Steele pointed out that the SSC addressed the problem of retrospective by adding a buffer, not an adjustment, but that if the PDT had adjusted biomass for the retrospective pattern then there would be double dipping for uncertainty.
- Ms. Tooley inquired if the risk assessment assigns catch to individual stock components. Mr. Correia replied that the risk assessment produces a probability distribution of what the catch may be, and not absolute numbers. He also explained that the inshore biomass is treated similarly, not having a point estimate but a range of values in the assessment. Ms. Tooley then remarked that the reference to the inshore component collapsing is questionable, given that the industry has fished at higher levels than are being proposed.

### ***Review and Discussion of Advisory Panel Recommendations***

Following the comments and questions for Ms. Steele's presentation Mr. Blout gave a brief report from the November 9<sup>th</sup> 2009 meeting of the Advisory Panel, which he chaired. The Advisory Panel had provided several recommendations regarding the management alternatives that were being considered in the specifications package, which Mr. Blout read to the Committee, Section and audience. Mr. Calomo asked for clarification on the voting record after Mr. Blout's presentation.

### ***Opportunity for Public Comment***

Prior to the lunch break, Mr. Blout provided an opportunity for public comment regarding the 2010-2012 herring fishery specifications:

- Mr. Calomo started his comments by stating that he felt the Advisor Panel meeting went well and that Ms. Steele had done a good job with getting the specifications package together. He went on to note that the herring FMP started with a hard TAC to protect areas like the Gulf of Maine. He also mentioned that he has not seen the effects, positive or negative, of a spawning closure that was previously enacted. He questioned the need for a buffer that, in his opinion, is large enough to destroy more than one fishery, and pointed out that the precautionary approach goes beyond common sense, and that while airing on the side of caution is something he promotes, he cannot if it destroys things.
- Mr. Gehan stated that he was at the meeting on behalf of NORPEL, Cape Seafoods, Lunds, Western Sea Fishing Co., the ME Lobstermen's Association, the MA Lobstermen's Association, the Stonington Cooperative, the Bumblebee corporation, as well as others. Mr. Gehan noted that there are serious questions being raised about an awfully critical issue that will influence many fisheries. He then stated that his Legal White Paper regarding the matter had been distributed, and that he would summarize the important points.
- Mr. Gehan's first point was that the specifications package is being done in conformance with Amendment 4, which does not exist in the FMP yet. Therefore the specification package is being tethered to terms and regulations that will not exist until 2011, when the Amendment 4 is completed, which is very unsound footing from an administrative law perspective. He then pointed out that it must be guided by currently existing law, the FMP, not the impending Amendment. To that end, he pointed out that the specifications process cannot be used to implement an ACL or any other terms used in the reauthorization Act, as that would be preemptive.
- Mr. Gehan then expressed his concern over whether the SSC recommendation for the ABC is mandatory. He pointed out that herring are not considered overfished nor is overfishing occurring, and so there does not have to be an established limit until 2011. He further noted that the Council will have to decide how to deal with recommendations by the scientific body and how to use the best available science. He then said that the Council needs to make its own statement of risk and state why it is taking that level of risk.
- Mr. Gehan then expressed his belief that it is important to explore alternatives such as the Advisory Panel suggested, or another Option with a rollover of the specifications from 2009. He suggested that the whole process has been driven by an assessment that is flawed, and that even the ASMFC has called for a new assessment. He stated that the agency is the only one that thinks waiting until 2012 is acceptable, and noted that the specifications from a new assessment would not come into place until 2015, which would cause an incredible amount of angst and economic pain, which he considers unacceptable.
- Ms. McCarron, representing the ME Lobstermen's Association, noted that the socioeconomic analysis was well done, but that it does not hold up to what the lobstermen will face. She described that fishermen are paying 30 cents a pound for herring, and that the industry has already taken a 1/3<sup>rd</sup> reduction in supply since 2006. She also described that the industry contributes billions of dollars to the Maine economy, with multipliers. She explained that if lobstermen have to use substitutes for bait the industry will be more cost prohibitive and difficult. She noted that she had heard that lobstermen can expect bait prices to double in the near future, a cost increase that lobstermen cannot survive. She noted that the fishery is not overfished and fishing is not occurring, so the Committee and Section should look for an administrative opening so that the state of ME has time to recover; at least a year.

