

**Framework Adjustment 12 to the
Northeast Multispecies Fishery Management Plan**

**To Reduce the Bycatch of Harbor Porpoise
in the Gulf of Maine Sink Gillnet Fishery**

Prepared by the

**New England Fishery Management Council
in consultation with the
National Marine Fisheries Service**

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Contents

1.0 Introduction.....	1
2.0 Purpose and Need.....	1
2.1 Background	1
2.2 Need for Adjustment	3
2.3 Need for Final Rule	5
3.0 Proposed Action and Rationale	5
4.0 Alternatives to the Proposed Action	6
4.1 No Action - Continuation of Mid-coast Closure.....	6
4.2 Other Alternatives	6
5.0 Environmental Assessment	7
5.1 Purpose and Need for the Proposed Action.....	7
5.2 Description of the Proposed and Alternative Actions.....	7
5.3 Description of the Physical Environment.....	7
Habitat	7
5.4 Description of the Biological Environment.....	7
Marine Mammals and Endangered Species	7
5.5 Description of the Human Environment.....	7
Gillnet Fishery	7
Social and Cultural Aspects.....	7
5.6 Biological Impacts.....	7
Impacts of the Proposed Action on Endangered Species.....	7
Impacts of the Proposed Action on Harbor Porpoise.....	8
Impacts of Alternatives.....	9
5.7 Economic Impacts.....	9
Distribution of Economic Impacts	10
5.8 Social Impacts.....	10
5.9 Finding of No Significant Environmental Impact (FONSI).....	10
FONSI Statement	12
6.0 Applicable Law	
6.1 Magnuson Fishery Conservation and Management Act.....	12
6.2 National Environmental Policy Act (NEPA).....	12
6.3 Regulatory Impact Review.....	12

6.4 Executive Order 12866.....	13
6.5 Regulatory Flexibility Act	13
6.6 Marine Mammal Protection and Endangered Species Acts.....	13
6.7 Coastal Zone Management Act (CZMA).....	13
6.8 Paperwork Reduction Act (PRA)	13

7.0 Appendices

- Appendix I. Map
- Appendix II. NEFSC Preliminary Analysis
- Appendix III. Biological Analysis
- Appendix IV. Economic Analysis
- Appendix V. Written Comments to Date

1.0 Introduction

Amendment #5 to the New England Fishery Management Council's Northeast Multispecies Fishery Management Plan (FMP) became effective in March, 1994. In addition to implementing conservation measures to eliminate the overfished condition of several multispecies finfish stocks, one of the principal management objectives was to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery to a level not to exceed 2 percent of the population, based on the best estimates of abundance and bycatch by the end of year 4 of implementation of the amendment. To achieve that objective, Amendment #5 included a process or framework to adjust management measures through abbreviated rulemaking. The Council's intent was to accomplish annual porpoise bycatch reductions.

The first adjustment to address harbor porpoise, Framework 4, became effective in May, 1994. It required the removal of all sink gillnet gear for periods of time in defined areas. These closures replaced blocks of days in each month during which all sink gillnet gear would have been removed from the water, a measure included in Amendment #5 to reduce groundfish fishing effort and accomplish porpoise bycatch reductions.

This second adjustment, Framework 12, is proposed to accomplish a reduction in the porpoise bycatch by expanding the size of Mid-coast Closure Area (as defined in Framework 4) to include what is referred to as the Jeffreys Ledge or "Z" Band west of 69° 30'W, but exclude an area defined as Tillies Bank (see map, Appendix I). Additionally, the framework also extends the duration of the closure, initially November 1-30, through November and December. The area would be closed to fishing with sink gillnets during this period.

2.0 Purpose and Need

2.1 Background

The 1988 amendments to the Marine Mammal Protection Act (MMPA) classified the Gulf of Maine multispecies sink gillnet fishery as Category I, a classification which denotes fisheries with "frequent incidental takes of marine mammals." Accordingly, the sink gillnet fleet has been subject to observer coverage since the Northeast Fisheries Science Center (NEFSC) Sea Sampling Observer Program was initiated in 1989.

Annual estimates of porpoise bycatch reflect seasonal distribution of the species and of sink gillnet fishing effort. Estimated annual bycatch (CV in parentheses) is as follows: 2,900 in 1990 (0.32); 2,000 in 1991 (0.35); 1,200 in 1992 (0.21); and 1,400 in 1993 (0.18). The bycatch in the northern Gulf of Maine occurs between June and September. In the southern Gulf of Maine bycatch takes place from January to May and again during September through December.

The most recent scientific information on marine mammal stock assessments (NOAA Technical Memorandum NMFS-SEFSC-363, U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments) states a minimum population estimate for porpoises in the Gulf of Maine/Bay of Fundy of 40,297 animals based on abundance surveys in 1991 and 1992. There is insufficient information to determine population trends, although the NEFSC has recently completed a third survey.

Estimates of potential population growth rates have ranged from 10% per year, based on a modified human survival model, to 4% annually. A National Marine Fisheries Service-appointed team of independent scientists and representatives from the fishing industry, convened as a Scientific Review Group in 1994, assumed a value of 0.04 as the maximum net productivity rate based on theoretical calculations showing that cetacean populations may not generally grow at rates much greater than 4% given the constraints of their reproductive life history.

The Council agreed to develop a management strategy to reduce porpoise mortality by integrating a plan with fishery management measures. The Council adopted a four year phased-in time/area closure program designed to meet the objective of reducing the bycatch to a level not to exceed 2 percent of the population based on estimates of abundance and bycatch. The two percent objective was based on a recruitment rate of approximately 4% and a conservative fisheries bycatch level that should not exceed 50 percent of the recruitment rate for marine mammals.

Several important caveats modified this objective. The Council acknowledged that the porpoise bycatch in the Gulf of Maine sink gillnet fleet should not *exceed* the two percent ceiling by the end of the fourth year of the program, and further, should be maintained at a point below that level. This modification was added chiefly because the same stock of porpoises range seasonally from the southern Bay of Fundy to North Carolina and are taken incidentally in fisheries in both the mid-Atlantic region and in Canada. A two percent bycatch goal for the Gulf of Maine fishery alone would ignore these other sources of mortality.

The most recent information for Canada indicates the total bycatch estimate for the 1993 summer period was between 222 and 424 porpoise in the western Bay of Fundy. The 1994 estimate was between 80 and 120 animals. Although evidence from stranded animals and observer coverage indicates porpoise incidental takes in some mid-Atlantic coastal net fisheries, bycatch estimates are not yet available for that region.

The Framework 4 program called for a 20% reduction in the porpoise bycatch in the Gulf of Maine sink gillnet fishery for 1994. To ensure continued efforts toward bycatch reductions a Harbor Porpoise Review Team (HPRT), appointed by the Council, was charged with evaluating the effectiveness of the Council's mitigation measures and, if necessary, recommending changes annually based on the Framework 4 goals outlined below.

Although timing and areas were not defined for years other than 1994, the goal of the program was to achieve a 60% reduction in the bycatch from current levels (using the available data prior to 1994) over a three-year period. In addition to the 20% target in year one of the plan, the Council adopted a target of an additional 20% for both years two and three. For example, 20% of 1,300 (an average of the two most recent years for which bycatch estimates are available) is 260 animals. Therefore, the year one (1994) target was 1,040. The year two (1995) and three (1996) targets are 780 and 520, respectively.

The final year target was held in abeyance in consideration of targets not met in any given year. For example, if the 20% target was not met in any of the first three years, the program allowed some portion of the overage to be added to the target for the next year or allowed deferment until year four of the program. The Council stipulated, however, that the fourth year target should not exceed 20 percent of the total reductions required to ensure annual progress toward its goals.

The fourth year target also was not specified in early 1994 because of anticipated MMPA requirements (the Act was reauthorized later in 1994) that would affect the Council's actions. As amended, the MMPA now requires the development, review and implementation of Take Reduction Plans for strategic stocks (of which harbor porpoise is one) in about 12 months from the present time. The MMPA goal is to reduce the bycatch to levels that are less than the potential biological removal level (PBR) specified for the stock. The date for compliance with the PBR figure for the Gulf of Maine harbor porpoise is identified in the MMPA as April 1, 1997. Based on current population and life history information, the PBR is 403 animals for Gulf of Maine porpoise.

Since the Council's timetable for reducing porpoise bycatch lags about six months behind that mandated by the MMPA, there may be re-consideration of both the objectives and yearly goals in the next amendment to the Multispecies Plan which is under active development.

2.2 Need for Adjustment

The time/area closures for Framework 4 were based on a Northeast Fisheries Science Center (NEFSC) analysis of harbor porpoise bycatch using the NMFS weighout database and sea sampling program, information on the distribution of sink gillnet activity and the seasonal and spatial distribution of harbor porpoise in the Gulf of Maine. The Gulf of Maine was divided into three areas: the Northeast (from Penobscot Bay to Eastport, Maine), Mid-coast (from Cape Ann to Penobscot Bay) and Massachusetts Bay (from Cape Cod to Cape Ann). The Council recommended 30-day closures for each of these areas which corresponded to periods when porpoise bycatch would most likely occur.

The Council defined the Mid-coast Area by a boundary which extended east on 42°45'N from the Massachusetts shore to 70°15'W, then north along 70°15'W to 43°15'N, then east on 43°15'N to 69°00'W; then north on 69°00'W to the Maine shore (see map, Appendix I). The area bounded by these lines and the shore was closed to fishing with sink gillnet gear from November 1 through November 30, 1994.

A band outside the Mid-coast Area (also referred to as the Jeffreys Ledge Band or "Z" Band elsewhere in this document) remained open to sink gillnet fishing in 1994. It is described relative to the Mid-coast Area as east on 42°30'N from the shore to 70°00'W, north along 70°00'W to 43°00'N, then east on 43°00'N to 69°00'W, then north on 69°00'W to the shore.

Since the sea sampling database indicated that the bycatch was high in the Jeffreys Ledge Band relative to other Gulf of Maine areas, the Council expressed concern that a displacement of fishing effort into this region might account for a kill rate as high or potentially higher than in previous years. Therefore, the Council recommended mandatory observer coverage for sink gillnet vessels operating in the band during the closure period in order to evaluate the necessity for a closure in subsequent years.

Although bycatch estimates for 1994 were not available, the Council convened a meeting of the HPRT in September, 1995 to evaluate the effectiveness of the first-year closures. Because a very high percentage of the bycatch occurs in the Mid-coast/Jeffreys Ledge Band in the fall, it was identified as a priority for review relative to the other closure areas. As stated, bycatch estimates for 1994 were not available from the NEFSC, but preliminary information on bycatch rates, including rates from previous years for comparison purposes, were used in addition to information on the location of incidental takes in the southern Gulf of Maine. The HPRT concluded that:

a) The time and area closures, as currently configured, are neither large enough nor long enough to achieve the Council's bycatch reduction goals. The group agreed that the first year goals were not met and that the porpoise bycatch was very likely higher in 1994 than in 1993. The HPRT was unable to evaluate the degree of effectiveness of the individual closures chiefly due to the lack of data on the fine-scale spatial distribution of fishing effort previously available through the NEFSC's port sampling program.

b) There is substantial between-year variability in the timing of peak bycatch, with less variation in the areas in which bycatch occurs. In any given year, the interannual variability could exceed the Council's 20% reduction goal. This may explain the 1994 results. The recommendation of the HPRT, therefore, was to expand the timing of the closures as a means to achieve bycatch reductions, and secondarily, to expand areas spatially to include locations which have historically accounted for bycatch but were not included in the first year closures.

c) The incidental mortality rate (porpoise kills/haul) for fall, 1994 in the Mid-coast Area and Jeffreys Ledge Band was about three times higher than in previous years

(1991-1993). Provided that fish landings and landing patterns were similar to other recent years, and if porpoise distribution was similar to that in preceding years, the higher kill rate observed in fall 1994 would raise the total annual bycatch in the U.S. fishery by about 50-60% relative to the bycatch in 1991-1993. (see Appendix II).

d) In view of the 1994 information indicating an increased bycatch rate instead of the projected 20% reduction in the bycatch, the management action for fall 1995 should extend the timing of what is currently defined as the Mid-coast Area to September, October, November and December and expand the area to include the Jeffreys Ledge Band during the months of October and November (recognizing that the timing for an early fall closure may not be possible from an administrative standpoint).

Based on these recommendations and information provided by the NEFSC (see Appendices), the Council voted to expand the area and extend the timing of the Mid-coast Closure Area in order to make progress toward meeting its bycatch reduction goals.

2.3 Need for a Final Rule

The Council requests publication of the management measures as a final rule after considering the required factors stipulated under Framework Adjustments to Management Measures in the Northeast Multispecies FMP, 59 CFR Section 651.40., and has provided supporting analyses for each factor considered. The Council has taken into account information, views and comments at a meeting of its Marine Mammal Committee held in Saugus, Massachusetts on September 12, 1995, a full Council meeting held in Portland, Maine on September 13, 1995 and finally at the October 11, 1995 Council meeting in Peabody, Massachusetts.

Considering the need for resource protection as indicated by the results of the 1994 actions and the variability in the period of peak porpoise bycatch in the fall, this recent effort to mitigate porpoise bycatch should be initiated as soon as possible. The Council requests waiver of the proposed rule and additional comment period and publication of the proposed management measures as a final rule.

3.0 Proposed Action and Rationale

The following action is proposed under the framework for abbreviated rulemaking procedure established by Amendment #5 to the Northeast Multispecies FMP. The framework adjustment was initiated at the September 13, 1995 Council meeting held in Portland, Maine. The final meeting was held in Peabody, Massachusetts on October 11, 1995.

To reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery, the Council recommends that the current Jeffreys Ledge Band west of 69°30'W (excluding the region defined as Tillie's Bank) be incorporated into the existing Mid-

coast closure Area. They also recommend an extension of the timing of the closure, initially November 1-30, to November 1 through December 31, 1995. During this period the area would be closed to fishing with sink gillnets.

The intent of the time/area closure program initiated in 1994 was to reduce the porpoise bycatch in the sink gillnet fishery. It was estimated that reductions of 20 to 40 percent might be realized in the first year of the program if the boundaries discussed in the NEFSC analyses were used in conjunction with 30-day closures for each area. The Council's boundary modifications altered that estimate to an unknown degree because of the potential displacement of gillnet fishing effort to open areas where porpoise would still be subject to entanglement.

NEFSC analyses of the southern Gulf of Maine area (see Appendix III) which encompasses both the Mid-coast Area and the Jeffreys Ledge Band suggests that the degree of interannual variability in porpoise seasonal movements coupled with the displaced gillnet fishing effort into those areas where bycatch was likely to occur has resulted in a kill rate that was more than three times higher than the same area in 1991-1993. Sea sampling data demonstrates the preponderance of bycatch was located in the Mid-coast Area and Jeffreys Ledge Band and that kill rates were highest in October and November. The months of September and December were more variable.

The area east of 69°30'W was excluded from the closure based on historic low levels of sink gillnet activity and the absence of harbor porpoise bycatch. Acknowledging that information from previous years also was based on relatively low sea sampling effort, the Council expressed concern that displacement of effort, especially in view of the Mid-coast closure area expansion, might result in higher levels of bycatch in the Jeffreys Ledge Band east of 69°30'W in 1995. Accordingly, they requested that observer coverage be deployed to adequately document gillnet activity in the area for purposes of making future adjustments to the management program as necessary.

The same reservations about adequate observer coverage applied to the Tillies Bank area, although NEFSC analysis provided a stronger rationale for excluding the region from the closure. Harbor porpoise bycatch rates in the vicinity of Tillies Bank appear to be substantially lower than elsewhere in the Jeffreys Ledge Band while information from the fishing industry indicates high use by gillnets vessels from Gloucester, Newburyport and southern New Hampshire.

4.0 Alternatives to the Proposed Action

4.1 No Action - Continuation of the Mid-Coast Area closure

The time and area closure restrictions described in Framework Adjustment 4 to the Multispecies Plan apply to sink gillnets for each fishing year unless modified by the Council. If no further action is taken, the Mid-coast Area will be closed to fishing with sink gillnet gear from November 1 through November 30.

4.2 Other Alternatives

The Council's recommended action contained a provision to consider modification of the proposed closure area (Mid-coast Area and Jeffreys Ledge Band west of 69°30'W). The modification would allow the area defined as Tillies Bank to remain open to sink gillnet fishing. It is described as west on 42°30'N to 70°00'W, north along 70°00'W to 42°40'N, on 42°40'N to 70°15'W, and then south on 70°15'W (see Appendix V). Impacts of the modification are discussed in the Environmental Assessment and in Appendix III.

5.0 Environmental Assessment

5.1 Purpose and Need for the Proposed Action

See Section 2.0 of this document.

5.2 Description of Proposed and Alternative Actions

See Section 3.0 and 4.0 of this document.

5.3 Description of the Physical Environment

Habitat: See Volume I, Final Environmental Impact Statement (FSEIS) for Amendment #5 to the Northeast Multispecies FMP, Section E.6.2, page 105 for a description of the Gulf of Maine.

5.4 Description of the Biological Environment

Marine Mammals and Endangered Species: See Volume I, FSEIS for Amendment #5 to the Northeast Multispecies FMP, Section E.6.3, pages 167-168 for a listing of affected species and the associated National Marine Fisheries Service (NMFS) Biological Opinion issued on November 30, 1993.

5.5 Description of the Human Environment

Gillnet Fishery: See Volume I, FSEIS for Amendment #5 to the Northeast Multispecies FMP, Section E.6.4, pages 176-177 for a description of the New England fleet.

Social and Cultural Aspects: See Volume I, FSEIS for Amendment #5 to the Northeast Multispecies FMP, Section E.6.4.3.

5.6 Biological Impacts

Impacts of the Proposed Action on Endangered Species: The Council discussed the biological impacts of Amendment #5, as reported in Section E.7.1 of the FSEIS, pages 310-322. NMFS also issued a Biological Opinion to the Council on November 30, 1993, in accordance with Section 7(a)(2) of the Endangered Species Act. NMFS concluded that existing fishing activities and related Amendment #5 management measures were not likely to jeopardize the continued existence of any threatened or endangered species. The time/area closures were discussed but had not been developed at the time of the consultation.

The action now proposed represents a change to the Northeast Multispecies FMP and is expected to accomplish reductions in porpoise bycatch by extending the area and time of closure in the Mid-coast Area. In the vicinity of the proposed closed area, a preliminary analysis shows that the rate of harbor porpoise bycatch is highest inside the Mid-coast closure, intermediate in the redefined Jeffreys Ledge Band west of 69°30'W, and lowest in the area immediately outside these zones.

Bycatch per haul can be quite variable between years. The causes are not fully understood, but may include changes in fishing practices, and almost certainly changes in porpoise distribution. There is considerable variation between estimated bycatch rates in different years, beyond what can be explained by sampling variability or by shifts in sampling effort between months and zones. In particular, estimated bycatch per haul during 1994 in this vicinity is more than three times that for 1991-1993 in any given month and zone.

An extended closure in the Mid-coast Area is likely to lead to some displacement of effort, mostly into the portion of the Jeffreys Ledge Band that is not closed (east of 69°30'W) and into the Tillies Bank area. Harbor porpoise have never been reported by observers to be taken in these areas. The Tillies Bank area appears to have a statistically significant lower rate of harbor porpoise bycatch. The evidence regarding the open portion of the Jeffreys Ledge Band is less clear.

The most common endangered species to inhabit the proposed closed area are right, humpback and fin whales. The period of highest use, however, is spring and early summer. Displacement of gillnet effort, if it occurs at all, will not occur into an area of high whale use in November/December.

The Council concludes that displacement of gillnet effort resulting from the proposed closure will not occur at time or in an area of higher use by endangered species of whales. The probability of whale entanglements, therefore, will not change from that level described in the Biological Opinion or will not likely jeopardize the continued existence of any endangered or threatened species. This framework adjustment should not alter the basis for the initial NMFS Biological Opinion. With the submission of this assessment, the Council seeks the concurrence of NMFS.

Impacts of the Proposed Action on Harbor Porpoise: On average, bycatch per haul in the vicinity of the closed area appears highest in October and November. The rates

in September and December are similar. Of the 5 most extreme observations in this model (combinations of month, zone and year where observed bycatch per haul was much higher or lower than predicted by the model), 3 occurred in September, suggesting that variability may be greater then. However, the estimated differences between months are not as great as between zones or years, although these conclusions could be substantially affected by sampling variability.

No harbor porpoise bycatch has been observed in the Tillies Bank area. There are two possible explanations: low sampling effort and/or genuinely low bycatch rate. If the expected bycatch per haul in this area was really the same as in the rest of the Jeffreys Ledge Band during any given month and year, and given the pattern of sampling effort in this area, the total expected bycatch would be just over 3 porpoises. The probability of observing zero bycatch purely because of sampling variability would then be less than 5%. It is therefore unlikely that the lack of observed bycatch is purely due to low sampling effort, and the bycatch rate in this area does appear to be substantially lower than elsewhere in the Jeffreys Ledge Band. This conclusion would be less safe, however, if the area was selected based simply on its low bycatch rate in the Sea Sampling Program, rather than on broader knowledge of fisheries in the area.

A similar analysis was applied to the region east of the redefined Jeffreys Ledge Band, between 69°30'W and 69°00'W. Again, no porpoise bycatch has been observed here, but sampling coverage has been lower than on Tillies Bank. In this region, we would expect to have seen just over 1 porpoise. With this expected total, there is about a 25% chance of failing to see any bycatch just through sampling variability, far higher than the probability at Tillies Bank. There is therefore no strong evidence that bycatch rates really are lower here than in the Jeffreys Ledge Band to the west. A more complete biological analysis is included as Appendix III to this report.

Impacts of Alternatives

The alternative scenario would be to take no further action beyond the 1994 closure of the Mid-coast area. This would result in a failure to reduce porpoise mortality rates and would mean that no steps would be taken to continue the planned reduction of harbor porpoise mortality by 20% per year. As noted by the Harbor Porpoise Review Team, the first year mortality reduction goals were not met, and the porpoise bycatch was very likely higher in 1994 than in 1993. Because NEFSC analysis indicates that the Tillies Bank area accounts for porpoise bycatch rates that are much lower than elsewhere in the Mid-coast area, its exclusion from the closure is not expected to result in any significant increases in bycatch in 1995.

5.7 Economic Impacts

Sink gillnets capture a substantial amount of pollock, cod and white hake, several other groundfish species, and other species such as dogfish and monkfish (goosefish). Over ninety percent of gillnet vessels are less than 50 gross tons and use other gear for about 20 percent of the year, usually otter trawls and shrimp trawls, and to some

extent hook gear. According to commercial fisheries data more than 42 percent of gillnetters fished in more than one statistical area compared to 24 percent 10 years ago. Annual revenues for the period 1987 through 1992 from gillnetting averaged about \$60,000 for vessels less than 50 tons and about \$83,000 for vessels larger than 50 tons. Individual vessels may have earned substantially more or less than the average. Average crew sizes range from about 2.7 for smaller vessels to about 4 for vessels over 50 tons.

The economic loss to gillnetters under the proposed closure is estimated to be \$979,000 (relative to the status quo) which in this instance is the Mid-coast closure (exclusive of the Jeffreys Ledge Band) for the month of November only. If Tillies Bank is left open, losses are reduced to \$935,000. Both estimates assume that boats that would have fished in the closed area do not fish elsewhere during the period of the closure with another type of gear.

It is not possible, however, to determine whether the total benefits of the preferred alternative exceed these economic losses because there is no precise estimate of the expected reduction in harbor porpoise mortality and no information available on how boats may offset losses by switching to alternative fisheries.

The economic analysis on which these assumptions are based and which includes an explanation of assumptions is contained in Appendix IV.

Distribution of Economic Impacts: The proposed action will affect gillnet vessels that fish in the inshore areas of the Mid-coast area during the time/area closures. These vessels are expected to lose a substantial amount of groundfish revenues while gillnetters fishing farther offshore or south of the Mid-coast area will not be affected.

5.8 Social Impacts

The social impacts of 50 percent effort and fishing mortality reductions in the Northeast multispecies fishery are described in Volume I, FSEIS for Amendment #5, Section E.7.4. Because the proposed action has a more positive economic impact on the gillnet fishery than this alternative, the range of social impacts of the proposed action is fully within the range of those described in the social impact analysis of Amendment #5.

5.9 Finding of No Significant Environmental Impact (FONSI)

NOAA Administrative Order 216-6 provides guidance for the determination of significance of the impacts of fishery management plans and amendments. The five criteria to be considered are addressed below.

- 1) Can the proposed action be reasonably expected to jeopardize the long-term productive capability of any stocks that may be affected by the action?

One of the principal objectives of Amendment #5 is to reduce the bycatch of harbor porpoise in the sink gillnet fishery. To the extent that the proposed action is effective, the Council expects to protect the Gulf of Maine/Bay of Fundy porpoise population by reducing interactions with commercial fishing vessels to a level that is sustainable. Other marine mammal stocks could be affected by a displacement of effort resulting from the constraints on gillnet fishing, but the fleet is still subject to monitoring by onboard observers under the terms of the 1994 MMPA reauthorization. Any increased bycatch of other species, therefore, will be reported and subject to the provisions of the MMPA.

2) Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats?

The proposed action which limits the bycatch of harbor porpoise is not expected to affect coastal or ocean habitat since the management measures will result in a reduction in fishing gear.

3) Can the proposed action be reasonably expected to have an adverse impact on public health or safety?

The measure is not expected to have any impact on public health or safety.

4) Can the proposed action be reasonably expected to have an adverse effect on endangered or threatened species or marine mammal populations?

The NMFS Biological Opinion for Amendment #5, issued under authority of Section 7(a)(2) of the Endangered Species Act indicated that the "existing fishing activities and related management measures proposed . . . are not likely to jeopardize the continued existence of any threatened or endangered species under [NMFS] jurisdiction." The proposed measure does not change that finding.

5) Can the proposed action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target resource species or any related stocks that may be affected?

The proposed action is intended to be a part of the overall groundfish management program implemented through Amendment #5. As such, the cumulative effect is expected to be consistent with that of the Multispecies FMP. The proposed action is not expected to add to the effect of the FMP on other stocks.

The guidelines on the determination of significance also identify two other factors to be considered: degree of controversy and socio-economic effects. The socio-economic impacts and the scope of the proposed action fall within the range of impacts and the scope of the harbor porpoise and groundfish catch reductions

analyzed in Amendment 5 and Framework 4 to the Northeast Multispecies FMP. The proposed action, therefore, does not have significant impacts beyond those already analyzed in Amendment 5 and Framework Adjustment 4.

The time/area closure issue has been debated, but the degree of controversy has been minimal in that most fishermen agree that action to protect harbor porpoise is necessary. It has also been agreed that the only tool currently available to managers is a time/area closure plan, although it is hoped that acoustic devices could prove useful in the future.

According to NAO 216-6, no action should be deemed significant solely on the basis of its controversial nature, but that the degree of controversy should be considered in determining the level of analysis needed to comply with NEPA regulations. Based on this guidance and the evaluation of the preceding criteria, the Council proposes a finding of no significant impact.

FONSI Statement

In view of the analysis presented in this document and in the FSEIS for Amendment #5 to the Northeast Multispecies Fishery Management Plan, it is hereby determined that the proposed action would not significantly affect the quality of the human environment with specific reference to the criteria contained in NDM 02-10 implementing the National Environmental Policy Act. Accordingly, the preparation of a Supplemental Environmental Impact Statement for this proposed action is not necessary.

Assistant Administrator
for Fisheries, NOAA

Date

6.0 Applicable Law

6.1 Magnuson Fishery Conservation and Management Act Consistency with National Standards

See pages 52-57, Volume I of Amendment #5 to the Northeast Multispecies FMP for a summary of the Council's determination of consistency with the National Standards. This framework adjustment is a change to the rules promulgated under that amendment. The Council does not find cause to reconsider that earlier determination.

6.2 National Environmental Policy Act (NEPA)

There are no economic and social impacts from this action beyond the extent of those identified and discussed in the FSEIS included in Amendment #5 and the

Environment Assessment contained in this document. The economic and social impacts of the proposed action are indeterminate.

6.3 Regulatory Impact Review

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866, the Regulatory Flexibility Act and the National Environmental Policy Act. The purpose and need for management (statement of the problem) is described in Section 2.0 of this document. The alternative management measures to the proposed regulatory action are described in Section 4.0. The economic and social impact analysis is contained in Sections 5.7 and 5.8 and is summarized below. Other elements of the Regulatory Impact Review are included below.

6.4 Executive Order 12866

The proposed action does not constitute a significant regulatory action under Executive Order 12866. (1) It will not have an annual effect on the economy of more than \$100 million (see Table 1.). (2) The proposed action will not adversely affect in a material way the economy, productivity, competition and jobs. (3) It will not affect competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities. The proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect this fishery. (5) The proposed action will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients. (6) The proposed action does not raise novel legal or policy issues. Time/area closures have long been used to manage fisheries in the Northeast.

6.5 Regulatory Flexibility Act

The proposed action does not require a regulatory flexibility analysis because it does not affect more than 20 percent of the small business entities in the multispecies fishery. In 1993, NMFS issued 4,442 multispecies permits. Of these, 442 were issued to gillnet vessels and it is estimated that about 140, or about 3 percent, would be restricted by the proposed action.

6.6 Marine Mammal Protection Act and Endangered Species Act

An adequate discussion of protected species is contained in Section E.6.3.4, Endangered Species and Marine Mammals, Volume I of Amendment #5 to the Northeast Multispecies FMP and the associated NMFS Biological Opinion issued on November 30, 1993.

6.7 Coastal Zone Management Act (CZMA)

See Section 8.5, Volume IV of Amendment #5 to the Northeast Multispecies FMP.

6.8 Paperwork Reduction Act (PRA)

Copies of the PRA analysis for Amendment #5 to the Northeast Multispecies FMP are available from the NMFS Regional Office, Gloucester, Massachusetts. No new collection of information is required.

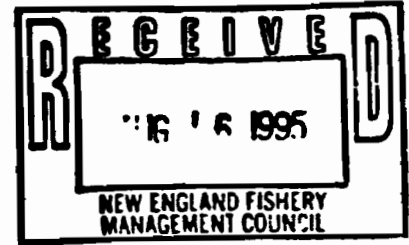
Appendices

Appendix II.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Fisheries Science Center
165 Water Street
Woods Hole, MA 02543-1087

August 9, 1995



Mr. Joseph Brancaleone, Chairman
New England Fishery Management Council
5 Broadway
Saugus, Massachusetts 01906-1097

Dear Joe,

The Northeast Fisheries Science Center has recently completed a preliminary analysis of the 1994 bycatch rates of harbor porpoise in the southern Gulf of Maine sink gillnet fishery (see Table 1 enclosed). The incidental mortality rate (kills/haul) of porpoise during Winter 1994 (Jan-May) was not significantly different than in earlier years (0.019 in Winter 1994 vs 0.039, 0.063, 0.013, 0.024 in Winter 1990-1993, respectively). However, the bycatch rate during Fall 1994 (Sep-Dec) was about three times higher than in previous years (0.072 in Fall 1994 vs 0.024, 0.023, 0.022 in Fall 1991-1993, respectively). The 1994 Fall bycatch rate is based on a large sample size (974 observed hauls)¹, and the difference between the 1994 Fall rate and those in 1991-1993 is too large to be a statistical artifact. This suggests that the year-to-year variability in bycatch rates is likely to be higher than expected based on the 1991-1993 data.

Landings data for 1994, by statistical area, are not yet available to prorate the 1994 harbor porpoise bycatch rates into estimates of total kills in the US Gulf of Maine sink gillnet fishery. During 1990-1993, bycatches of harbor porpoise in the Fall southern Gulf of Maine fishery accounted for about one third of the total harbor porpoise killed in the US sink gillnet fishery. If landings and landings patterns in the 1994 sink gillnet fishery are similar to recent years (and if the distribution of harbor porpoise was similar to that in preceding years), the higher kill rate observed in Fall 1994 would raise the total annual bycatch in the 1994 US fishery by about 50-60% relative to the 1991-1993 bycatch levels.

Examination of monthly kill rates in the southern Gulf of Maine during Fall 1994 (see Table 2 enclosed) indicates that porpoise bycatch rates were highest in September and October. The high bycatch rate in October 1994 is consistent with the pattern of elevated October values observed in previous years. If the sink gillnet fishery closure period is to be modified in 1995, closures in October are likely to be more effective in reducing bycatch rate than closures in December, although the latter would still be of value.

I would like to stress that final analyses of these data are not yet complete. However, while some minor changes are expected in the 1994 bycatch rate estimates, there is little doubt that the final figures will show an increased bycatch rate in Fall 1994. A copy of the final analyses will be provided to you once they are available.

¹ Exclusive of all hauls and porpoise kills associated with the autumn 1994 'pinger' experiment.



If you have any questions, feel free to contact me or Dr. Fred Serchuk, Chief of the NEFSC Conservation and Utilization Division.

Sincerely,

A handwritten signature in black ink, appearing to be 'A. Peterson, Jr.', written over a horizontal line.

Allen E. Peterson, Jr.
Science and Research Director

Enclosures

cc: A. Rosenberg
W. Fox
F. Serchuk
R. DeConti
P. Fiorelli

**MONTHLY BYCATCH RATES OF HARBOR PORPOISE IN THE FALL
SOUTHERN GULF OF MAINE SINK GILLNET FISHERY
(Number of observed hauls in parentheses)**

Year	September	October	November	December
1990	0.000 (39)	0.127 (36)	0.053 (44)	0.024 (51)
1991	0.000 (341)	0.008 (352)	0.049 (530)	0.019 (251)
1992	0.000 (203)	0.044 (223)	0.022 (308)	0.026 (162)
1993	0.064 (78)	0.033 (275)	0.008 (383)	0.017 (181)
1994	0.109 (247)	0.095 (370)	0.029 (238)	0.008 (119)

Table 2. Estimates of the harbor porpoise bycatch rate in the Southern Gulf of Maine sink gillnet fishery for each Fall month, based on observer data from NEFSC statistical catch reporting areas 513, 514, and 515. The number of observed hauls upon which the estimates are based is given in parentheses. Note that the estimates for 1990 are based on small sample sizes.

WINTER, SOUTHERN GULF OF MAINE

Year	Harbor Porpoise Killed/Haul	Observed Hauls
1990	0.039	261
1991	0.063	184
1992	0.013	1283
1993	0.024	1119
1994	0.019	895

FALL, SOUTHERN GULF OF MAINE

Year	Harbor Porpoise Killed/Haul	Observed Hauls
1990	0.048	170
1991	0.024	1474
1992	0.023	896
1993	0.022	917
1994	0.072	974

Table 1. Estimates of the harbor porpoise bycatch rate in the New England sink gillnet fishery in the Southern Gulf of Maine, based on observer data from NEFSC statistical catch reporting areas 513, 514, and 515. "Winter" is defined as January through May. "Fall" is September through December.

Appendix III.

**Observations on Harbor Porpoise Bycatch Per Haul in the
Southern Gulf of Maine Gillnet Fishery
1990-1994**

**Northeast Fisheries Science Center
September 29, 1995**

Introduction

This report presents results of analyses to determine trends in bycatch per haul of harbor porpoise in the sink gillnet fishery in the southern Gulf of Maine. Data collected in autumn under the NMFS Sea Sampling Program were used to evaluate trends in bycatch per haul in relation to year, month and zone (Mid-coast, Z or Jeffreys Ledge Band and "Outside" which refers to areas adjacent the Mid-coast and Z Band). These analyses were requested by the New England Fishery Management Council for use in preparation of a framework measure to mitigate harbor porpoise bycatch under the provisions of the current Multispecies Plan (Amendment 5).

Methods

The NEFSC used standard statistical techniques (generalized linear modelling, and bootstrapping) that allow for sampling variability and for shifts in the number, timing, and spatial position of hauls sampled. The data are taken from the NEFSC Sea Sampling Program; the 1994 data are not yet available in final form, so all results are provisional. The data from the 1994 pinger experiment (excluding active pingers) show significant differences from the sea sampling data in comparable months and zones. The "pinger boats" were, of course, sampled much more heavily than boats not involved in the experiment, so direct use of the pinger data could bias the results if the fishing practices of the pinger boats differed from those of the other boats. To avoid the possibility of such bias, we have therefore excluded the data from the pinger experiments pending further investigation of the causes of the observed differences.

Results and Discussion

The results of these analyses are shown in Table 1, which is explained in detail at the end of this section. The main conclusions are as follows.

- 1) There is a strong and statistically significant spatial gradient in bycatch per haul, with the rate being highest inside the Mid-coast Closure, intermediate in the redefined Z-band west of 69°30', and lowest in the area immediately outside these zones.**
- 2) There is considerable variation between estimated bycatch rates in different years, beyond what can be explained by sampling variability or by shifts in sampling effort between months and zones. In particular, estimated bycatch per haul for 1994 is more than three times that for 1991-1993 in any given month and zone.**

3) On average, bycatch per haul appears highest in October and November. The rates in September and December are similar. Of the 5 most extreme observations in this model (combinations of month, zone and year where observed bycatch per haul was much higher or lower than predicted by the model), 3 occurred in September, suggesting that variability may be greater at that time. However, the estimated differences between months are not as great as between zones or years, and these conclusions could be substantially affected by sampling variability.

4) No harbor porpoise bycatch has been observed in the Tillies Bank area (70°15'W-70°W, 42°30'N-42°40'N). There are two possible explanations: low sampling effort and/or genuinely low bycatch rate. If the expected bycatch per haul in this area was really the same as in the rest of the Z-band during any given month and year, and given the pattern of sampling effort in this area, the total expected bycatch would be just over 3 porpoises. The probability of observing zero bycatch purely because of sampling variability would then be less than 5%. It is therefore unlikely that the lack of observed bycatch is purely due to low sampling effort, and the bycatch rate in this area does appear to be substantially lower than elsewhere in the Z-band. This conclusion would be less safe, however, if the area was selected based simply on its low bycatch rate in the Sea Sampling Program, rather than on broader knowledge of fisheries in the area.

5) A similar analysis was applied to the region east of the redefined Z-band, between 69°30'W and 69°W. Again, no porpoise bycatch has been observed here, but sampling effort has been lower than at Tillies Bank. In this region, we would expect to have seen just over 1 porpoise. With this expected total, there is about a 25% chance of failing to see any bycatch just through sampling variability, far higher than the probability at Tillies Bank. There is therefore no strong evidence that bycatch rates really are lower here than in the Z-band to the west.

6) The inclusion or exclusion of either Tillies Bank or the eastern end of the Z-Band makes negligible difference to these conclusions, or to the parameter estimates in Table 1.

Table 1 shows the current estimates of year/month/zone effects, in the form of comparisons to a reference year (1991), a reference month (September), and a reference zone (the Z-band). The table can also be used to estimate bycatch per haul in any year, month, and zone using the reference bycatch rate for September 1991 in the Z-Band of 0.0123 porpoise/haul.

For example, the estimated rate in October 1992 in the mid-coast zone would be:

$$\begin{array}{rcccccc}
 \text{(base case)} & \times & \text{(October effect)} & \times & \text{(1992 effect)} & \times & \text{(mid-coast zone effect)} \\
 0.0123 & \times & 132\% & \times & 96\% & \times & 353\% & = & 0.055
 \end{array}$$

A similar calculation of standard error (SE) cannot be made from this table alone because of correlations between parameter estimates. However, the calculations could be made from the full data set if so desired.