- Ms. McCarron went on to describe that a change in the timing of the fishery will not coincide with the lobster fishery which occurs from September to November or December, making it even more difficult for lobstermen. She noted that there has been no peer review of the inshore risk assessment, and that she is concerned with the data sets that were used. She concluded by stating that the herring resource is thought to be robust by fishermen, and that she believes that it was not the intent of congress to cripple the lobster fishery with its rules.
- Mr. Paquette asked that the Committee and Section interpret the law and science across all fisheries equally, so that the consequences are distributed evenly. He then noted that there is a strong need for more data, not another assessment, and that the solution exists within Amendment 5 which he believes will provide better catch monitoring and better data.
- Mr. Flemming commented on the previously stated legal analysis, summarizing that an ACL is not needed until 2012. He then pointed out that the Council made the decision to put ACLs in place in 2010 and that National Standard 2 states the requirement to follow best available science. He also stated his opinion that there was unlikely to be better science than that which the SSC provided. He finished by explaining that under Alternative 1 overfishing would occur, and so his hope is that Alternative 2 can be worked with to find some additional fish for bait, and that the risk assessment is the biggest limiting factor in those regards.

#### ***Development of Final Recommendations on TAC/sub-ACL Options***

Ms. Tooley began by asking the service employees for advice on some legal issues. Her first question was in reference to the status of the document relative to Amendment 4 and the specifications package. She asked if the document needed to be revised based on the current regulations instead of what is in Amendment 4, and then proceeded to ask how much flexibility there was in setting TACs.

Mr. Martin responded that the process is following exactly what was prescribed in the regulations. He further stated that the TACs coinciding with the ACLs once the mechanism is put in place does not mean that the proposed TACs cannot be established. He suggested that it might be advantageous to clarify that the specifications are just specifications, and put some of the terms into perspective that may come into play if Amendment 4 is implemented, and that may coincide with the specifications being put forth at the meeting. He emphasized that the specifications package is not veering from how it has been done or how it should be done in the future.

Ms. Tooley pointed out that the current specifications use a different ABC, subtract the Canadian catch, and then set OY. She further pointed out that the current process is close to the previous process, but instead is utilizing the SSC. The process starts by establishing an OFL, reducing it by scientific uncertainty to the new ABC (done by the SSC) and then reducing it by management uncertainty to set OY, which seemed different to her.

Mr. Martin responded that his interpretation came from talking to staff in his office about the process. Ms. Steele then described that the terminology changes in Amendment 4 but the process does not. She further explained that the specifications package can call things TAC's in 2010 and ACL's in 2011, but the real difference is that the SSC is included in the process, as has been mandated by the Magnuson-Stevens reauthorization Act. She added that she is under the impression that the SSC recommendations need to be used in the process now, and that most of

the groundwork was already been laid to comport with new Magnuson-Stevens reauthorization Act. She concluded by stating that the involvement of the SSC is coming directly from the Magnuson-Stevens reauthorization Act, not from Amendment 4

Ms. Tooley then asked if her assumption that the current plan provides that the ABC would equate to the OFL and that the SSC advice would translate to OY was correct, essentially letting SSC set the OY. Ms. Kurkul responded that it was simply a terminology issue. She explained that currently the setting of the ABC is done somewhat differently than was done in previous years, but that the Magnuson-Stevens Act does require that the SSC make the recommendation, and that its not any different than the reduction down to the lower level of OY. She added that the iterative process for obtaining catch levels are pretty much the same, but that the terminology has changed.