The results show that bycatch per haul can be quite variable between years. The causes are not fully understood, but may include changes in fishing practices, and almost certainly changes in porpoise distribution. The present analysis does not account for changes in numbers of nets per string, or for possible covariates of harbor porpoise distribution such as water temperature or prey distribution.

Because of year-to-year variability, predicting the most likely bycatch per haul in a future year for a particular month and zone would entail making some assumption about how "good" or "bad" the year is to be. The mean estimated year effect so far is 129% (relative to the reference year 1991), but year effects have varied between 87% and 342% of the 1991 rate. To predict a "probable worst case so far" bycatch per haul, the 1994 effect (342%) could be used; however, this does not take into account estimation error in the parameters, or the possibility that some future years may have even higher bycatch per haul than 1994.

Table 1

Estimated effects of year, month and zone on harbor porpoise bycatch per haul. The standard errors (SE) summarize the uncertainty in each estimate of mean effect compared with its reference (year 1991, month September, or zone Z-band), not the variability of bycatch per haul from year to year. The reference bycatch rate (for September 1991 in the Z-band) is 0.0123 porpoise per haul (CV=47%).

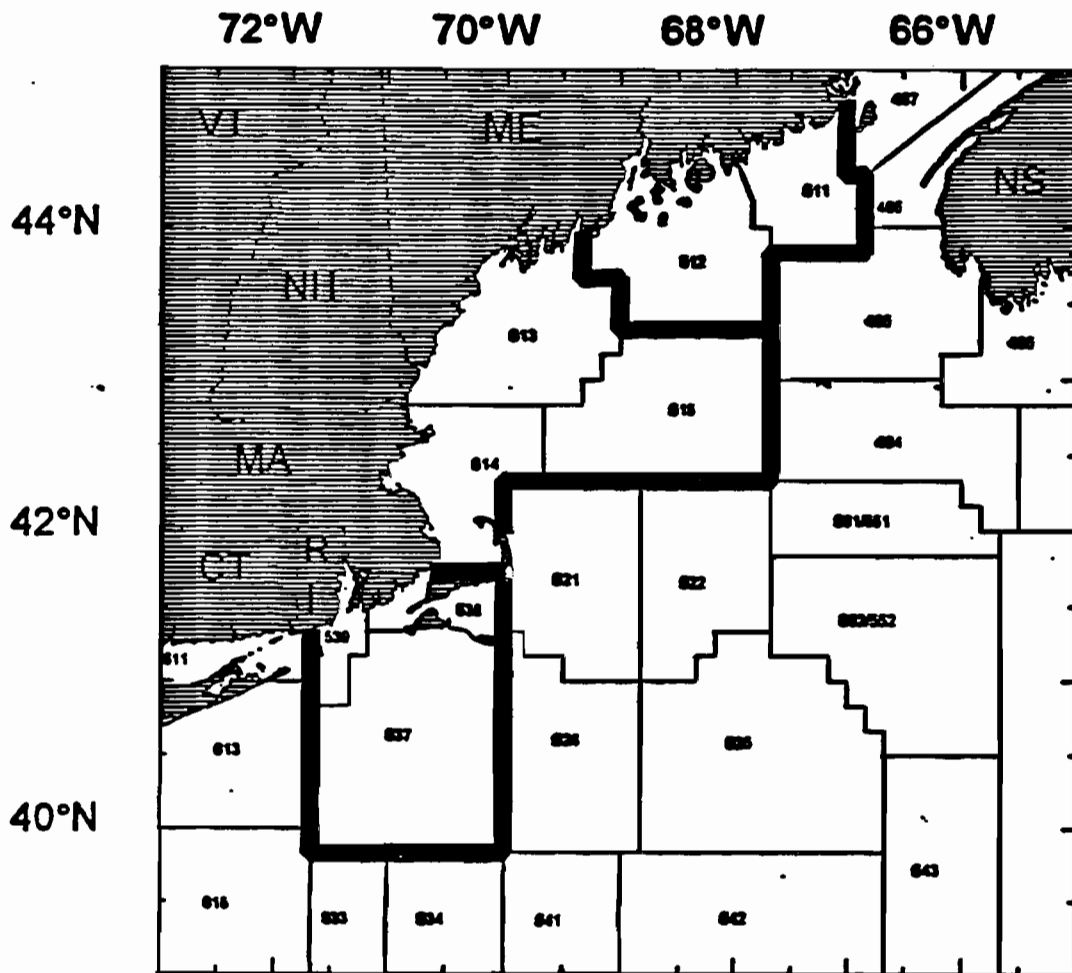
Base case (September 1991, Z-band): 0.0123 porpoise/haul, CV 47%

<u>Year</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>
Effect (%)	220	(100)	96	87	342
SE	128		44	42	127

<u>Month</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>
Effect (%)	(100)	132	160	98
SE		49	62	51

<u>Zone</u>	<u>Mid-Coast</u>	<u>Z Band</u>	<u>Outside</u>
Effect (%)	353	(100)	16
SE	106		9

The Gulf of Maine, with NEFSC statistical catch reporting areas and strata for estimating total harbor porpoise bycatch.



The thick black lines show the boundaries of the three strata used for estimating bycatch: Northern Gulf of Maine (areas 511 and 512), Southern Gulf of Maine (areas 513, 514 and 515) and south of Cape Cod (areas 537, 538 and 539).

**Benefit/Cost Analysis of Proposed
Framework Action**

**Northeast Fisheries Science Center
September 29, 1995**

Introduction

This report presents the results of a benefit-cost analysis of the New England Fishery Management Council's proposal to close additional areas and time periods in the Gulf of Maine to reduce Harbor Porpoise by-catch. This is being carried out as a framework measure under the current Multispecies Plan (Amendment Five).

Benefits and costs of the proposed management action are measured in relation to the Status Quo, which in this instance is the Mid-Coast closure (exclusive of the Z-Band) in November. The Preferred Alternative would close the Mid-Coast area in November and December, along with the Z-Band area, west of the 69 degrees 30 minute line. Net Benefits of the proposed measure would therefore be the difference in benefits and costs between the Preferred Alternative and the Status Quo.

Methods

The net benefits of either alternative are measured by the sum of consumer and producer surpluses. For the purpose of this analysis, there is assumed to be no change in consumer surplus for the seafood sector because the gillnet fleet lands only seven percent of the total catch in New England, so it's unlikely that retail prices will change. However, consumer surplus for Harbor Porpoise will change if additional areas are closed. Although Harbor Porpoise never enter the market directly, society still values the existence of a Harbor Porpoise population. The total change in consumer surplus, therefore, depends on the region's valuation of harbor porpoise protection.

Numbers used to calculate consumer surplus for Harbor Porpoise protection were based on a survey of Massachusetts residents conducted by economists at the University of Maryland in 1994 (Strand, McConnell and Bockstael 1994). The survey attempted to elicit household preferences for protecting Harbor Porpoise through a method called contingent valuation which has been widely used to measure the value of non-market resources. This survey gave a weighted mean willingness-to-pay per household for harbor porpoise protection.¹

The individuals surveyed were told that there would be a one time state income tax surcharge to protect harbor porpoise and the money would be used to compensate gillnetters for lost income. Because the mean willingness-to-pay was based on a special tax in a single year, it had to be amortized to convert it to an annual cost. For this analysis, a seven percent discount rate and a 50 year time horizon were used. Fifty years was chosen because the tax would only be paid once in a lifetime, and after 50 years

there is very little change in the amortization factor. The University of Maryland study reported mean willingness to pay to be \$176 per household, which was amortized into \$12.74 per year. If this amount is multiplied by the number of households in Massachusetts, a total willingness-to-pay of \$28.6 million was obtained.

Producer surplus is a firm's total revenue minus total cost, including opportunity costs. In this analysis, vessel profit is substituted for producer surplus because information on opportunity costs of capital and labor are unavailable. Since this analysis is for a two month closure, there will be no change in fixed costs and only changes in variable costs, which are trip costs, are relevant. There is potential for variable cost savings to be generated by these closures if vessels are tied up at the dock². In equation form, the change in producer surplus is:

$$\Delta PS = \Delta VR - \Delta VC$$

where PS = Producer Surplus

VR = Vessel Revenue

VC = Variable Cost

Vessel revenue is defined as the sum of the revenue received from each species landed during the time period of interest. Variable costs are trip costs such as crew share, fuel, oil, ice and food.

Because the crew shares in both the risks and rewards, crew payments are problematic. In most firms, labor is treated as a variable cost of production and a decrease in labor costs would increase firm profitability. However, in fishing firms, labor is typically paid a share of the catch and also pays for part of the variable costs. Any decrease in fishing effort which leads to a decrease in landings means that crew income declines. Treating labor in this manner is somewhat problematic because it assumes that crew labor is fixed and their opportunity cost is zero. The opposite view would be that labor is completely variable, that they just earn their opportunity cost and that no surplus accrues to labor (Herrick et. al, 1994). In reality, the situation is probably somewhere between these two extremes. Because this closure is for a two month duration, it's assumed that crew members will be unable to find alternative employment and a zero opportunity cost will be assumed, meaning any reduction in share payments to crew members will be counted as a cost in the analysis.

Two sets of analysis are reported here. The first will

examine the change in Net Benefits if the framework measure is implemented as proposed. The second analysis examines the proposal which excludes Tillies ledge from the closure area.

Data

The calculation of total revenue earned by the fleet was problematic because the reverse Z-band area cuts across quarter degree squares. On non-interviewed trips, it was impossible to determine on which side of the boundary the landings occurred. A Geographic Information System (GIS) located at the Woods Hole Lab which had been used previously was therefore used to calculate the loss in revenue from each area.³ Variable costs and crew payments are assumed to be 23 and 25 percent of gross stock respectively.⁴

Results

Costs

Losses in producer and crew surplus under each alternative, assuming zero effort displacement, are given below. Under the Preferred Alternative the loss is estimated to be \$979,350 (Table 1). If Tillies Ledge is left open, losses are reduced to \$934,999.

Table 1. Producer and Labor Losses Under the Proposed Alternatives.

I. Preferred Alternative

Time Period	Area	Vessel Revenue Change	Crew Share Change	V. Cost Change	Total Surplus Change
11/1-12/31	Z-Band	-701,018	-233,672	-214,9799	-719,711
12/1-12/31	Mid-Coast	-252,896	-84,298	-77,555	-259,639
Total		-953,914	-317,970	-292,534	-979,350

II. Leaving Tillies Ledge Open

Time Period	Area	Vessel Revenue Change	Crew Share Change	V. Cost Change	Total Surplus Change
11/1-12/31	Z-Band	-657,818	-219,273	-201,731	-675,360
12/1-12/31	Mid-Coast	-252,896	-84,298	-77,555	-259,639
Total		-910,714	-303,571	-279,286	-934,999

Benefits

The expected willingness to pay for harbor porpoise protection, based on the University of Maryland study, was estimated to be \$28.6 million per year. This is a lower bound estimate because households in Maine and New Hampshire weren't included. Because the survey was framed around the idea of compensating gillnet vessel owners for not fishing, thereby eliminating human induced mortality, any mortality which occurs will be a loss to society. If the relationship between mortality and losses is assumed to be linear, a one percent increase (decrease) in Harbor Porpoise mortality would increase (decrease) losses by \$286 thousand per year.

Below is a table which shows the change in total losses for each percentage decrease in human induced mortality. As an example, reducing mortality from five percent to two percent, a three percent difference, would reduce losses to society by \$858 thousand.

Table 2. Reduction in Social Losses Based on Reductions in Harbor Porpoise Mortality.

Decrease in Mortality	Cumulative Decrease in Losses (\$1,000)
one percent	286
two percent	572
three percent	858
four percent	1,144
five percent	1,430

Net Benefits

For any proposed management action, a positive value when the costs are subtracted from the benefits means the action is worthwhile from a national economy perspective. For this particular proposal, it's difficult to determine whether the benefits exceed the costs because of uncertainty in the data. That is, there is no estimate on the expected reduction in Harbor Porpoise mortality, and no available information on the number of vessels which will be able to offset losses by shifting areas fished.

Tables 3 and 4 show the net benefits given different assumptions about reductions in by-catch and the percent of effort

which can be shifted. The columns are the percent of effort which might relocate to fish in other areas and assumes that the total revenue earned is equivalent. The rows contain percent reductions in harbor porpoise mortality. Each cell in the tables represents the Net Benefits given a reduction in by-catch and the degree to which vessels can shift effort and offset losses. For example, given a one percent reduction in mortality and a 25 percent shift in effort, Net Benefits under the preferred alternative are -\$449 thousand. Given a one percent reduction in mortality, between 50 and 75 percent of the effort would have to shift to other areas and earn equivalent amounts to achieve positive benefits. With a three percent reduction in by-catch, only between 10 and 20 percent of the effort would have to shift for there to be positive benefits. Given the uncertainty about Harbor Porpoise mortality and switching, these tables give rough approximations on possible Net Benefits given different assumptions regarding mortality and effort displacement.

Table 3. Net Benefits (\$1,000) of Preferred Alternative Given Different Levels of Effort Displacement and Reductions in Harbor Porpoise Mortality

Reduction in By-Catch	Level of Effort Shifting						
	0%	10%	25%	50%	75%	90%	100%
1%	-693	-595	-449	-204	41	188	286
2%	-407	-310	-163	82	327	474	572
3%	-122	-24	123	368	613	760	858
4%	164	262	409	654	899	1,046	1,144
5%	450	548	695	940	1,185	1,332	1,430

Table 4. Net Benefits (\$1,000) of Preferred Alternative Minus Tillies Ledge Given Different Levels of Effort Shifting and Reductions in Harbor Porpoise Mortality

Reduction in By-Catch	Level of Effort Shifting						
	0%	10%	25%	50%	75%	90%	100%
1%	-649	-556	-415	-182	52	192	286
2%	-363	-270	-129	104	338	478	572
3%	-77	16	157	390	624	764	858
4%	209	302	442	676	910	1,050	1,144
5%	495	588	728	962	1,196	1,336	1,430

Literature Cited

Herrick, S., I. Strand, D Squires, M. Miller, D. Lipton, J. Walden and S. Freese. 1994. Application of Benefit-cost Analysis to Fisheries Allocation Decisions: The Case of Alaska Pollock and Cod. North American Journal of Fisheries Management 14:726-741.

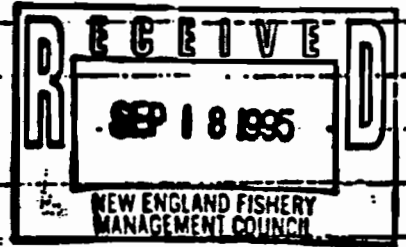
Strand, I., K. McConnell and N. Bockstael, 1994. Commercial Fisheries Harvesting, Conservation and Pollution: Preferences and Conflicts. National Marine Fisheries Service S-K Program Project NA-26FD-0135-01, Final Report.

End Notes

1. Willingness-to-pay measures consumers willingness to incur costs for a non-market resource. From this amount, total value can be estimated.
2. It's likely that some vessels will be able to fish in other areas, but given the time given to complete this analysis, this is impossible to quantify. Switching areas will likely result in higher variable costs and lower production, but the net effect of these movements is unclear.
3. When revenue calculated from the GIS program for both the Mid-Coast and Reverse Z-Band was compared to the total from the weighout system, the GIS program yielded a result that was one percent less than the actual weighout. Total revenue results from the GIS program were then increased by one percent to account for this difference.
4. Variable cost as a percent of gross stock used the same figure as that used in the Draft Supplemental Environmental Impact Statement (DSEIS) for Amendment Seven. Crew payments are based on unpublished survey data from Maine and New Hampshire vessels and was one percent less than the percentage reported in the DSEIS.

To: Pat Fiorelli

From: Cape Ann Gillnetters Assoc.



Pat,

Thanks for following up on this request for us. I've taken into consideration the concerns voiced regarding the proximity of the proposed open area to the "hot spots" up on Jeffries. Consequently, I've moved the northern boundary 10 minutes to the southward. This should create a buffer zone which may help make this idea more acceptable.

The open area has been filled in on your October charts. Its co-ordinates are:

East - 70°

West - $70^{\circ} 15'$

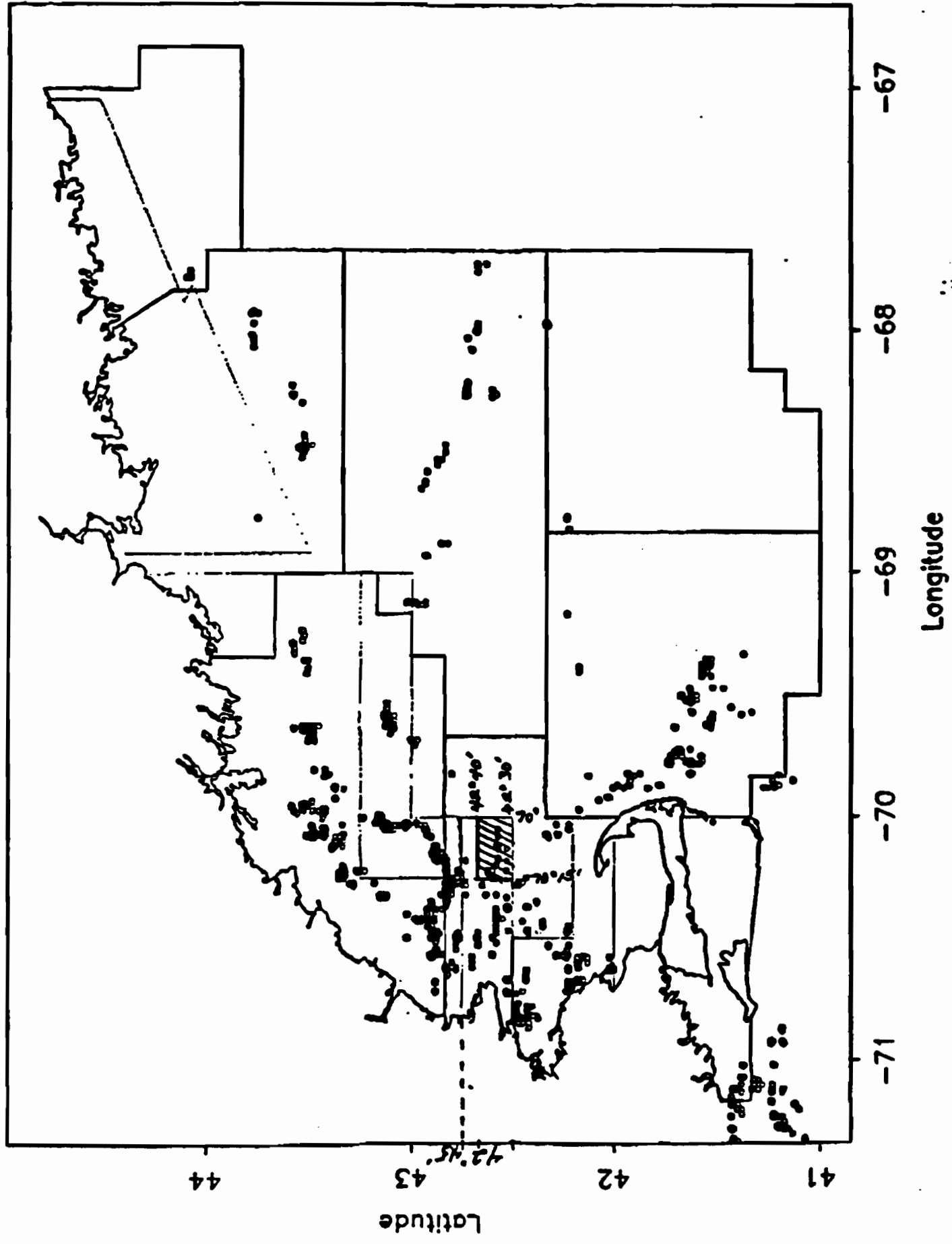
North - $42^{\circ} 40'$

South - $42^{\circ} 30'$

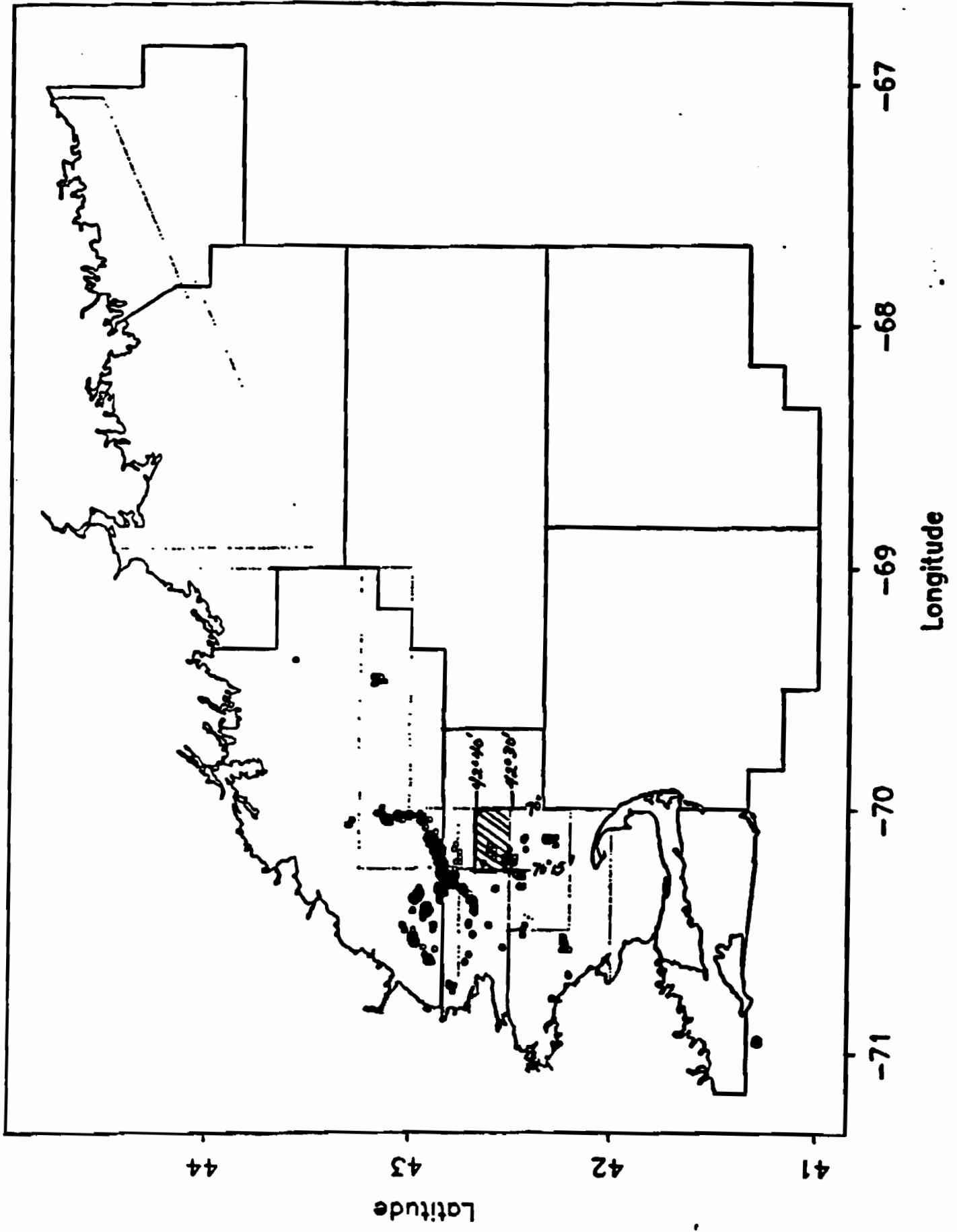
Thanks,

Paul

Obs. Hauls months= 1U years= 9U,91,92,93



Obs. Hauls months= 10 years= 94



NEW ENGLAND FISHERY MANAGEMENT COUNCIL

MINUTES

Mariner's Church Meeting Center, Portland, ME
September 13, 1995

Marine Mammal Committee Report

Mr. Nelson: We are dealing primarily with the harbor porpoise issue. The Harbor Porpoise Review Team was officially formed and had an opportunity to meet last Friday, September 8 to discuss a number of items. One was the effectiveness of the 1994-95 time area closures to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery; to examine future measures that would allow the Council to achieve the goals stated in the Framework #4 to the Northeast Multispecies Fisheries Management Plan, and also to consider the use of acoustic devices as part of the bycatch mitigation strategy.

Their report, as well as a variety of data, can be found under Tab 11. I think for the sake of brevity, people can read what is there as they have an opportunity to. There were various things that were highlighted in that meeting. Number one is the variability that is evident in the data and the need to retrieve or have data available in a timely fashion so that we can have whatever analyses needs to be done so that we are all dealing with a comfort level of confidence in the data. However, they did review available data, and working towards the goal of what we have for our ultimate goal, which is reducing the bycatch to a much smaller number than what it currently is, they made recommendations and again those are under Tab 11.

The Marine Mammal Committee met yesterday to discuss the recommendation of the Harbor Porpoise Review Team and we have made several motions that we would like to put before the Council for consideration. Based on the best available evidence that porpoise takes probably increased this past year, rather than decreased, although there is tremendous variability between years and we can't be sure about the numbers, nevertheless we are still not reaching our goal. The Harbor Porpoise Review Team felt that additional measures needed to be taken in order to continue progress toward those goals. So after review of that recommendation and the data associated with it, the Marine Mammal Committee recommends the following.

Mr. Nelson moved and Mr. Coates seconded:

that the Council recommend that the Jeffreys Ledge or "Z"-band west of 69°30' be incorporated into the existing mid-coast closure area for November and December 1995. The Council also requests that the NMFS Regional

Director investigate the possibility of fishing in the Z-band contingent upon the experimental use of pingers.

Mr. Nelson: As I mentioned in our last meeting, pingers have shown great promise. The experiment that has been conducted did not answer all the questions that people have, however, it has been effective this past year and we would like to see that use continued. So I would like to have discussion on this motion.

Dr. Rosenberg: Could you explain a little bit why it is only that portion of the Z band and why it is not the whole Z band?

Mr. Nelson: Looking at the data we had available, there seemed to be few, if any, takes east of 69°30' and also the activity associated with gillnetting east of that boundary was not significant. Therefore, we opted to draw an arbitrary line that encompassed areas that have shown over the years to have activity and takes. That's why it was drawn.

Dr. Rosenberg: I guess the initial intention of the Council's objective was to move forward with a reduction of harbor porpoise bycatch or measures that would be intended to reduce harbor porpoise bycatch by 20% in each year down to 1997.

Mr. Nelson: Certainly, if we could achieve 20% per year that would be ideal. It would appear that we were not able to do that although the closure this past year, the team felt was the appropriate for both time and place. It is just that there are other mitigating activities that they don't have a good feel for movement of the animals. Therefore, we felt, and they felt, that whether it is a 20% or more, and I think we are probably looking for a higher than 20% effort reduction here, is what we are recommending. The November/December time frame was something that we felt could be achieved this year so we are not trying to make a recommendation that is not achievable.

Dr. Rosenberg: Let me finish the question a little bit although, I think you mostly answered. Is it the committee's feeling that this closure of the Z-band for November, and this is assuming the closure was originally for November only and now the intent is that it be closed for November and December, would at least be expected to achieve the kind of schedule that the Council is looking at in the first place given the information you have available. It may exceed your original objectives, as you have just stated, but that as far as you can tell, for achievable measures this is going to address those objectives pretty closely.

Mr. Nelson: Correct.

Dr. Rosenberg: Obviously I am asking this because I need to be able to say "yes, the Council has done what it said it is going to do."

Mr. Nelson: There was an excellent debate that took place with the Harbor Review Team and I commend them for all of the ground that they have covered in that period of time. One of the things that struck me was the Center staff pointing out that with any luck we could have hit the 20% reduction this past year but it just didn't turn out that way because of environmental factors which we don't have a handle on which we will try to get a later recommendation on. In order to do what we feel is achievable within this time frame is to do something further in 1995 and November is usually the high month of take. Therefore, expanding it to a greater area would provide more protection to the animals and, at the same time, expanding it to a two month period will try to provide that extra amount of protection. This also provides the opportunity for you to consider the use of pingers on any fishing that you might allow in that area and gives us the opportunity to further evaluate the effect of pingers which, as you know from the previous study, seem to be quite promising.

Mr. Coates: I just want to make sure that it is clear to everyone that in addition to the Z-band being incorporated into the mid-coast area that it also includes the December closure. I wonder if it might need some language to clarify that.

The motion was perfected to read:

that the Council recommend that the Jeffreys Ledge or "Z"-band west of 69°30' be incorporated into the existing mid-coast closure area, and this reconfigured area be closed for November and December 1995. The Council also requests that the NMFS Regional Director investigate the possibility of fishing in the Z-band contingent upon the experimental use of pingers.

Mr. Nelson: That's correct. The existing closure area would be expanded into December and the Z-band would be November and December. The existing closure would be enlarged to cover both months. This is a modification to the original Z-band as well.

Mr. Odlin: John, you mentioned at the discretion of the Regional Director. Is this still under the auspices of experimental fisheries? And if they go in there, what would be the observer coverage?

Mr. Nelson: The intent was for the RD to, as we understood it from legal counsel, he could authorize fishing to take place in that area with the stipulation that the pingers would have to be used. Again, reflecting the fact that this looks like a promising technology that needs to be continued to be used under real world circumstances so that we can continue to get information on it. The recommendation from the Harbor Porpoise Review Team is that they would like to see the pingers looked at in various areas to see if there is continued effectiveness. I think what we are basically looking at is that we essentially have one more year to make whatever leap we need to make

to get the catch down to where it is appropriate. That's a moving target I understand also, but we are trying to make sure that we have taken whatever measures are necessary to get us on track to reach that goal.

Ms. Stevenson: To the same section of the motion, it says "requests that the NMFS Regional Director investigate the possibility of fishing". Does that mean that we want him to allow it if you can. I am very unclear as to what we are asking the Regional Director to do.

Mr. Nelson: The intent of the committee was to ask the Director to use his discretion to allow fishing in that Z-band as long as pingers were used on any of the nets in there.

Ms. Stevenson: As part of an experiment or just a blanket approval of use of pingers in that area?

Dr. Rosenberg: My understanding is it would have to be as part of an experimental fishery and that you are asking me to consider an experimental fishery which would include fishing in the Z-band. I agree with you that it is not very clearly stated in the motion. My understanding of it, and I think it should be clarified in the motion, is that you want me to consider options for an experiment that would at least include fishing in the Z-band. There may be other things that I would feel are necessary with respect to that experiment. It may include other parts of the area. I don't think you mean to limit it to that, the only thing you want me to look at is whether you can fish the Z-band with pingers. If you do mean that, say so. This part of the motion concerns me because I am a very discreet guy but you are asking me to do something at my discretion. So however it can be clarified, if you are asking for a specific experiment say so, if you are asking to look at available options such as fishing either in the Z-band or other closed area then say so. The only thing I will commit to is considering it.

Ms. Stevenson: Further on that, what I don't understand is if we are supposed to be asking for a pinger experiment that includes the Z-band or if the objective is to allow fishing in the Z-band if pingers will allow it. These are two different prospects.

Mr. Nelson: I am not sure I can answer those questions with the definity that apparently we need. The sense of the committee and the review team was that pingers seem to be very effective and they would like to see that further analysis conducted on them. The feeling was that in particular areas, they should be allowed so that type of successful impact would take place. The only way to do that is to fish in those areas and have pingers on them and have the observer coverage that Artie had asked for previously to continue.

Dr. Rosenberg: Let me describe a little bit more why I am asking for more

specificity. I am also encouraged by the pinger results and the industry went to a lot of effort to try to accomplish the experiment last year. It looks like the Marine Mammal Commission was quite impressed with the effort that had been put in and the results and so on. It seems here that you are asking for two things; 1) additional experimental work to move forward from the limited experiment that was done last year as well as possibly the opportunity for additional fishing for these vessels even though there is a need to close areas to protect harbor porpoise. If you were just asking me to investigate options to do that, I would be asking the scientists, probably the Review Team, Council members and the industry, "what is the appropriate experiment?" That may include things such as fishing in the Z-band with pingers and fishing outside the Z-band with pingers. What is the best way that we can accomplish both the conservation goals and get better data. I presume you don't want to limit to, and the only thing you should consider, is allowing vessels in the Z-band with pingers. There may be other experimental options that would come forward when somebody sat down to design a way to get better information. The observer coverage thing that Artie brought up is of course a concern. A lot of our effort is designated to go on sink gillnet vessels by Congress for our observer coverage but we are not going to have 100% observer coverage again. We do have more observers in that fishery than in any other. So we would have to consider that in the design of any experiment. I suppose the question then to the committee and to the Council is "do you have a specific experiment in mind or do you want me to consider options for experimental fishing with the use of pingers that may both improve upon the information and provide some additional opportunities for gillnet vessels to work during this period of the closure?"

Mr. Nelson: I would acknowledge that we do not have the expertise to design that. Certainly there are members that have been involved in the previous experiment and can provide some input on that. But I think that we would be looking for you to draw on the expertise that you have inhouse to come up with whatever is appropriate so that the further evaluation can be made. We just felt that, and I think the Review Team's sense was, that if we were going to be able to have the goal reached and also possibly have fishing take place there, that the only way that you are going to do that is to look at pinger information. Otherwise you are probably back to just closing areas and protecting the harbor porpoises.

The motion was further perfected to read:

that the Council recommends that the Jeffreys Ledge or "Z"-band, or a redefined Z-band, west of 69°30' be incorporated into the existing mid-coast closure area, and this reconfigured area, be closed for November and December 1995. The Council also requests that the NMFS Regional Director investigate possibilities for additional fishing, in particular in the area of the Z-band, and experimental work on the use of pingers to mitigate harbor porpoise bycatch.

Dr. Rosenberg: That makes it a little bit broader. It means that instead of just focusing on "can you fish in the Z-band?" There may be some other options that would be appropriate. That's a suggestion, I am not trying to push anybody into that. If you want me only to focus on fishing in the Z-band, then I can consider it in that form too. Either way.

Mr. Brancaleone: Is that all right John?

Mr. Nelson: I don't have a problem with the expansion of it. I think though that I want to just convey to you the sense of both the Review Team and the committee that if there is going to be that type of activity that we wanted to focus it in particular areas and the Z-band was one of the areas that was discussed.

Dr. Rosenberg: Can I suggest it then say "additional fishing, in particular in the area of the Z-band." Does that help?

Mr. Nelson: It certainly does.

Mr. Anderson: I think after attending the Review Team's meeting and the committee meeting yesterday and I am not sure how much you are looking for as far any type of experimental design or that type of thing, but conceptually I think that the industry and some of the scientific community want to see that this device actually enter into an operational status of the fishery.

At this particular point anything that has been done, and I have been involved with it for the last four years now, and last year was a very rigid and definitive experiment that set the parameters of what it wanted to accomplish, but one of those wasn't really an operational device that could be put into the field and mandated as a mitigation tool that would have to be used when the time was right.

I don't know what took place with the experimental fishery for the small mesh fishery in the northern sector. Could you just comment, was that a blanket policy or was that an individual application by individual vessels to participate in that fishery? I guess the thing is that as far as the allowance of the devices in the Z-band, it would still need to be developed and looked at by you. Some of the options I think are whether you were to issue a blanket policy for anybody that would fish within that Z-band, that they would require the device or whether individual vessels would have to apply.

Just another factor that I think ought to enter into this is that we are at a very late date with this particular procedure. One thing that is kind of imperative for the industry to respond to is that there aren't a tremendous amount of devices available. They could be potentially produced but upon your approval of any type of fishing activity or further experimental work in the Z-band, the industry would have to

respond and solicit vendors who could meet the fulfillment of an adequate amount of devices.

Dr. Rosenberg: First of all, I have to tell you what I understand the motion to be saying and what I would intend to do. "I do support this motion but that means that I support that I will look into it and obviously the time is short, so I will look into it tonight." I understand there is an issue about the availability of devices which means that you couldn't require pingers on every vessel throughout the range. But what I don't know and I am not willing to judge scientifically, is what the conditions for the experiment would be. In other experimental fisheries, we can design it as we want, but for example, the one in the Gulf of Maine there are conditions to participate in that experiment with the bycatch reduction device, the whiting grate. In the shrimp fishery there was a condition that you had to use the Nordmore grate. In this case there would be a condition that if you are going to participate in the experiment, you have to do certain things like using pingers on your nets. Maybe that would say you use pingers on your nets in the Z-band, maybe it says you use pingers on your nets wherever you fish if you are going to participate in the experiment.

I don't know what the details of the actual experiment would be because I haven't thought through what information would be the most valuable and what is practicable to do. I think what would have to happen is that probably the Review Team and industry people would need to sit down and work out a particular experiment, not in the rigid sense necessarily of what was done last year, because that was done for another purpose, but it would be an operational thing that would provide us some information on the ethical use of pingers as well as would provide an operational opportunity for people to use these things in practice. I don't know how that will interact with the availability of devices. What I have heard, anecdotally from people, is that they are worried about getting devices now. They think the manufacturing wouldn't be a problem for the spring but it might be difficult now. If that is the case, then we have people who have an experimental permit conditioned on having pingers and they can't get pingers and they can't go fishing under the experimental conditions. That's all I can say about that. I mean we are not going to manufacture the devices.

So I don't know what the actual structure would be such that it would both enable gillnetters to work more effectively or for a longer period of time and have the devices available and provide us some real information. Because I am not going to approve an experimental fishery that is not providing us information that we need to answer the question about whether this really mitigates bycatch to some extent. It is not a safety valve, it is an experimental fishery and I need to justify it in that way. Does that help at all, Erik?

Mr. Anderson: Yes it does. Once again, I just wanted to get across the point that this particular recommendation, being almost two parts, but one of it leaning heavily

on you in reference to this experimental fishery, only enlightening you to say that there would be some urgency so that if and when it is approved that the industry can respond in trying to have the devices produced so that like you said, in some respects there is no sense passing it if the devices aren't available, there is some hypocrisy in it for the industry to say "okay, great now what do we do." But I think time being short and not knowing what the manufacturers capabilities might be, that is not the duty of the Council, that would be the burden of the industry to see what could be accomplished on that end. We are just looking at you to see how fast we can develop the parameters of the experimental fishery being operational, being what information could be produced by it and then with that level of commitment out of you, the industry could proceed in the supply of the devices.

Dr. Rosenberg: I can't make a commitment because I have to see the details. I am trying to make encouraging noises and most of the information on pingers has been encouraging. I understand the urgency. It doesn't help you very much if you say "yes, you can do it on October 29," and nobody has any devices. So if we were going to move forward with this, we should try to do it as quickly as possible.

Mr. Brancaleone: Further discussion on the motion?

Mr. Cohan: I wanted to underscore the importance of the whole pinger program to us and what we were thinking when we were trying to address this yesterday at the committee meeting. We wanted to allow fishermen, particularly the guys out of Newburyport and Portsmouth and Rye and that whole segment of the coast, to get some access to some bottom to fish. You are looking at probably six out of the eight biggest weeks that they have in the entire year and you have to put that fat in to get through the winter. If pingers can access them a little bit of some of what they need to lay in that larder, that is what we were kind of hoping for.