Ms. Kurkul then responded to Ms. Tooley's second question by referring her to the response letter to Senator Snow. She stated that the agency acknowledges that it is not necessary to have ACLs in place until 2011 for a stock that is not subject to overfishing, but regardless, there have been other changes to the Magnuson-Stevens MS Act that apply now, specifically that there has to be an SSC recommendation on the ABC. The recommendation that that the SSC has given addresses National Standard 1 and 2, which are designed to ensure that overfishing is prevented and that the SSC advice is considered best available science. She concluded by stating that the Council needs to make their recommendations consistent with achieving the National Standards.

Mr. Stockwell replied by stating that it was not easy for him to make a motion, and that he believes all the Options will result in significant impacts, but that he hopes that after the SSC meeting the Options can be scaled up based on their reconsideration. He then stated that it is hard to balance protecting both the fishery and the fish and made the following motion:

**1. COMMITTEE MOTION: TERRY STOCKWELL/ERLING BERG**

To Recommend Alternative 2, Option 2A for the 2010-2012 specifications  
2010-2012 TACs (mt)

Area 1A – 26,546

Area 1B – 4,362

Area 2 – 22,146

Area 3 – 22,146

TOTAL – 75,200

(2011 and 2012 sub ACLs TBD based on revised 2010 numbers, similar exploitation ratio, and will add up to stock-wide ACL)

**Additional Discussion on the Motion:** Mr. Stockwell further explained his rational for the motion noting that it underscores and acknowledges the huge buffer to address scientific uncertainty and the advice of the SSC. He added that the PDT analysis includes assumptions and estimates that have not been peer reviewed and should be. He promotes this Option because it addresses the extreme economic impacts that are going to occur and significantly reduces all of the TACs while possibly allowing some form of the industry to be sustained.

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Mr. Grout then asked for clarification with the numbers for Alternative 2, noting that there were errors in the calculations. He also noted that it was the only Option where all three TACs declined between 2010 and 2012.

Ms. Tooley stated her dissatisfaction with the assumptions and data that went into the risk assessment, noting that there are only the landings in the fishery and how the stock has responded based on trawl survey to rely on. She stated that to believe the PDT's numbers is to believe that the stock has crashed, which she and other fishermen believe is false.

Mr. Adler clarified that the motion was only being made by the Committee, and not the Section.

Dr. Pierce expressed his support for the motion due to its sensitivity to the risk assessment, as well as to the human perspective, although he was tempted to make a substitute motion that puts more fishing effort in area 3. He expressed that there was likely to be a strong social and economic impact, and that there were bound to be dramatic impacts for lobster industry specifically and that he could not ignore the human impact as a Council and an ASMFC member. He expressed further support for the motion because it would allocate more catch to Area 1A, an amount that is greater than what is being given to the Canadians. He furthered this comment, saying that the herring catch is restricted in Area 1A the more the lobster industry will turn to other bait.

Dr. Pierce further pointed out that all the way back to 1993 the SSB has been stable and high, noting that there has been a stable situation stock wide and therefore there is no need to focus on one component specifically. He then referenced Figure 4 in Appendix II, which he felt were very important and gave him comfort in the motion. He pointed out that the lower dotted line in the middle figure, which shows that a ratio of .39 is fairly close to the bottom line, and that at least it is on the lower side if there is a mistake made. If this motion is accepted, this level of landings has been far lower than the inshore landings since prior to 1998 at least. He further noted that in terms of being concerned about the inshore component, dropping from 45,000mt in Area 1A to the current Option is very significant.

Ms. McGee questioned if the motion was consistent with National Standard 2 and the best available science, which includes the risk assessment provided by the PDT. Ms. Kurkul expressed concern with the implication that the risk assessment was going to be ignored. She stated that last year they used the risk assessment to set levels, but the difference was that the Council's recommendation was changed and made more conservative based on the retrospective pattern. She expressed that the SSC has been conservative in addressing the retrospective, but to what extent that it might cover the two issues is not clear to her. She finally expressed that the Council needs to make the case with the recommendation that it provides, and her opinion she would be more comfortable with Option 3 instead of Option 2A, because if there is uncertainty, then the conservative Option is better.