We realize that we have been backed into a time-oriented corner by the priorities that Amendment 7 has had and by the untimely delays and hard data from last year and our first round of closures. We are still all kind of guessing in the dark about that. But we wanted to mention the relation there and the urgency of this request is to try and keep boats working. In that vain, I have somewhat of a fly to throw in the ointment here, it's a fruit fly, but there has been a precedent set here as far as readjusting the Z-band slightly to the westward downeast. There is a portion of the Z-band in the southeastern corner of it that pretty much encompasses Tillie's bank. If you look at all your charts in the back here, you will see five years worth of good data, plenty of effort, and there haven't been any takes there. When I look at this chart, that's my life that I am looking at. It is interesting to see it reduced to a piece of 8x10. But you can see through these small diagrams where these animals move in the takes. Even though there isn't a curve on this chart, you can see exactly where Jeffrey's runs through just looking at the takes all the way down. On Tillie's down in that southeastern corner, the animals just don't go there. Yet it is a vital place for

Gloucester boats to fish. It also gives access to the southern New Hampshire and the Newburyport boats to get out and fish too.

I would like to consider this area for exclusion from the Z-band. I know it sounds like bad ju-ju at this point, but the data sits there in front of you and the animals aren't there. There is plenty of effort and there are no takes. We are looking at between 70° and off to the west into 70°15' along the 42°45', it is just a 15 minute square there on the extreme southeastern corner of the Z-band. If you could see it on a big chart you would realize the importance of that bottom to the fisherman. Everything towards shore from inside there is equally important, but there are takes there. So it is justifiable to close it down. This piece of bottom, given the tradeoff for the fishermen and for the animals, I don't see where the data here justifies closing that down at such a critical point of the year when there are so many vessels involved.

So once again, the top northern end of it would be 42°45', which is where last years' closure zone began, and if you carried that 42°45' line out to the 70°15' and then go south to the 42°30', it gives you that little square there. If you could look at that on a chart, that's all of Tillie's and basically the boats absolutely need that bottom and there is no reason that they should be denied right now. I would like you to consider that. It's right up there on the motion that we have the option to consider the fisheries to exist within the Z-band which makes it very convenient of me to ask you this.

Mr. Wiley: This all sounds very familiar to me since I think we went through a very similar process somewhat more than a year ago. I've got a bunch of different comments that I will try and combine into a few comments.

First of all, I am going to read from the original Harbor Porpoise Review Team's recommendation to the sub-committee which is a little bit different than what was proposed to the entire committee here. But they started off by saying that the time and area closures, as currently configured, are neither large enough nor long enough to achieve the Council's stated goals. A very clear statement. We are already eroding the areas and the times. There is good basis for the statement that the bycatch could be 50-60% higher than in previous years instead of 20% lower which was the goal of the Council and that a significant portion of that bycatch increase occurred in the mid-coast area. Nobody is giving out numbers but they are available, you can get them yourself right from the data that you have in front of you. If you take the percent of observer coverage, the bycatch rate and number of observed hauls, I came out with about 1,700 animals killed in the mid-Atlantic coast area. That is a lot of animals considering you are trying to reduce the number of animals being killed.

I would say that if you are already considering reducing the areas from what we

have now, you are not going to succeed. In addition, the original recommendation for this 1995 closure was from September through December, not just November and December. But what happened was, bureaucratically, it didn't look like anything could happen in September and October so the sub-committee accepted November and December. That's a little bit different than the actual recommendation that was made. You can get the idea here that once again the time and the area is being eroded until you are not going to have a viable program as you didn't have a viable program for 1994. So I would be very, very careful about considering too many inclusions or exclusions in time or area with what you are already proposing.

Also, the pingers are certainly a promising experiment. They remain experimental. The Review Team did not recommend pingers for the November/December closure, the reason being if you miss with pingers you are going to come up with nothing once again. The ESA listing is still viable. Many people think that because of the congressional action to place a moratorium on listings that it is a done deal. Actually, that lasts until October 1 of this year. What it states after that is that NMFS cannot spend money on making ESA listings. Luckily all the effort has already been done, all the money has been spent on this listing. If we force it to be reopened and what has happened in the last three years since the listing, is that every year the take has gone up and the Council is still doing nothing to reduce that take, I have a pretty good idea what is going to happen. So there is a lot of stuff to consider and if I were you folks, I would certainly be looking at the most opportune way of reducing take in a fairly quick manner.

Dr. Rosenberg: I do support this motion given my caveats about you recommending something to me, but I still support the motion. However, it simply says that the Council recommends that the closure be incorporated. It doesn't say how that is actually be done and the only way that it can be done is by framework action. So to just say that the Council recommends that this happen, the Council has to initiate a framework action and accomplish that for this to happen. So I draw that to your attention because "who are you recommending this to?" You have to do the framework action to actually accomplish it and I want to make sure everybody is clear on that. I support the idea but I support it given that you do it as a Council framework action under Amendment 5 to institute this extension of the closure.

The motion was further perfected to read:

that the Council recommends that the Jeffreys Ledge or "Z"-band, or a redefined Z-band, west of 69°30' be incorporated into the existing mid-coast closure area, and this reconfigured area be closed for November and December 1995. The Council also requests that the NMFS Regional Director investigate possibilities for additional fishing, in particular in the area of the Z-band, and experimental work on the use of pingers to mitigate harbor porpoise bycatch. This is the first meeting for initiating a framework action.

Mr. Brancaleone: Okay, does everyone understand that? If this motion is passed then we are initiating the framework to get the Groundfish Committee to go start work on a framework.

Dr. Rosenberg: If you actually want this to happen, the only way it can happen is framework.

Mr. Anderson: Once again, a procedural question. On that statement there where it has to run the framework route, which I guess we understood, but because we recognize a time frame for this to be accomplished, but once again will you not entertain any fishing activity on an experimental basis within that area prior to the passing of the framework motion, if it was to proceed for it to be passed? Do you know where I am getting at? Will you only act on any type of experimental fishery within the Z-band only and if the framework measure gets through?

Dr. Rosenberg: Well, unless you do the framework, it is not closed, right? So if you don't do the framework, then I don't have to allow you to fish in there because it is not closed. You need to do the framework now. I know John is aware of this and Gene may want to describe the procedural issues, but the Council needs to move on a framework immediately to accomplish this closure, including the closure of the Z-band, and until that happens I can't approve an experimental fishery. I am not going to approve an experimental fishery in an open area. I guess I could but I don't imagine we will have a lot of applicants.

Mr. Nelson: There was discussion at the August meeting as far as we were trying to move ahead at that time under a framework action. We had gotten a clarification at that meeting on the idiosyncrasy of this particular rule that governs marine mammals or harbor porpoise. We are trying to move ahead with that in mind. We had tried to initiate the framework in August, but as was rightly pointed out, we had not got recommendations which should have been available at the first meeting of the framework. Gene can stumble in any time here before I stumble into something that I shouldn't be saying. So we would be considering this as the first meeting. The recommendations, as I understand it, would then be put into the *Federal Register* for public comment.

Tape 5

Mr. Martin: That is essentially correct. As I explained yesterday in the committee meeting, there is some awkward or unfortunate wording in the regulation as to the number of meetings required to do this. We have gone back and looked at the original amendment and have discerned that the intent of setting up a harbor porpoise framework was to mirror the other types of frameworks that exist in groundfish and scallops. This means that a framework has to be done over at least two Council meetings, this would be the first one, the next meeting whether it is the

previously scheduled meeting at the end of October, of you desire a special Council meeting before that time, would be the second meeting. As with other frameworks that you have done within a reasonable time before the second meeting, there would have to be made available to the public the recommendations that would come forward in that second meeting as a framework measure and the appropriate analysis as to the effect of those recommended changes in the FMP. Then public comment would be received, either after that information is available or at the second Council meeting, and then the Council would recommend that the National Marine Fisheries Service, if they voted to accept the recommended changes, be implemented as a final rule without any further public comment. That means if you wait until the next meeting on October 25, it will be extremely tight for the Council to get us the framework package and for us to publish that before November 1. So that needs to be taken into account. If you didn't meet the November 1st deadline, it means that whenever we do get the package and publish it, the measures would be in place from that period on until the end of December. So all is not lost if you don't meet the November 1st guideline, the only thing that would be called into question at that point is what impact does a shorter expanded closed area have in achieving your objectives for harbor porpoise reduction. Does that outline pretty much the procedure?

Mr. Nelson: Yes, I think that describes it. We are making the effort to stay on line for that time frame so that we can implement something for this year.

Dr. Rosenberg: Obviously this is a very tight time frame to put the framework together. You have to make the analysis that says it is intended to reduce harbor porpoise catch, and there is good reason to believe that it is moving towards the objectives that the Council has set. We will give you any help we can in preparing those framework documents but that is the mechanism by which to put this into place. I wanted to make sure that the Council is aware of it. So essentially you are initiating that framework at this meeting and you will probably have to have a special meeting to get it in place by November 1.

To further that, and before Erik or Paul asks me, yes I will consider, concurrently while we are developing that framework action, the options for experimental fishery. I will try to look at that. Again, there are no promises on an experimental fishery. I will investigate it and I will do it concurrently, if you understand what I mean. I am not going to wait until the thing is in place and then say "okay, now we can talk about an experiment." I'll try to do it at the same time given that we can get together the people who need to do that work.

Mr. Brancaleone: Okay, ready for the question?

Mr. Anderson: I just don't to ignore Paul's earlier request. I know Phil made the recommendation yesterday of adjusting the Z-band as it is reflected in the proposal

right now. I don't think that we had looked at that area, and whether it is justified or not, I just don't want to ignore his request. He came up and made it and whether it is achievable or not, I'm not sure.

I looked through 12 months of data of the area that he requests, I see plenty of observer coverage in there and I don't see the takes that might justify it. It's just a quick synopsis but that was what was done yesterday in reference to making the adjustment in the Z-band from the 69°30' to the westward. Unfortunately we don't have a chart large enough to look at it, but looking through the handout that is in the packet, the area that I think he described, the southeastern corner of the Z-band, anybody going through the last part of the packet, going through the 12 months that is accumulated in there, will find observer coverage in the fall months and I don't believe that there is any indication of a recorded take in the area.

Mr. Coates: I think that this motion, if Andy doesn't object, would incorporate the potential for him to look at even further adjustment or authorization of additional fishing. It doesn't say you have to use pingers in the Z-band, it just says "investigate possibilities for additional fishing, in particular the area of the Z-band, and experimental work on the use of pingers." So if he doesn't object, that possible square, that area that has been identified by Paul, and I am quite nervous about it only from the perspective that I see takes all around it, but if the Regional Director would be willing to look at that area and possibly exempt it from the required... like we did that area to the eastward in the Z-band, then I would have no objection.

Dr. Rosenberg: It is for experimental purposes, there is not an experiment going on there allowing fishing in that area without pingers. So it is not going to be exempted additionally. I think what you are arguing for is a possibility of shifting that 69°30' line. I am not doubting Paul or you about either the importance of that area or that you don't see harbor porpoise in that area, for all of this is going to have to be very clearly justified in the analysis that this will meet the objectives that opening up any area is not going to increase takes. If that can be done, maybe that is something that you want to ask the people putting the framework document together to look at in more detail. But you have got to be very careful that you make the argument very strongly that you are not compromising any of your conservation issues. I am not saying that you can't make that argument, I don't know until I see the analysis. I support the motion because it supports developing a framework. The decision on it depends on how the analysis looks. There isn't a provision for me exempting from that last statement because that is not part of this program. I will consider an experimental fishery using pingers because it is important to gather that experimental data. So there is a little disconnect there. I wasn't sure from Paul's comments whether he was arguing that that should be included, in particular, under consideration of the experimental part with pingers or whether he was saying that that should be included as an open area in moving the Z-band line.

Mr. McCauley: I was going to ask whether or not what Paul was asking for could be incorporated in the next meeting and still meet the legal requirements of the framework measure, just so that he could refine it and have it ready for the next meeting, which would be the final meeting of the framework measure. He's brought up this subject, it is just that I think it needs refinement at this point so that we fully understand it.

Dr. Rosenberg: And analysis.

Mr. McCauley: And analysis, possibly.

Mr. Martin: You could do that if it is analyzed. You can analyze it as an option for consideration or for inclusion in the second meeting. But the point is, you would need to propose that as either the measure or an option to the whole measure with the appropriate analysis along the lines of what Andy was saying so that the public and the Council has the opportunity to see the effect of that in order to avoid a third meeting.

Mr. Brancaleone: Patricia?

Mr. McCauley: Okay, I just propose that that seemed like a better approach than where we are right now.

Ms. Fiorelli: I agree that the idea of an analysis is a good one and I think that we have a number of requests going into the Center so we can incorporate that. What I do need to remind you of is that the original initial closures were based on the presence of animals, gillnet activity and observed takes. So animals are in that area. Because you have no black dots in that area doesn't mean that there aren't animals there. One of the apparent reasons that we didn't meet our goals last year is because we left a very critical area open that we knew was an area of relatively high bycatch. So not only did we not hit our target, we seem to have a situation where bycatch increased instead of decreased.

The Council had set itself on a goal of 20% reduction each year. So not only did we not achieve that reduction but we are somewhere out in the woods on it. So as you are making your decisions, keep that in mind, that you may be looking at the same situation that you did in the previous year where if you have effort bunching up and you have animals there, you may be in for another hot year with harbor porpoise. So I think an analysis is appropriate. I think there is some information on harbor porpoise distribution that maybe hasn't been analyzed yet, but I'm not sure of that. Certainly, looking at it on these maps, I don't think it is a very useful way to figure out what is what. So that is just a comment from the Harbor Porpoise Review Team.

Mr. Brancaleone: So if we vote this motion up, it doesn't preclude the committee,

while the document is being written, to include the request. Am I right? Gene?

Mr. Martin: I think the best way to do it is in the motion.

Audience member: Inaudible comment.

Mr. Martin: You can bring up new things but it may necessitate an additional meeting if it hasn't been analyzed. I am just saying, for purposes of getting this option analyzed and in the package to meet those analysis requirements, it would be best just to specify that idea in the motion. I am not sure, are you going to have another committee meeting before you do this?

Dr. Rosenberg: You almost have to write the framework document. You have a lot of work to do to write a framework document before the next meeting to make sure that it pulls together.

Mr. O'Malley: Suppose the motion included the expression "redefinition of the Z-band," would that cover peoples concerns? In particular in the area of the Z-band or redefinition of the Z-band and, if necessary, if the maker of the motion would approve.

Mr. Marshall: I think that the motion really needs to make it clear that they are going to refer some things to Andy but that the Council is going to initiate a framework action to do this. If that isn't clear to everybody, it should be clarified in the motion.

Mr. Wiley: It is not clear to me actually what is being stated in this particular text. I think it is quite fuzzy at this point and probably purposely so. What is clear though is that the Council missed its goal and that the Council missed the goal because the areas were too small and the times were not enough. The reasons that the areas were too small and the times were too short is because they listened to individual fishermen talk about their particular fishing areas and they ignored the National Marine Fisheries Service scientists, independent scientists and conservation biologists when listening to recommendations. Certainly my hope for this particular go around is for that order to be reversed and that the needs of interested individual fishermen would be reduced and that the recommendations of various scientific groups be elevated in stature. I think if that is the case, you will have much more success last year than you certainly had this year.

Mr. Brancaleone: John, did this recommendation come from the Review Team or from individual fishermen?

Mr. Nelson: The committee.

Mr. Brancaleone: It came from the committee based upon science from the Review Team.

Mr. Nelson: That's right. We took the recommendations of the Harbor Porpoise Review Team, we looked at what we thought was practical from the standpoint of time frame in order to be able to initiate anything and made our recommendations to the Council for consideration.

Mr. Brancaleone: Okay. Patricia?

Ms. Fiorelli: The Harbor Porpoise Review Team recommendation was to look at the use of pingers on an operational basis in the Mass Bay area because the Mass Bay area is relatively small, it has low levels of bycatch which it has consistently has for a numbers of years. So the Review Team's initial recommendation was to look at pingers there because for some reason there are numbers of questions, particularly from a NEPA point of view that we are going to have to go through.

There are numbers of questions about habituation to pingers, do pingers exclude animals from essential habitat and all kinds of things like that. Never mind the stuff about using them on a day to day fishing setting. So therefore the initial recommendation was to try them in the Mass Bay area and in fact even open the whole area up to pinger use -- this is a recommendation to the committee now so keep that in mind -- but try it there first and then use pingers in the second go around in the Northeast area which is the whole downeast section because that was an area that had considerably different environmental conditions, try them there, because the bycatch rates were a little bit higher so again you would get a better test. We know that it is effective in reducing bycatch but in order to answer all the other questions, the Northeast area was the second recommendation and then in the third go around, in other words, the mid-coast closure area for 1996, we recommended pinger use in the Z-band at that point in time.

I think there was some concern about 1995 because we were so far off our goals and because the bycatch rates are so dramatically higher in the mid-coast area than they are in any other area. In fact about 50 or 60% of the bycatch occurs in this area consistently year to year, in October and November, and with September and December being variable months, that was the sort of rationale that we employed. So it was a step wise, phased-in approach using small areas and then going to larger and larger areas. The reason that it was restricted to the Z-band in 1996 was again because if there was some issue about acclimation or whatever it may be, that you wouldn't be losing the whole house by taking the whole mid-coast closure area. We would be using a discrete area but of relatively high bycatch, which would be the Z-band. So the recommendation was for 1996 rather than 1995 simply because the goals were so out of whack with where we really intended to be.

Mr. Smith: I just wanted to comment on Dave Wiley's comment. He makes a good point and the converse point that maybe some different redefinition of the areas may be appropriate. That is exactly the reason for the framework process. There is a public comment period in there and there is going to be an analytical chore to be done in the context of preparing the document for the second meeting. So I would say for the people who have different perspectives, get your word processor out and get your comments in. That gives us a basis to start now and end in a meeting in October and decide what to do based on the different points of view.

Frankly, I take issue with his choice of words, but I don't want to have people leave the room saying "these guys never listen." What we are doing is initiating the process to make an adjustment and it may be the kind of adjustment in the long run that he is looking for.

Mr. Wiley: Thank you.

The perfected motion carried unanimously on a voice vote.

Ms. Stevenson: After it is decided what the closures are going to be and what the criteria is going to be, could we have an analysis of the reduction in codfish catch that should occur by this closure?

Mr. Brancaleone: I'm sorry, what were you asking?

Ms. Stevenson: Okay, at this moment we just voted whether or not there is a pinger to close a significant area at a very significant time to a very directed codfish fishery. My question was, could we, after we end up finding out exactly what the criteria of that closure is going to be, get an analysis of how much cod conservation occurs out of this closure?

Dr. Rosenberg: I think the definitive answer is "possibly." I heard the question and it may be something that the Center can look at along with your staff in the midst of the one or two things that they have to do.

Mr. Terry Smith: I don't know what form this future analysis will take, Barbara, but the analysis that we have done in support of these mammal measures in the past have looked at the groundfish trade off associated with the closures. I presume that we have the data for that again.

Mr. Nelson: Our next recommendation deals with the input that the Harbor Porpoise Review Team received from the audience and that was the need for a more refined approach on how to reduce the take of the harbor porpoise and how to initiate closures in areas rather than just having blanket closures that may or may not be achieving what is appropriate. The issue came up and was discussed at some length,

as far as whether or not there were trigger mechanisms that might be utilized that would initiate various closures in various areas. One of the items that was mentioned as a possible trigger is sea surface temperature. There may be other things. The fishermen that were at the meeting had some ideas as far as when animals show up in Boothbay, for example, that they historically felt that two weeks later they would be showing up at the Jeffreys Ledge area. If that is the case, some mechanism may be examined to explore whether or not a trigger mechanism is appropriate. So the recommendation that the committee made after reviewing the Harbor Porpoise Review Team recommendations and discussing it amongst ourselves and the audience was we recommend that the Northeast Fisheries Science Center, other experts and industry members be brought together and explore the use of a trigger mechanism and determine its feasibility as part of a time/area closure management program. We would like to have this type of information made available as soon as possible, but by November 30 at the latest.