Mr. Grout asked why the 2001 Option is being chosen over the 2009 Option, to which Ms. Tooley replied that 2001 was picked because there was the same distribution among the areas as the first 6 years of TAC setting, through 2006.



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Ms. Kurkul noted that the risk to be taken for the stock components is a Council decision but the PDT advice is part of the question about best available science, and the Committee and Council need to address the PDT advice.

Ms. Steele asked a follow-up question to Ms. McGee's question, asking that if there are no reference points or legally defined targets for F that need to be met, is it accurate to assume the Council can determine the risk to the individual stock components. Ms. Kurkul replied that indeed, the Council can determine the risk but the PDT advice has to be addressed.

Mr. Gibson and Mr. Cieri then clarified that the stock components could persist at a rate of F at MSY or something above that, and that F at stock collapse would be rate higher than what is in the risk assessment.

Mr. Correia stated also clarified that because the target exploitation rate would be missed, the numbers ought to be carried through all three years so the numbers would be available during the meeting taking place.

**MOTION #1 PERFECTED**

To Recommend Alternative 2, Option 2A for the 2010-2012 specifications

2010-2012 TACs (mt)

Area 1A – 26,546

Area 1B – 4,362

Area 2 – 22,146

Area 3 – 22,146

TOTAL – 75,200

Management Uncertainty – 14,800

ABC – 90,000

**Additional Discussion on the Motion:**

- Mr. Gehan asked for clarification between the old and new process, and stated that he did not have a problem with Option 2A. He also asked that the Committee consider adding another 20,000mt to Area 3, as he did not see that the risk of exceeding F at MSY would be great. He further pointed out that the legal standard is to show that the TAC has a 50% or greater chance of hitting the target, and if it is possible to prove that the target can still be hit with the additional metric tonnage then the Option should be considered. Ms. Steele responded favorably to this point, and suggested that if the SSC increases the ABC in it's later meeting, then the extra fish should go into Area 3.
- Mr. Calomo expressed his disfavor of Option, and stated his desire for a rollover of the specifications for 2009.
- Mr. Kaelin stated his support for Option 2A, also noting a desire to unify the fishery, also explaining the Option to be a fair treatment of Area 2 relative to Areas 1A and 3. He further

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supported the idea that any additional fish from the SSC's ABC decision should go to Area 3 as well. He stated his belief that use of a brailer in the mackerel fishery could prevent herring catch now, and the allocations to Area 2 keeps them in the game to prosecute mackerel fishery. He ended by stating that he was much more in favor of the Advisory Panel's approach yesterday.

- Mr. Libby also expressed his support for the motion, stating that it falls within the SSC recommendations and spreads the TAC out through areas, which he believes is fair.
- Mr. Ellington remarked that the decision would be a disaster for him and those he represents. He stated that he could not support the motion, and his disappointment the Committee wouldn't use a rollover of the TACs until a new benchmark was made available. He further noted that if it came down to a decision between Option 2A or 3 then he would choose Option 3. He then said that the industry can be untied in supporting Option 1, but not in Options 2A or 3. He also voiced support for extra allocations of harvest from the SSC going to Area 3, and expressed disappointment that the Advisory Panel meeting took place before SSC meeting.
- Mr. Moore stated that he has 10 million dollars invested inshore, and even more on the water, that he employs 70 people, and creates substantial foreign and domestic sales. His desire was for recognition of what has been done, by the Committee putting pressure to get new benchmark. He stated that 3 years is an unacceptable amount of time for a new benchmark, given the SSC, NEFMC, and ASMFC recommendations. He expressed a desire for the Advisory Panel's recommendation to be considered, and ended by stating that if he had to choose an Option, he would pick Option 2A.
- Mr. Grout asked why the Regional Administrator was more comfortable with Option 3, to which Ms. Kurkul replied that although it is marginal, the inshore exploitation rate would be slightly lower in Option 3.
- Dr. Pierce asked for clarification on what is creating a decline from 21,000mt to 18,000mt in Option 2A, but an increase from 31,000mt to 37,000mt in Option 3. Mr. Correia stated that fish needed to be shifted while trying to maintain the spirit and intent of the Option, and also trying to keep the exploitation rate similar to the one that results in 2010. The lower numbers in Area 3 under Option 2A are based on the initial allocation of the TACs in that Option in 2010.
- Mr. Adler stated his opposition to the motion for a number of reasons, as a section member. He stated his belief that the science is flawed. He feels torn between the impacts to the fishery and the recommendation of the SSC, which he felt should be lower.
- Mr. Libby expressed that given the problem with lobster industry, he was convinced that the precautionary approach was needed and would support a new benchmark, and supported the idea of a strong herring fishery.
- Mr. West, representing Bumble Bee expressed that the industry will have reached a breaking point if Committee agrees with this motion.
- Mr. Hatch remarked that he may be able to support this Option, and try to convince people to fish in Area 3 and leave Area 1 alone
- Mr. Swanson expressed his support for the motion as a starting point, not knowing what SSC will say.

## PERFECTED MOTION #1 CARRIED 9-2-0.

***Reallocation of Canadian Management Uncertainty Buffer, Additional ABC Allocation, TAC Reserves, Overages***

Ms. Steele asked for further recommendations from the Committee in regards to four issues:

- The SSC could potentially increase the ABC, so she asked if the excess should be allocated to Area 3. She further noted that not clarifying could create confusion at the Council meeting and that the recommendation could be based on the risk assessment.
- She also suggested that a recommendation be made about the management uncertainty buffer and returning New Brunswick catch to Area 1A
- She also suggested the Committee make a recommendation about any TAC reserves in any of the areas, such as Area 2 reserving a certain number of tons for mackerel fishery
- She finally suggested that the Committee make a suggestion regarding overages in 2010. She pointed out that if the specifications are implemented mid year, there is a chance of an overage, but that overage could be avoided in Area 2 if it was thought out ahead.

Mr. Odlin stated his support to add the potential additional fishing effort from the SSC's decision to Area 3, as it is not overfished and overfishing is not occurring, to see if it would pose a risk.

Mr. Abbott stated that the ASMFC will wait until after these issues have been decided on, seeing as there are 4 members sitting on both the Section and the Committee.

**2. COMMITTEE MOTION: JIM ODLIN/MARY BETH TOOLEY**

To project, as soon as possible, catch from the Canadian weir fishery, and to move any unused herring into Area 1A during the fishing year in November and December.

**Additional Discussion on the Motion:** Mr. Blout suggested that a percentage was needed, instead of a specific number in case of overage. Ms. Tooley asked, in regards to in-season adjustment, if the public could know when the projections will be done and what adjustments will be made? Ms. Kurkul responded that a specific trigger would need to be put into the wording.

**MOTION #2 PERFECTED**

To project by October 15<sup>th</sup> the catch from the Canadian weir fishery, and to allow any unused herring from the management uncertainty buffer to be reallocated to the Area 1 fishery for November and December

**Additional Discussion on the Motion:** Mr. Martin stated that there is a provision in the herring plan for in-season adjustments but that it requires rulemaking. He then asked what the justification for the transfer of the allocation if the weir fishery could pick up again in New Brunswick and catch more fish. Mr. Grout replied that it would be part of the projections, that by October 15th the landings through September would be obtained so that the likelihood of catch in November and December could be predicted. Ms. Kurkul then clarified that the wording

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needed to be very clear with specific numbers and dates. If not, then it would become in-season management that requires rulemaking which takes much more time and effort. Mr. Martin further emphasized that an amount and conditions needed to be specified now to relieve the need for any more public comment, which he acknowledged would be difficult, to know when the conditions are going to be met.

Mr. Odlin inquired if the PDT could do analysis on the issue to come up with a date and a specific amount to be re-allocated before next week, however Ms. Steele replied that the issue isn't really technical, just a decision that needs to be made. She clarified that it was as simple as deciding that if only some amount has been caught, then some amount of what is left will be allocated to November and December, and that there wasn't a way to do technical math to set the parameters.