Mr. Nelson moved and Mr. McCauley seconded:

the Council recommends that the Northeast Fisheries Science Center (NEFSC) explore the use of a trigger mechanism and determine its feasibility as part of a time/area closure management program. The Council recommends that this information be made available as soon as possible, but no later than November 30.

Dr. Rosenberg: I don't have any problem with somebody exploring the trigger mechanism, it just seems to me that it should be the Harbor Porpoise Review Team as opposed to creating yet another group. So I would suggest that it be "that the Harbor Porpoise Review Team explore the use of a trigger mechanism", because I think the Harbor Porpoise Review Team and the Council needs to immediately begin examining, along with developing the framework that you are about to do, actions for the spring. So instead of creating some new group, use the existing groups.

Mr. Nelson: I don't disagree with the RD on this, the only problem that we seem to be having is the available data rests with the Center and perhaps other groups, such as oceanographic groups that have looked at the modeling of the sea surface temperatures in the Gulf of Maine. There is a marine mammal conference being conducted next week which has a number of these experts available and we are certainly going to ask them to look at the feasibility of trigger mechanisms relating to sea temperature. But the sense that we got was that the Center had the data and therefore they were the logical folks to review it.

Dr. Rosenberg: And they participate on the Harbor Porpoise Review Team as do other scientists.

Mr. Brancaleone: So you are not willing to change it John, you want it to remain that

way?

Mr. Nelson: I think there is only one member from the Center that is on that team and if we want to put the burden on him. I'm not sure if he has that expertise to be able to dig that type of information out.

Mr. Terry Smith: Just to comment on this specifically and in general, let there be no misunderstanding, you may have one member on the Harbor Porpoise Review Team but we have the entire investigation working on developing data and analysis for that members' presentation. That is always the case. So I think that utilizing the Harbor Porpoise Review Team or utilizing the NEFSC is actually the same thing.

Mr. Martin: I think it involves more than just scientific analysis though. There are some obvious policy questions and the feasibility of implementing a trigger mechanism and I think that's what the Harbor Porpoise Review Team is designed to be, a combination of all of those factors.

The motion was perfected to read:

the Council recommends that the Harbor Porpoise Review Team explore the use of a trigger mechanism and determine its feasibility as part of a time/area closure management program. The Council recommends that this information be made available as soon as possible, but no later than November 30.

Mr. Nelson: Gee, I thought I had won one for a second there. I think that you are correct that there is a variety on the Harbor Porpoise Review Team and there may be more variety depending on the next motion. It seemed as if there is a need to review this request and they are looking at a trigger such as surface water temperature. If the Center or whoever is going to do the analyses determines that "no, they can't find the trigger," then that is reported back and it will be pointed out that there is nothing you can do. You can't have a definitive trigger here so therefore that probably becomes a dead issue. But if they do find some validity based on their temperature or recordings over the years, then at least we have something for the Review Team and then the committee can go over and make recommendations for the Council to consider. I would look at that procedure taking place.

Mr. McCauley: I would support the motion because I think that you possibly have to look at another approach to that and it is more or less a static system where certain things happen every year exactly at the same time. I think the approach of a trigger mechanism, especially if they can kind of find a starting point where certain events start to take place, they are going to have a lot more success in this whole program and I think it is time that they looked at that. I don't think that anybody sitting here can honestly say that the whole program is an absolute success at this point. I think

that this offers another approach to it and I think it should be explored.

Mr. Brancaleone: Further discussion on the motion?

Mr. Zglobicki: I'm a bit confused here. The recommendation of the Harbor Porpoise Review Team was to have the Council explore the trigger mechanism and to request appropriate analysis from the Northeast Fisheries Science Center. Now we are turning around and saying, "no, we are sending it back to the Harbor Porpoise Review Team." Can someone explain it to me?

Mr. Smith: I think the tone of the discussion is the Council agrees it is worth exploring but it should be the team that explores the details.

Mr. Brancaleone: Patricia?

Ms. Fiorelli: I might be able to clarify a little bit. The Center, without putting him on the spot completely or getting him fired, the Center's representative, who is Dr. Tim Smith, felt like there is a lot of work coming down the pike on marine mammals and there are a lot of things they have to calculate for PBR's and abundance estimates and things like that. If the Council felt like there were some priorities that needed to be made, it would help them to know what our thoughts were and to request the information. Certainly the Harbor Porpoise Review Team would be willing to review that information but there are some analyses that are available only through the Center. To look at timing of takes, for example, where they occurred in the Boothbay area relative to where they occurred further south and those kinds of things. So there are a numbers of requests from the Harbor Porpoise Review Team for further information and I think they felt like that the Council could prioritized those requests as they saw fit and then forward them to the Center. That information would then feed back into the Harbor Porpoise Review Team. Does that make sense to you, Andy?

Dr. Rosenberg: Yeah, sure, but what I want to make sure is that the motion reads that we don't have an effort independent of what the Harbor Porpoise Review Team is doing so you can work with team members including the Center and other people because it is not just the Center that can do these kinds of analyses to investigate this possibility. In terms of prioritizing, I don't know where this would fall in the priority list of things the Review Team and the staff need to do. Obviously the framework is probably the top priority. I would guess the second priority is figuring out what you are going to do for the spring closures and where this trigger mechanism issue falls, I'm not sure. I don't have any problem, I just want to make sure that it is coordinated through one group. We seem to multiply the number of groups that are working on harbor porpoise at an exponential rate.

The motion carried unanimously on a voice vote.

Mr. Nelson: Our next recommendation does deal with the composition of the Harbor Porpoise Review Team. The discussion that took place at the committee level was that our observation of the functioning of the Review Team was that it moved along very well but there are obviously areas that they did not have expertise and it needed to get input. In order to facilitate getting that input the committee felt that the composition of the Harbor Porpoise Review Team should be revised to include fishing industry members and advocacy groups either as members or as advisors to the team. The concept is to have these groups in the presence of the Harbor Porpoise Review Team when they are deliberating because many times we found that there was valuable input from either group to the team. As I believe some of the team members mentioned to us at the committee meeting, they appreciated getting that input and that it would be worthwhile for them to have that on a routine basis. So we are suggesting that some modification be made that either allows for advisors or for members to be added to that team.

Mr. Brancaleone: Why? You have the capability right now to have advisors to the Marine Mammal Committee so what you are suggesting is advisors to the Marine Mammal Committee and then advisors to the Review Team. The process will never end, it seems to me.

Mr. Nelson: As I understand it, the Council staff is the one that really develops the Harbor Porpoise Review Team and as such we are just merely asking for the Council to give them some direction as far as how they might move on addressing this particular issue in the future.

Mr. Brancaleone: Somebody could correct me if I am wrong, I thought the Harbor Porpoise Review Team committee was basically the same as any PDT committee which was an extension of the staff, technical people to review analysis and then make recommendations to the committee. I thought that was the way it was. So is that the same as the PDT?

Mr. Coates: You are right. The Harbor Porpoise Review Team is defined as a team of scientific and technical experts appointed by the Council to review, analyze and propose harbor porpoise take, mitigation alternatives, 50 CFR 651.2. As such, I would recommend that we consider the development of an advisory panel for harbor porpoise, generally, but I don't think that fishermen and advocacy groups, whoever they are, I'm not sure what that means, but I think they are polar opposites and should possibly dilute the effectiveness of the Harbor Porpoise Review Team. I am very much opposed to any action in that direction. But I do think that the need for advice, beyond the expertise of the Harbor Porpoise Review Team, would be welcome by the Marine Mammal Committee and as such there should be a body constituted to provide that input.

Mr. Brancaleone: Are you making a motion, John?

Mr. Nelson: Well we were moving that as a recommendation but if it can be done in any other way, I don't have any problem with it.

Mr. Kellogg: I think Phil's suggestion does not prevent the Harbor Porpoise Review Team from inviting industry or other advocacy groups to meetings as they see appropriate. That has been done by the Scallop Plan Development Team.

Mr. Cohan: I think by the very definition of the Harbor Porpoise Review Team which Phil read begs for technical expertise from the fishermen themselves who know the practicality and the way the gear is deployed and the nuts and bolts of the vehicle that is trying to be managed here. There is nothing in my mind which makes a full-time commercial fisherman any less an expert capable of supplying technical expertise than a man of papers.

Ms. Stevenson: This is constituted like the other PDT's and that's my problem with the other PDT's. I believe that they all need to have a fishing industry person who has particular expertise assigned to them as part of the team, not as advisors but as part of the team. I am not talking about 10 or 20 people, I'm talking about one.

Mr. Wiley: There are already several teams that pretty much have the makeup that is being proposed here – the Harbor Porpoise Working (group) and also the take reduction teams. So I think that to make a third team would be somewhat redundant. There is certainly a real need to have some sort of unbiased analysis. If you put some of the advocacy groups and fishermen on one of these teams, you will never achieve consensus and you are unlikely to ever go forward with any sort of recommendation at all.

Mr. Anderson: I think the nature of this request kind of goes back to the Item B motion which was approved. In reference to trying to develop trigger mechanisms, whether they be some biological situation that exists or another possibility of the trigger is when industry starts to see takes, that could be a level of a trigger. If this is going to revert back to the Review Team then I think that there should be some level of expertise from the industry to help develop this and see that it couldn't receive every possibility of being accomplished, that being the triggers.

As John said, there was a member of the Review Team there yesterday that was an advocate for this only for the respect that there was some valuable exchange at the Review Team in which the industry, or all the participants in the audience, not were excluded, but the exchange of information was very limited. So I think this motion is legitimate and I think it is to the benefit of developing mitigation strategies that are going to be successful.

Mr. Brancaleone: Are we going to have a motion?

Mr. Nelson moved and Mr. McCauley seconded:

that the Council recommends that the composition of the Harbor Porpoise Review Team be revised to include fishing industry members and advocacy groups, either as members or as advisors.

Mr. McCauley: It sounds to me like we are getting into a situation where one group is thinking that the commercial entities involved in this group would be advocating their particular position and something to do where they have benefitted. I would call it more apt to be a reality check if there was a fisherman involved in the process. I think quite often you get situations where committee's come back with something, especially when there is no industry representative, and the next thing you know we look at it and it goes back again because there has not been anyone there to point out the fact that this is not real, this can't take place in the real world. I think that's where the fishermen would add to this committee.

Dr. Rosenberg: I don't support the motion, and I don't support it not because I don't think the fishermen or advocacy groups have an important technical point to make. I agree with Mr. Cohan that fishermen are technicians as well as somebody who is trained in science but I don't think you have to do everything in every forum. It's not as if the recommendations of the Harbor Porpoise Review Team are just taken as the gospel. They then go through the committee and they then go to the Council and there are a whole number of points at which additional kinds of information are brought in. I think that to have all groups represented in every step simply confuses the issue. It is fine to have a technical forum that puts together the technical information as well as possible and then say "here, this is our technical advice from one view point." Otherwise, I would find it very difficult for the committee to actually fulfill its role. So I don't support the motion as read. I think that the appropriate place for the kinds of information that you are talking about is either by request for participation when discussing certain kinds of meetings or through the committee, and that's up to the committee chairman and the Council to organize.

Mr. Marshall: I wasn't at the committee meeting, so I am not sure what discussion took place there with this particular item on the list of actions. But, I would hope that if the motion is going to be passed that it be clarified a little bit because the last six words in it are "either as members or as advisors," and I think there is a big difference in those two. If you are going to have members, you are probably talking about two people, one from industry and one from interests groups, conservation groups, or whatever kind of groups. If you are talking about advisors, then you are probably talking about a lot more people who wouldn't get a vote in the group or anything like that but might fill up the room and make an interminable amount of discussion going that, as somebody pointed out, would probably never lead to any kind of consensus or decisions.

Mr. Brancaleone: I am assuming that this motion is talking specifically to members of the Review Team because the chairman of that committee, the Marine Mammal Committee, can already ask for advisors to his committee. Should we drop the last three words, "or as advisors?"

Mr. Nelson: Yes, it was added on because we were not sure what would be the appropriate legal makeup of the Harbor Porpoise Review Team, whether there was particular guidelines that they had to go by. If it makes more sense to ask for it as members, we don't have a problem with that. We were just trying to provide as much flexibility as possible. I don't want to rehash what you have heard already, but it was evident that certain things like "what's a haul", simple things like this, that that type of input could come from industry and was needed by the members of the team. As I had mentioned before, they appreciated getting that kind of input. It wasn't advocating one position or another, it was merely providing the input.

Dr. Rosenberg: The definition is scientific and technical experts. Of course Gene is a technical expert in the law and there are lots of fishermen who are technical experts in fishing. It just gets very confusing. I think if you keep it as one kind of technical team, that makes it a little bit clearer. You are going to have to define what you mean by technical experts, otherwise you are not going to represent technical viewpoints. It is much easier to have the committee arrange advisors as needed to make sure that input is there.

Ms. Dorry: As an advocacy group, or whatever you want to call us, we actually support the motion. It is very much parallel to what we are supporting in Magnuson for the Council format and the Council formation to be changed so that there is equal advocacy and industry representation on that. But I think it is really important that the practical experience that Paul Cohan had referred to is something that I lack as an advocate and that they have and I think it needs to be incorporated in the process from the get-go and not only when requested, and conduct information that could potentially eliminate going round-and-round and bouncing it back to technical experts. I think the technical expertise is pretty broad, you need people who have experience with their gear and you need people who have the law in their hands so they can apply the technical expertise of the law and you basically need people who can raise a voice that doesn't necessarily include gaining money off of it which is what advocacy groups usually are. So we definitely support the motion and we hope that you pass it and more efforts like this that include the fishermen into the process from the get-go should be included in all Council and in all fishery management, and not just this one.

Tape 6

Ms. Thournhurst: I just wanted to say that if the Council is clear enough to the Harbor Porpoise Review Team about what exactly they want them to discuss, they

could also direct them as part of that initial direction to seek the advice of various technical experts for each agenda item that they have on the schedule for that day. I was at both of those meetings that occurred, the Harbor Porpoise Review Team and the Marine Mammal Committee meeting, and as a biologist and a NMFS staff person, I think that some of the scientific discussion was slowed down because of these additional comments that came in. There was a lot to discuss that day, and there was important input, but that may not have been the right forum for it.

Mr. Wiley: The system has a lot of opportunity for outside comment as we are seeing today. I think that Kim's point is well taken that it certainly slows the process down greatly the more we have to argue the same points over and over again in every forum. However, having said that, if you are going to go forward with this, I would suggest a wording change which is that "advocacy" just means you are supporting a particular position and you can have industry members being advocacy groups. So you could have a situation here where you had advocacy groups representing the industry and industry members and fulfill your mandate. So I would say that substituting conservation for advocacy would be a better idea.

The motion was perfected to read:

that the Council recommends that the composition of the Harbor Porpoise Review Team be revised to include fishing industry members and conservation groups.

The motion failed on a voice vote.

Mr. Brancaleone: Do you feel comfortable with that, John, or do you want a show of hands?

Mr. Nelson: No, I get the message.

Mr. Brancaleone: Anything else?

Mr. Nelson: Yes, there are a few more things. I appreciate the members bearing with me on this because there was a lot to cover and this is really the first major opportunity we have had to address a lot of issues associated with the marine mammals. But, obviously, we need to do this and get it moving and be proactive on this whole thing.

You do not have in your papers the last recommendation that the committee voted on, but if you turn to the Harbor Porpoise Review Team memo from Pat to myself, on the last page of that memo is a section entitled "other HPRT recommendations". Essentially, what the committee adopted were the recommendations, almost in this order, to prioritize how they would like the Harbor Porpoise Review Team and the

committee to get additional data in order to facilitate their deliberations in the future. The number one request after the trigger mechanism is taken care of is the port-based estimator to determine the total bycatch. They need to make sure that that is in place so that future analyses can really be done in a timely fashion.

Following that is was the analyses similar to those now available for the mid-coast for the other closure areas. They felt that the data was lacking in those other areas and we needed to address that. Additionally, it was identified that there was an area south of Cape Cod that apparently had a need for a closure in that area. We need to have a detailed analysis of that area to determine if indeed that is appropriate.

The next one that the committee had in its priority is actually the last one that you have on the Harbor Porpoise Review Team recommendations. That is that we would like to see continued, and if possible, expanded observer coverage and any additional evaluation of the use of the pingers. Finally, we would like to have the Center focus on providing the 1995 abundance estimate for harbor porpoise, which we realize will be time consuming, so therefore we put that really as the last item of priorities. That is something that is important but we need these other things first because we are moving ahead no matter what the estimate really is. So I would move that those recommendations be also forwarded to the National Marine Fisheries Center to try to provide that type of information to the Harbor Porpoise Review Team.

Mr. Brancaleone: Do we need a motion or is there anybody who disagrees with that? We can just send out a letter without having a motion.

Mr. Nelson: If we don't need a motion, that's fine.

Mr. Brancaleone: Is anyone in disagreement? Does anybody have any other comments on it?

Mr. Rathbun: John, in the package of information we were sent in the mail was the application from IWC for an Emergency Action they wanted the Council to make and then later on in the enclosure was the request also to the Commerce Department for the same thing. I know we are not going to answer for the Commerce Department but I was wondering if we ought to give an answer of some sort even if it is in the negative or waffling answer, whatever, to the request for emergency action.

Mr. Nelson: We did not consider emergency action, we considered the recommendation discussed earlier.

Mr. Rathbun: I realize that, but on the other hand they have requested an answer and I presume we should formulate an answer of some sort to their request. Secondly, I would like to know is there any indication from Commerce what they are going to do about it?

Mr. Nelson: I can't answer for Commerce and I guess I would turn to Doug and ask him "was a response made to the letter that you had received?"

Mr. Marshall: I didn't understand everything Ben was saying. I had missed something.

Mr. Rathbun: Well, in the enclosure here from IWC, they request that the Council put in an emergency closure of the Council's mid-coast management area from 15 September to 15 December. They request us to do an emergency on it. We are not going to do an emergency, obviously, but on the other hand we should answer them in some form, I think, only to be polite.

Mr. Marshall: We have not answered them yet.

Mr. Rathbun: No, but we can now, I presume.

Mr. Marshall: We can after this meeting, yes.

Mr. Rathbun: Is there any indication of what Commerce is going to do about it?

Mr. Marshall: I have not heard anything, Pat have you heard anything?

Ms. Fiorelli: That's a question for Andy Rosenberg.

Mr. Marshall: For what it's worth, I heard a rumor and the rumor is that the Fisheries Service is not going to seriously consider emergency action. But I don't know whether that is true or not.

Ms. Stevenson: I assume this area south of the Cape you are talking about is close to the Cape, it's not in the mid-Atlantic, right?

Mr. Nelson: No, it is just south of the Cape.

Ms. Stevenson: Because my question is, how far south does harbor porpoise management, or whatever you call it, extend? Because I have heard rumors about needs for closures in North Carolina. Is this the group that would do that or is there another one? I'm just trying to understand.

Mr. Nelson: As I understood we were really looking at the New England area but that the Harbor Porpoise Review Team had to take into account catches that were made in Canada and also in the mid-Atlantic area. I don't know if their authority extends to those areas but that they would certainly have to take into account takes into those areas.

Ms. Stevenson: So if there were a perceived need for a closure some place else because otherwise you couldn't meet your goals, this Council would not be the one to do that?

Mr. Nelson: As I understand it, and maybe Pat or somebody has information on that...

Ms. Fiorelli: We have to take the mid-Atlantic and Canadian bycatch into account when looking at a bottom line number like potential biological removals. If the PBR is 400, it needs to take into account the bycatch in those two areas. But the Harbor Porpoise Review Team nor this Council needs to consider those areas because the bycatch down in mid-Atlantic takes place principally in state waters. So the states are going to be dealing with that in the context of their own management scenarios and I believe ASMFC is going to take it up at its next meeting. So our closures are restricted to the Gulf of Maine with the exception, which I think we are considering, of that area south of Rhode Island as part of Gulf of Maine even though it is not technically part of the Gulf. So that is what we are looking at, it is the area only south to just those three little statistical areas south of Rhode Island.