Mr. Grout suggested that the Committee still allow for landings in the time period of October – December for the New Brunswick fishery, as twice they had exceeded the 2,000mt limit. Ms. Steele further emphasized that the motion could not be crafted to use all of the left over tons, but that it would be a matter of setting a threshold, condition, and amount.

### **MOTION TO SUBSTITUTE: DAVID PIERCE/DOUG GROUT**

If by considering landings thought October 15<sup>th</sup>, less than 5,000 mt has been taken in the New Brunswick weir fishery, then 5,000 mt will be reallocated to the 1A fishery in November and December

**Additional Discussion on the Motion:** Mr. Stockwell questioned increasing the landings number and reducing the reallocation number. Mr. Gibson asked why it would not work to just project what percentage of the management buffer has been taken by the Canadians and then reallocate the rest of it. Ms. Kurkul expressed concern about the numbers proposed, adding that the approach is right, but that there needs to be a buffer, particularly because October is an active month for the New Brunswick weir fishery.

### **MOTION TO SUBSTITUTE PERFECTED**

If by considering landings thought October 15<sup>th</sup>, less than 9,000 mt has been taken in the New Brunswick weir fishery, then 3,000 mt will be reallocated to the 1A fishery in November and December

**Additional Discussion on the Motion:** Ms. Tooley questioned why a hard and fast allocation number was needed, when the upper limit was management uncertainty. She further asked why there is not additional flexibility to the language. Ms. Kurkul clarified that while mackerel uses percentages, the totals are already known and it is easier; in the herring fishery she clarified that it will take far more time. Ms. Steele added that it would take 45 days to complete an in-season adjustment, and an Amendment would be needed to the plan as well. Mr. Martin also clarified that putting flexibility into the motion causes a process problem, and that herring rules require

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public comment for in-season adjustments and cannot be waived. If there is uncertainty as to what will be reallocated, the Herring FMP requires a process for rulemaking, which is time consuming.

Mr. Stockwell expressed support for the wording, and added that the ability to change the numbers still existed for the upcoming Council meeting.

**MOTION TO SUBSTITUTE CARRIED UNANIMOUSLY**

**SUBSTITUTED MOTION CARRIED UNANIMOUSLY**

Dr. Pierce expressed concern about setting aside quota in Area 2 for the mackerel fishery in November and December. He added that it would be helpful to have information on when mackerel fishery is in operation and to what extent, in order to set numbers. Ms. Tooley agreed on the difficulty and noted that if the specification are not implemented until 2010 mid year, then total may have been exceeded anyway, so wont help short term. Mr. Blout suggested that it would be helpful too set numbers for 2011 and 2012, but Ms. Tooley and Dr. Pierce pointed out the lack of relevant information. Mr. Kaelin added that he was not sure November and December were key months anyway, and that taking action may be premature.

***Final Recommendations on JVP, IWP, TALFF, BT, USAP, Research Set Asides, Fixed Gear Set Asides and Reserve***

Ms. Steele asked for reaffirmation of motions #5, 6, 7 and 12 from the October 6th , 2009 meeting, and asked for recommendations on a fixed gear set-aside. The Committee members confirmed that the motions still stand and that no changes would be made to them.

**3. COMMITTEE MOTION: TERRY STOCKWELL/DOUG GROUT**

That the fixed gear set-aside west of Cutler be reduced proportionately based on the distribution of the TAC in Area 1A for the three-year period (295 mt)

**Additional Discussion on the Motion:** Mr. Himchak inquired if some of the reallocated fish from the New Brunswick fishery would come back to 1A and bring the fixed gear back to 500mt, and Ms. Steele affirmed it.

**MOTION #3 CARRIED UNANIMOUSLY**

Dr. Pierce ended the meeting by asking to receive any and all comment on how to administer the issues from this meeting within the ASMFC.

The Herring Committee/Section Meeting adjourned at approximately 4:30 p.m.

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