Mr. Nelson: To finish up, Mr. Chairman, I just want to let the Council know where we are going from here because obviously this is going to be an ongoing process and we could not address, or did not feel, it would be appropriate to address other areas at yesterday's meeting. So specifically we are going to hold another committee meeting. We are going to do that to look at the Mass Bay closure area. We have directed the Council staff to contact the Mass Bay Gillnetters Association since there was no representation of them at our meeting. We had heard verbally various recommendations that they have and we want to get those in writing so that we can assess that. In addition, as we have already mentioned, we were looking at the Center providing more detailed information on that particular area and appropriate measures to reduce the take in that area. We are going to also do the upper Maine area in like fashion. So we are continuing our activity to put into recommendation any of the things that we feel are appropriate to continue the effort to reduce the take of the harbor porpoise.

Mr. Brancaleone: Any other questions for John?

Mr. Anderson: I'll just be quick only for the fact that there have been some statements made here and I think there has been fairly positive action to mitigating this situation. But one was the fact that there had been statements of an increase bycatch of 50-60% in 1994. I don't think anything in your binders will reflect that. There was a letter from Allen Peterson stating that a bycatch rate could have been increased but until there is an effort component put onto that rate, I don't think anybody can make that final analysis of whether there was an increase in kills last year. It was unfortunate through this whole process of the Review Team that a lot of

their data wasn't completed or in a completed state, right down to the population assessment that had been conducted in 1995. It was valuable information that would guide the Review Team and also the committee and hopefully in the future that information will be in a completed state so that any other decisions in reference to this could be a little bit more complete.

Mr. Wiley: I just want to read a quote that I wrote down from Tim Smith when he was at the Harbor Porpoise Review Team when he stated that "nothing in the data suggests that a 50-60% increase is incorrect". This is just to add to Erik's comments.

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

MINUTES

Holiday Inn, Peabody, MA
October 11, 1995

Wednesday, October 11, 1995

Mr. Brancaleone: As you are all aware, this is a special one-day Council meeting to address a framework action under the Multispecies Plan to deal with the reduction of harbor porpoise in the gillnet fishery. In order to meet our requirements, we needed another meeting. This is going to be the second and final meeting unless something else changes.

Marine Mammal Committee Report

Mr. Nelson: You summed it up already, Mr. Chairman, much better than I could but I would just like to back up for a minute to make sure that the audience is in sync with us as far as why we are at this particular point, so I will do that very briefly. Amendment 5 to the Multispecies Fishery Management Plan had in it one of the components to reduce the harvesting of harbor porpoises. To achieve that there was a framework process put into place to reduce that catch that has been taking place primarily with the gillnetting industry. The first adjustment, or Framework 4, became effective in May of 1994. Also at that time, the industry became proactive and initiated an experimental fishery out there in the closed areas. They also looked at how other means might allow the fishery to take place as well as prevent the taking of porpoises. That was through the pinger experiment. The Harbor Porpoise Review Team was formulated this year. It reviewed as much data as was available from the Center. They met on September 8 and came up with recommendations. Among the recommendations was the realization that the measures taken to date had not achieved the overall goals that the Council had ascribed to. They also made various recommendations on how to get us back on track.

The Marine Mammal Committee met on the 12th of September and reviewed those recommendations, looked at the data themselves and came up with recommendations to the Council, which met on September 13. As a result of the discussions, the Council had moved to approve the motion that would close the Jeffreys Ledge, or Z-band, or a reconfigured Z-band, west of 69°30', and incorporate that into the existing Mid-coast closure area and that that redefined area be closed for November and December of 1995. The council also requested that the Regional Director investigate the possibility of additional fishing in the Z-band, primarily with the use of pingers to evaluate more fully their effectiveness. I think that is going to be discussed a little bit later.

You have, under Item 11 of your abbreviated package, the marine mammal and endangered species summary. It also has the status and Council action and everyone has received a draft of the Framework Adjustment 12 which deals with the bycatch of harbor porpoise. Within the framework of the recommendations that the Council adopted at the first framework meeting, as laid out in our draft framework document, we essentially have three options that should be discussed today. The three that we have in there are basically no action, that is leave the closure as it is slated to go into effect for November of this year. The second one is the closure of the Z-band, west of 69°30', and incorporating that into the redefined area and close that for November and December. The third option, which came about as part of a discussion at the last public hearing, was to have the closure of the Z-band, west of 69°30', and incorporate that into the reconfigured area for November and December, but exclude the area known as Tillies Bank. That area is defined in that Item 11 document and it is also listed in Appendix 5 of the draft framework document.

So essentially that brings us to where we are today. We need to discuss the various alternatives available to us. This is the second meeting of the framework and therefore if we come to a consensus we would be forwarding a recommendation to the Regional Director for his consideration.

Mr. Nelson moved and Mr. Rathbun seconded:

that the redefined Z-band, west of 69°30', be incorporated into the existing mid-coast closure area and this reconfined area be closed for November and December of 1995.

Mr. Brancaleone: Is that the third option that you spoke of?

Mr. Nelson: That's the second option, the third option would exempt the area known as Tillies Bank.

Dr. Rosenberg: Just for clarification, that does not include as the motion currently reads, leaving Tillies Bank area open, is that correct?

Mr. Nelson: That's correct.

Dr. Rosenberg: So that would require an additional change or something if we were to go with that option. This is to close the modified Z-band and keep the Tillies Bank area closed.

Mr. Anderson: I was just curious in reading the draft document, that some of the analysis that was done in reference to the Tillies Bank area showed that, at least in my interpretation, that it was warranted in the respect of the observer coverage that had

been there and the amount of the takes that had been there. I was just curious to know why we couldn't include that in the closed area or about the option that was put into the draft document, keeping that area open.

Mr. Nelson: I don't have an objection to the discussion of any of these options, but I wanted to make sure that we started with an overall broad one, that encompassed all of the goals that we really can achieve for this particular year. If there is good reason to do something different, that is why we have the discussion and also the information in the framework document, and I would think that that indeed would be one of the areas we would be discussing based on the available information that has come from the Center.

Dr. Rosenberg: Just in reference to that, the analysis that was done indicated that there is a low risk of takes in the Tillies Bank area according to the information that we had in hand and the Center put together for us.

I would just like to acknowledge both the Council staff and the Center's work in preparing these documents on a very short time frame and I think they did a really good job in putting things together, both the analysis and the final documents that the staff prepared and the Center scientists and Regional Office staff worked on.

Mr. McCauley: On this Tillies Bank region, it seems to me that you could still exclude it from the Z-band closure if you had a trigger mechanism in place where you could define what it is. But if all of a sudden you start getting a shift in effort and you start getting more takes in that area, that the Regional Director could close it on an instant basis without any further public input. I would think that that would be something that should at least be taken into consideration because I remember in Maine there was some discussion about keeping this open and there wasn't any real need to close it. I would imagine that there is going to be enough of a shift of effort as it is and I don't know this area very well, but that seems to me to be one mechanism that would allow for this to remain open, at least initially, until we have other things that are like that. I would like to just have some discussion on that before we make a change in the motion.

Dr. Rosenberg: I don't know if that is a discretion that could be put into this kind of framework. I know that it has been done in other plans, but I don't know if that is feasible within this framework.

Mr. McCauley: I am assuming that if it was open that there would be a considerable amount of observer coverage just to make sure there wasn't a problem, if in fact it did remain open under this framework action. Therefore, I don't think it would be such a high risk situation because I am counting on the fact that you would probably have observer coverage in that area just to monitor it, or any other area that is excluded from the original full closure.

Dr. Rosenberg: We will have observer coverage in the area. We won't have 100% observer coverage, but we will have observer coverage with all the available observers that we can for our usual program on the gillnet fishery, which is a higher level than any other fishery. I think that the provision which gives the Regional Director discretion to close, is something specific to the Summer Flounder Plan. I don't know if that is available to the Council within the regulations for framework. I don't think so, but maybe Gene knows.

Mr. Martin: You mean just conceptually. Yes, I think it could be part of it but I think you would have to think about it. It is going to be a relatively short amount of time with very little information to go on for doing that. It is a matter of whether that option has been specifically or adequately analyzed in the document before you. I can see arguably where it has because you have an analyses of an entire closure of that area for the entire two months as well as keeping it open for the entire two months. So the discretion aspect of it is probably somewhere in between there and the public has had adequate notice to see the effects of adding that kind of a provision.

Again, I am not sure practically whether it would be something that Andy could exercise comfortably given that we won't have much observer data there and it is a fairly short period of time.

Mr. McCauley: I know what is too much, and almost anything at all would be too much. So I guess it wouldn't be a very high tolerance of any takes. But nevertheless, going back to the people from the audience that asked for that to be excluded certainly made sense at the time and I think the motion is the most restrictive motion that we could offer at this time and I am just trying to look at the options that we might have. If it is practical to change it and put it in a framework like this, where there is a trigger to close it, and I think in any case like this where you are making an exception, unless you do have some means of closing it on a very quick basis like this, you end up in a situation where you are making massive closures that are unnecessary.

Dr. Rosenberg: There are two separate questions. One, has there been sufficient analysis of the Tillies Bank area? The second one, which is sort of a separate issue, is it appropriate to have a trigger mechanism by which, at my discretion, I could close that area if I had reason to believe that there was a high level of take? The analysis is addressed on Page 2 of Appendix 3 and given the kind of data that was available, I think it is quite well done. There are some statistical issues involved but you wouldn't expect there to be takes in that area. I think Gene phrased it as "would I be comfortable exercising such discretion". I am never comfortable in those kinds of things. Could it be done? Yes, I suppose so but putting in a specific trigger mechanism is going to be very arbitrary. So that would require a suggestion of trigger mechanism. I think you ought to maybe separate the two questions of whether it is appropriate to try to keep it open and then whether it is appropriate to have a trigger mechanism to close it should

there be a problem, just to clarify the issue, if the Council chooses to consider modifications to the proposal as it has been made so far to John's motion. I don't know what a trigger mechanism would be, unless you wanted to say if anybody catches a harbor porpoise in that area, then I would close it. That wouldn't be my favorite trigger mechanism. It seems kind of awkward. I also would be very concerned about the benefit you would get by applying any kind of trigger mechanism versus the detrimental effect you would have on collecting good information, if you see what I mean. There is a possible impact upon the information that you are going to get if there is a trigger mechanism, whether it be one porpoise or 10 porpoises. I wouldn't expect that people will be jumping forward to tell you that they caught them if that is going to close that area.

Mr. Anderson: I think it is a good point, and I am just a little confused on the issue. I know the Marine Mammal Committee made a recommendation for the Center to do some analysis on the effect of trigger mechanisms in the report by November 30. I don't know how that is reflected in the document, but it is something that is going to take place by the end of the month, and whether there is any reflection that triggers are a more effective way to manage this bycatch issue. There is a lot of information that deals in the analysis of the situation and that there is a lot of variability of when the bycatch is going to take place. Maybe this could be potentially the better way to go in the long run of triggers actually instituting a closure. But where we enter into this right here, where the framework is going to permanently shut the fishery down, or shut an area down for 60 days right now, I don't know what the future prospects of triggers are in the management of this problem. Once we enter down this road of closing this particular area for the dates that it's been specified at this particular time, how do we introduce, at a later date, the possibility of triggers becoming the management tool to use.

Dr. Rosenberg: Well, I think it could be used, and the Council could propose a measure that includes a trigger mechanism in any of these framework actions to adjust the area closures. So just because you don't have a trigger mechanism in this one, doesn't mean you can never use one in the future. I think that that's a matter of how the Council proposes measures because the Council has an ongoing plan of reduction of harbor porpoise bycatch. And either based on new information or additional consideration, the Council feels that they would recommend a more better mechanism for dealing with managing this problem would be using some kind of a triggering criteria, then there is nothing to prevent that. Obviously my advice to you would be that you should consider that very carefully. It shouldn't be somebody at lunch saying "well how about three porpoises, should that be the trigger" and everybody says "yes, sounds okay to me." You will have to justify the particulars should that be proposed either now or in the future. Now there isn't any analysis in front of us so I don't really know what to suggest to you should the Council feel that they want to use a triggering mechanism for this closure to happen at the end of this month. Do you see what I am saying? I

couldn't suggest to you what an appropriate trigger mechanism would be. If you recommend one to us then we will consider it in our review and see if we think it would be workable. That's the only way I could leave it, I don't have any basis for evaluating it at this stage.

Mr. Anderson: And I understand that. I know that there has been a request that this issue be investigated and reported on by no later than the 30th of November, is that correct John?

Mr. Nelson: Yes, that's right. We were looking at trying to determine if there was some mechanism out there that would make this a more effective way of managing the take of the harbor porpoises and the Center is supposed to look into it and determine whether there is some hydrographic information or some other data that would show that you can make a more precise timing for the closure rather than arbitrarily setting up a date at the beginning of one month and ending at the end of the next.

Mr. McCauley: Kind of going along with what Erik was talking about, it seems that once this area is included, as the motion reads right now, how would you ever get that bank open again? It is not going to be an easy process once it is incorporated in as a closure to open it again. That's true with most closures, especially a specific area. How many years is it going to be to determine that "yes, I guess there wasn't any takes based on samples going forward." Once it stays closed, nobody is fishing there during November and December, then how are you going to ever open it up again? That's what your dilemma is and that's what I am driving at. It would seem that there are some estimates, as noted on Table 2 that have monthly bycatch rates of harbor porpoises in the fall, and I don't know what an acceptable rate is. It seems to be in the neighborhood of .024 or somewhere in that neighborhood as being an appropriate high level that anything exceeding that is considered to be excessive; point 0.2 seems to be somewhere in the neighborhood of what is already being described. Table 1 and Table 2 have to do with the winter, southern Gulf of Maine and so forth and so on. The way I read them, I thought that the level that seemed to be kind of borderline or acceptable was a .02 take level and anything exceeding that would be in violation and probably would require a closure.

Mr. Smith: There seem to be a couple of things weaving in and out of this conversation. One of them is whether to exempt this Tillies Bank area or not. I think that we all wish we had more data and a lot more information to go on but we all know that in these kinds of issues, you are always going to wish for more but not have it. The people drafting the document who understood the signs better than anyone, seem to conclude that the bycatch in that area appears to be substantially lower than elsewhere in the Z-band. On that basis, I would suggest that that square on the chart that was passed out ought to be exempted from the Z-band area that is proposed for closure. The other issue that seems to come in and out of this is the whole concept of a trigger, by which you

had taken immediate action of things didn't work the way you thought they would. With all the big things coming at us, and this is one of them, I am surprised Andy hasn't resisted the idea more because it begins to defy my understanding of how we can respond to so many things on a case by case basis when we don't have a lot of routine sampling out there. If you want to adopt that kind of a concept in a future plan, I would say it ought to be thought out a whole lot more thoroughly and I would suggest we not try and do it in this process. The reason for that is that imbedded in this document is that this be recommended as a final rule in order to get it in effect as soon as possible, and to reap the benefit of the November and December closure period. If we customize this with a lot of things that haven't really been flushed out and thought out carefully, it is going to be very hard to go with the final rule. Therefore, you will have a proposed rule with a comment period and you may not get something in effect until well into November, perhaps even early December, if it is also a proposal that has two or three different sides. So I would suggest we deal with it pretty much the way we see it. Things like triggers, defer them for consideration at a future time.

Mr. Smith moved to amend and Mr. Coates:

to exempt the Tillies Bank square from the Z-band area that would be closed in November and December, 1995.

Mr. Zglobicki: I would ask the Regional Director his feeling on the increased effort in that area even though the information that we have presently indicates that there weren't many takes. With the displacement of the rest of the effort from the Z-band into that one area, would there be a great increase in takes?

Dr. Rosenberg: All I can do is refer to the analysis that has been done and basically there were observed trips in the area, but no observed takes, as I recall on Page 2 of Appendix 3. The analysis that was done tried to determine whether that was simply a problem of sampling, in other words, they didn't do enough observations, or whether because the take is actually expected to be lower. The conclusion was that there is a less than 5% chance that it is just because you didn't observe enough trips in that area. Now there may be an increase in effort, but it is my impression, that there has been substantial fishing pressure in that area anyway, it is not as if people didn't fish there and now they are going to move there. That is my impression and maybe some of the people in the audience can clarify that.

Mr. Cohan: I had those charts printed up to give you a better idea, but the fact is that I have as much riding at stake on this harbor porpoise issue, and our boats do, as anybody and I really wouldn't have even brought up the idea if I thought it was going to blow up in my face and make me and everybody else look foolish. I fish out there a lot. I fish out there from the end of July right through February and if anecdotal information is worth anything, I have never had an interaction there myself and I think

the observer data justifies it. I think it is an excellent test case because here we are going to have an area, we are obviously going to have big-time observer coverage in it, so I think we are going to have a real good analysis of whether we can make this closure discrete and get them to hit the nail on the head.

It seems that these animals are very site specific and if you look at the little charts that were passed around in Portland and try to put those take zones onto the chart which I passed out here, you will see that the majority of the interaction is right up there in the shallowest parts of Jeffreys Ledge. One of the reasons that we had a problem with last year is because of those real high-take zones were excluded and that kind of led to a real horror show when you included in the fact that there was a lot of monkfish gear being fished in there for the first time. People had actually expanded the amount of gear, perhaps doubled the amount of gear, that they normally fish due to the fact that they are working with the monkfish gear. We realized this and that is one of the reasons why we came forward in Amendment 7 and tried to make one of the key points of our Amendment 7 proposal on that reduction so we could address this. What we saw was a lot more gear in that area than had traditionally fished in that area. Also, one thing that has brought this problem to a head, is the fact that over the years, the last 8-10 years, we have been losing so much bottom to increased mobile gear effort and increased access to harder bottom outside these areas, that the fleet has gone to this as the pinnacle of the hill as the last resort in a place where you might stand a chance of going and being able to haul the next day. That's put a real concentration of gear that never existed on this piece of bottom before, although it was always heavily fished. That's quadrupled the effort up in the areas of highest take.

So to just oversimplify it and say "we'll just shut down the ocean for a couple of months to this handful of boats and the problem will go away," it is actually a combination of several factors that have led us to this situation. So I think that no matter how much effort you get in there, we are still going to be well below any threshold that you come up with for a possible trigger as we get down the line. Triggers are an excellent way to get the most bang for your buck.

Dr. Rosenberg: I think that basically you wouldn't expect from this analysis that even if there is an increase in effort, that necessarily there would be a high take based on the analysis at hand. Obviously, there can be problems there because they can only use the existing observer data that they had, but because it has already been a heavily fished area, that's probably less of a concern.

Mr. Brancaleone: Other Council members on the motion to amend? Audience?

Mr. Anderson: I guess I am not familiar with exactly how to go about this procedure, but getting back to what Jim was saying, as far as the permanent aspect of this framework, in the way that it is worded right now, there is no provision for a particular

trigger mechanism to be investigated and prosecuted at a later date. There is information provided by the Harbor Porpoise Review Team, there is information provided by the Marine Mammal committee that is not reflected in the motion in respect to the possibility of an experimental fishery within that area. I don't know if we take these as two separate issues, but once we go through this particular exercise here of closing the area, it kind of leaves out all the possibilities of the experimental fishery, of the trigger, and it is a shut case. Now you have to reintroduce these things. Being that all these items have come up in previous discussions, I believe there should be some reflection of this in the motion so that we don't do something permanent that we might regret later on.

Mr. Brancaleone: This is a motion to amend, to leave out the Tillies area.

Mr. Anderson: That's correct, but I am talking about the whole motion. I support that motion.

Mr. Brancaleone: Just this motion, then we will deal with the original motion afterwards.

Mr. Anderson: Fine.

Mr. Wiley: I think Paul's point is a good one which any area that is left open will be heavily fished and you really have no way of predicting what future fisheries may move into that area, such as the monkfish fishery moving into the top part of Jeffreys Ledge and what that impact will have. So one of the things that we haven't heard discussed so far is, does this particular proposal move you towards your goal of harbor porpoise reduction? We have heard a lot of concern about opening areas once they get closed and things that are similar in nature. But we haven't heard any discussion on does this really help you move toward your goal and I think that is something that really needs to be discussed.

In addition, there has been no discussion on that east portion of that 69°30' area which I think Andy's analysis shows does not have a lower bycatch rate. So that area is already, evidently, being left open which we can then assume, rightly so, it will have increased fishing effort in it. What impact will that have on your take reduction? So I think both of those things have to be considered concurrently. The fact that if you leave an area open, such as Tillies, even with a lower bycatch rate, it does not necessarily translate into low bycatch. The other area that isn't even under discussion, for some reason, which has a higher bycatch rate or a normal bycatch rate, is also being left open which will have considerable effort moved into it. Will those get you your goal?

Mr. Williamson: I think that our goal is to manage the bycatch of harbor porpoise down to a rate dictated by the Marine Mammal Protection Act over time. The second thing

is to try and keep the gillnet fleet in operation while we are doing that. So I think it is a matter of management. Tillies Bank is probably out of range of all of the day boat fishery that works out of New Hampshire. So I can say that we will see very little displacement of effort out of Tillies coming from New Hampshire. The ground east of 69°30', there is very little gillnet bottom there to the point that it probably only support a few boats and that bottom is well used anyway. So we can't anticipate that there would be displacement of effort into that area. What we do know is that we are taking some radical steps to shut down a major amount of bottom and we have no way, at this point, of every opening them up. Hopefully we are going to be discussing that later on on this matter. So we have to be very conservative about shutting down bottom and I would suggest that the Tillies bottom is the best option for seeing if we can tailor our management plan to appropriate closures rather than just broad blunt tools.

Mr. Brancaleone: Other comments on the motion to amend?

Mr. Rathbun: I think it is a reasonable move and I would like to go on record as supporting it. I think it is a reasonable move based on the data that we have to go on.

Mr. Wiley: Does this vote contain the area east of 69°30' automatically in it or does is that still open for discussion?

Mr. Brancaleone: This addresses Tillies only.

Dr. Rosenberg: I am going to vote in favor of the amendment because I believe that the analysis indicates that it would not compromise the goals the Council has set for reducing harbor porpoise for the Tillies Bank area.

Mr. Gibson: If we vote this up and we exempt the area here and all of a sudden down the road we find that there is a lot of takes in there, a big displacement of effort, as has been suggested, do we have no mechanism for restricting it or shutting it down. I know the FAAS actions, as I remember, they had to have a triggering mechanism of some sort, didn't they? I am comfortable with this if there is some mechanism that we have that may not be contained in this particular plan that could shut it down or restrict it if we had a real horrendous problem out there that everybody identified.

Dr. Rosenberg: My understanding of it is for November and December, it would remain open. But that doesn't preclude shutting it down at any future time. FAAS action doesn't apply because it is based on concentrations of young fish and you couldn't use that. I think we could all agree that harbor porpoise are not young fish so I don't think we would be able to stretch it to that. So I don't think there would be any provision for shutting it down for this 1995 November and December period. That does not mean that you couldn't do that in the future, in any other year, or at any other time period.

Mr. Martin: This really is still a mechanism for shutting it down under the MMPA if you can show some sort of significant adverse immediate impact which is not going to be likely in this kind of a time frame and so forth. If you are looking at thousands of porpoises suddenly being slaughtered, then that's one thing. But that is not likely to happen. So theoretically there is a legal mechanism for shutting it down if there is a tremendous unexpected kind of take which is not likely from the analysis even with increased effort.

Mr. Coates: I think it is important to understand that some of the trepidation on the part of the Council members is due to the fact that one of the two critical months is already under way and there is no closure in the Z-band right now and based on last years' information, there was a significant increase in takes. So that is a matter of some concern. On the other hand, I am confident the analysis done by the Center indicates that this area, as identified by the fishermen, is probably going to result in very low takes. So I am willing to support the motion, in fact, I was the one that advanced the east of 69°30' proposal, as again a way of mitigating some of the impacts of this. Quite frankly, we are all anxious to get this thing resolved as fast as possible and get some mechanism that will prevent any takes of porpoise whatsoever so that we can then address gillnetting as a fishing mortality reduction measure, not as a harbor porpoise mitigation initiative. I think that's what we are all looking for here and it has been a long time. I think the reason we didn't include Tillies initially is because we hadn't had the analysis. Now that we have got it, I am very comfortable with it.

Mr. Wiley: Andy, are there any oceanographic or biologic features of Tillies that make you suspect that that should be an area of reduced take?

Dr. Rosenberg: I don't know is the simple answer. All I know is that the analysis covered three years of information which would include some variability and there were no takes in any of those three years. But I don't know the specifics of the oceanography. I can check with the Center after the fact, if that's a particular scientific interest.

Mr. Wiley: Then again, you were reticent to use the catching of harbor porpoise as a trigger for closure and what was the problem with that?

Dr. Rosenberg: I don't have any basis for knowing how a trigger mechanism would operate either what would be the appropriate, whether it should be one porpoise or it should be the sighting of a single porpoise or if it should be the catch of 100 porpoises. So I don't know how that would effectively work. I don't know its impact on what the data collection opportunities might be and I don't know that it would actually advance you towards the goal at all. It may actually be detrimental and I have real concerns about that because I have seen detrimental effects of trigger mechanisms in the past, not the least of which is the FAAS actions, which I would say in some way have operated detrimentally because they always were too late, intended to concentrate effort in an area

when people knew there was a closure coming. So until that analysis is done, I would be uncomfortable with a trigger mechanism as appropriately moving towards the goal of reducing harbor porpoise bycatch.

Mr. Wiley: And the problem with the data collection would be in relation to what?

Dr. Rosenberg: Well, I think if you had a trigger mechanism of anyone sighting a porpoise in the area, then we close the area down. I guess it is possible you might get observers to sight a porpoise but I think that a lot of fishermen have put a lot of effort into trying to make this work. I think that that would jeopardize some kind of a trigger mechanism, particularly a very arbitrary one which didn't have the analysis, would jeopardize that cooperation and make it that much more difficult. We are not going to have 100% observer coverage because nobody is going to give us either the money or the observers to do that at any time in the future that I can imagine, although I would be glad to have it. So I don't necessarily think it would be advantageous in terms of trying to collect additional information on how this is really working.

Mr. Wiley: So the possibility of having a negative impact from the fishermen may lead to the program being biased?

Dr. Rosenberg: That would concern me. I don't know that it would, but it may. That's why I would like to see somebody actually look at different ways that a trigger mechanism might operate as opposed to a vote on the floor. I think it would be better to go through some analysis of how a trigger mechanism should actually operate and what would be the pros and cons of doing that. As my staff can tell you, I do pros and cons on any decision and I don't know what the answer would be for a trigger mechanism.

Mr. Wiley: The concern is that as things are configured now, there would be a real chance for fishermen to manipulate the observer program.

Dr. Rosenberg: Not the observer program, per se, there is additional information that we get from both log sheets and from anecdotal information. The incentive to do that, if there is a trigger mechanism in place, is much lower. That kind of cooperation can be heavily impacted. That would be my fear. There is nothing confirmed, but obviously it would be a concern to me.

Mr. Wiley: I think it is a legitimate concern.

The motion to amend carried unanimously on a voice vote.

Mr. Brancaleone: Back on the main motion. Further discussion on the main motion?

The main motion was repeated with the amendment:

that the redefined Z-band, west of 69°30', be incorporated into the existing mid-coast closure area and this reconfigured area be closed for November and December of 1995, with the exemption of the Tillies Bank square area.

Mr. Nelson: I did just want to touch on triggers for a moment since everybody else is. The intent of the Marine Mammal Committee in asking for a trigger to be examined, or the possibility of a trigger to be examined, was indeed to look at that in the long term. It was not intended to feel that we would be able to institute something in the very near term. I would concur with what Erik has said and Andy also, pointing out that what the committee would like is to get that information from the Center so that we can all evaluate it and look at the pros and cons associated with the feasibility of a trigger. Again, a trigger is something that would just be a management measure that would help refine what we are doing. That is the total intent, but if it is feasible, I don't see it in place before next year. So I don't want to cut short any discussion on it, but I just want to put it in the proper perspective. The committee wants to review it first. We don't really want to have direction from the Council, if you would. We want to be a rogue committee that looks at everything that we possibly can and then comes to you with the best available recommendation.

I think there was one other thing that Erik had brought up and I will certainly be happy to refer to Gene, but I don't think that this motion precludes the use of a trigger if we find that a trigger is something that can be used as a management measure. I think that we can just go through the normal process of reviewing what happens this year and coming up with whatever measures are necessary for next year, and if it is appropriate, to have a trigger in there, then that would be part of the mechanism. Action here does not preclude that for the future, but Gene can lend some legal basis to that.

Mr. Brancaleone: Gene agrees.

Mr. Zglobicki: I have some concerns about the area east of 69°30' which we left open. As Phil remembers during the committee meeting, the reason we left that area open was we were assured that there were no takes in that area. That's why Phil suggested that that area be left open. With the information that we have from the Center right now, it shows that there are takes in that area and maybe we should reconsider that and close it.

Dr. Rosenberg: I think you need to look at Page 2 of the Appendix. Under Item 5 it says "a similar analysis was applied to the region east of the redefined Z-band, between 69°30' and 69° west." Again, no porpoise bycatch has been observed here but sampling effort has been lower at Tillies bank. This is a statistical argument and I apologize for the technical side of it, but because of the statistics of doing this analysis, you would

have expected the possibility of takes there. That doesn't mean that you have observed takes there. I don't think that people were telling you incorrectly when they told you no takes occurred there, but because of the way the sampling effort works, when you do the statistical analysis, you have to account for the fact that maybe you didn't see any because you didn't have enough sampling there or maybe you didn't see any for a number of other reasons. So people were telling you correctly in the meetings that we didn't observe takes there. Is that good evidence that there won't be any takes there, it is weaker evidence than the analysis for Tillies. In Tillies it indicated that we didn't observe any takes there and if you consider why that might be, there is strong evidence that that's because you wouldn't expect takes there. In this case, that evidence isn't as strong. We can talk about why that comes out of the statistics for anybody who really is interested. I think that you need to be a little careful in that you actually read what it says as opposed to drawing conclusions either from the comments in the meeting or from comments at the microphone. There was a specific analysis done with all the information available.

Mr. Zglobicki: But isn't it true that if we accept the argument for one area, then we have to accept the argument for the other area?

Dr. Rosenberg: No, because the analysis comes out differently in the two areas. In the east of 69°30', you can't conclude that the bycatch rate is much lower. For Tillies Bank you can conclude, based on the statistical evidence, that it is lower. There isn't strong evidence that it is much lower. There is evidence that it is lower, but if you were a betting man, you wouldn't necessarily want to bet your house and all your money on it, but you might be willing to venture something and say that "yes, it is probably lower." Maybe that's the best example I can give you. There is evidence that indicates it is lower, it is not absolutely conclusive.

Mr. Zglobicki: But isn't that what we are doing right now by exempting the area, we are betting the farm on it.

Dr. Rosenberg: Then you are asking the question, if you don't close it do you have a very high risk that you won't achieve your objectives. I think the answer to that is probably no. The conclusion under .6 basically says that whether you include it or not isn't going to impact what you would estimate the bycatch would be which would suggest that you are not betting the farm on it. In other words, it is not a matter of if you leave it open, you are taking a real high risk that you will totally compromise it, or the other way around. But the result is more quivical than for Tillies Bank area and you need to be aware of that. I am not trying to gloss that over in any way.

Mr. MacKinnon: We just want to go on record to support this action. One other little important fact, on Page 9 "Economic Impacts", this gillnet fishery is a much more valuable industry than what is pointed out here. These figures are wrong. The other

thing I wanted to point out is that 90% of the boats don't go otter trawling or shrimp trawling. There should be hooking or tuna fishing, but that is incorrect information.

Mr. Amaru: Looking a little further down the line, if the intent is to save harbor porpoises, I am going to look down at what we are going to be doing with Amendment 7 and the implications. I believe that the intent of reduction will be met, and then some, so I am going to go along with John's motion. I think it is very good and I believe it will address the problems. It may be anecdotal looking down the road, but from my perspective, I believe that that will be the net result.

Mr. Wiley: I think the betting analogy is a good one and you certainly bet heavily last year and did not win. That should be of real consideration. The point of excluding or including any particular area, you probably couldn't choose an area of small size such as this area east of 69°30' and come up with a drastic impact one way or the other, but you can look at the cumulative impact and the effect of constantly whittling away at the closed areas will do exactly what history tells it will do from last year, which is result in a large take. So again, I am unclear as to how constantly whittling away the area of the closures is going to achieve your goal.

Mr. Williamson: The argument of how many angels can dance on a pin doesn't really apply in this case because there are just a finite number of gillnets you can set on a very small piece of bottom. The pieces of bottom that are available in this area east of that line are surrounded by very deep dragger-type bottom. There are very few gillnets that that area can support. It probably supports the maximum number that it could support at this point already. It is successful only for offshore gillnet boats, probably operating most likely out of Boothbay and it is probably beyond the range of adequate coverage by the Coast Guard enforcement mechanism. I think we would like to see that any actions that are taken are going to be adequately enforced. We would like to see measures in place that will be something that can be enforced and not extend the Coast Guard beyond the limits of what they can actually do.

Dr. Rosenberg: I am going to vote in favor of this motion because I think it is important that we get some additional protection for harbor porpoise and this motion does accomplish that. There may be other caveats that you wish to bring to that discussion, but I think it is important to get additional protection for harbor porpoise and I will vote in favor of it.

Mr. Anderson: Is this on the full motion?

Mr. Brancaleone: Yes, it is.

Mr. Anderson: I just want to be assured that what we have here now, and if may need to be perfected again, that this motion applies only for the 1995 season and that if we

have to introduce other language into this motion that pursues the request of the Harbor Porpoise Review Team and the Marine Mammal Committee, that it is in there. This is strictly for the 1995 season as is. I don't know if this is the time to request that additional language be placed in this motion to have some decision in reference to the experimental fishery that has been requested. It was a recommendation of the committee. There are tones of it in the report on the recommendations of the Harbor Porpoise Review Team and I just want to have some assurance that we don't come into that problem once that motion is passed. I don't know whether, Andy, if it time for you to reflect on this and see where it is from here so that if it is necessary to put something into this motion, we could deal with it now.

Dr. Rosenberg: I had asked Joe before if I could have some time after this framework discussion was concluded to describe for the Council and the public what I am currently considering with respect to experimental fisheries given that the committee, and I believe the Council, asked me to consider an experimental fishery in the report from the last meeting. I am prepared to do that after the motion and after the issue of the framework is set. So I will tell you what I am currently considering and I am doing that because I want to hear feedback on that as a proposal and then I will make a final decision on an experimental fishery following that. That is at my authority for an experimental fishery, but I want to hear what the Council and the public has to say about it. At the last meeting I promised you we would look at it concurrently, and we did.

Mr. Martin: Actually, Erik is raising a question that I hadn't thought of before and I guess just to get clarification from the Council's intent here, I think it is important to get it on the table, and that is it does say that this expanded area of closure will only occur for November and December of 1995. That raises in my mind the question, "what happens next year for this area assuming the Council, for whatever reason, doesn't take an action?" Do we go back to the original closure? Is there no closure at all? Or is the default measure this closure as it now stands? You might want to clarify what your intent is on that particular aspect.

Mr. Brancaleone: I look to the committee.

Mr. Nelson: We really didn't discuss that. We were looking at what needed to be done. My sense of the committee was that it was focused on 1995 alone and, quite frankly, we didn't give any thought to what it would be for next year. I think right now since you brought that up, that I guess you would be reverting back to just a November closure which is coming under the Framework #4, but I leave that for your legal interpretation. I think that our sense is that the committee is going to be looking at the results of this closure next year and making determination of what other steps, if any, are needed to get us to the point where we are reaching the 400 or 500 animals, or lower than that, if at all possible. So I think this was what we felt was appropriate for this year, but beyond that, it is going to be other steps for next year if we don't meet our goals.

Mr. Smith: The motion itself, to me, was very clear and it was the response to Erik that he was looking for--it says November and December, 1995. Having said that the document clearly, and the analyses, state that the two best months would be October and November and this is silent on October, as well as September and December, which were the next two best months in that period. So I would say that we need to get on with this and get it into effect so you get the benefit from November and December just as quickly as you can and start almost immediately, whether in the context of Amendment 7 or separately by a different framework to deal with what you do in 1996. These are two separate issues.

Dr. Rosenberg: I agree with Erik's comments. It is very important that the Council immediately consider how to continue moving towards this objective in 1996. The reason that we are in this box is because we are acting at the last minute to try to get some additional protection. I would just remind you that the objective is to continue to reduce harbor porpoise bycatch by 20% a year and that will apply next year as well. So the issue of a default in my action, in my mind, I mean there is a default action, as Gene points out, but the Council shouldn't be thinking "well, we don't really need to worry about it because we will just go with whatever we have in place." You have got to continue to develop this whole exercise and that includes for both the spring closures as well as next fall. All the closures that are coming up, you need to continue to consider those and how they might best operate to meet these objectives. So the motion is very clear, but it is important for the Council to remember you have to keep this problem up front while all the other things are going on with Amendment 7.

Mr. Nelson: We certainly do recognize the need to continue to make progress towards the goals that have been outlined. We have already initiated activity towards trying to address whatever needs to be done in the spring. Again, we are looking for whatever data might be available, and ideas, and we have requested that type of information from industry as well as the Center. Also, I would just point out that we do need to make sure that we have data from this year available to us as quickly as possible so that the Harbor Porpoise Review Team can be called to meet and review that data, make timely recommendations to us so that we can then have the committee meet and start this process. We certainly want to do it in a very timely fashion and, quite frankly, we recognize very clearly that the time frame of October is really the crucial one that we want to address and we would have done it this year if the timing had been better and we will take care of the timing issue this coming year.

The motion carried unanimously on a voice vote.

Mr. Nelson: This is the second and final framework meeting and I would now request that, if I need to have a motion, to have this forwarded to the Regional Director for his consideration.

Tape 4

Dr. Rosenberg: What this motion would do is we would, in fact, be able to have this closure in effect November 1st which is what the recommendation was. That's contingent upon a number of things. The first is that I receive the document immediately and there are no further problems identified in the document, legal or otherwise. My staff has scheduled the reviews immediately for publication. We have a time table that we are trying to work to. We would then provide notice to fishermen that it is actually going to occur once we have a final decision which means I would make a recommendation to Washington and Washington would have to concur. Then we'd have to publish the notice and we'll do that this week assuming we have the document tomorrow. I don't see any problem with getting the document; I assume we're still working on that time frame.

Mr. Anderson: Is there any other time for additional comments?

Dr. Rosenberg: I don't believe there would be any further public comment.

Mr. Martin: I tried to get this in before the vote was passed. I will probably be involved in writing this rule and I want to make sure that I understand that the intent of the Council in respect to how long, or what happens after 1995? I think I heard from John that the intent was that the original closed areas, the November closed area that was in place for 1994, remains in place, as originally stated. But, this expanded area and time area will only last for November and December of 1995. Is there anybody that disagrees with that interpretation? The Mid-coast closed area is still something that is always in place as originally intended and it is just that this expanded part only lasts for November and December. Then you will reconsider, at your will, whether you want to make further additions to that original area for 1996? Is that correct?

Mr. Nelson: In that the original Mid-coast area that was normally closed for November is also closed for December of this year.

Mr. Nelson moved and Mr. Coates seconded:

that the Council forward Framework 12 to the NMFS' Regional Director for final rule.

The motion carried unanimously on a voice vote.