
Herring Oversight Committee Meeting Summaries

March 30-31, 2010

May 17, 2010

July 27-28, 2010

September 1-2, 2010- ***DRAFT***



New England Fishery Management Council

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FINAL MEETING SUMMARY

Herring Committee Meeting (Two Days)

Eastland Park Hotel, Portland ME

March 30-31, 2010

The Herring Committee met on March 30 and 31, 2010 to: continue the development of the catch monitoring alternatives for inclusion in Amendment 5 to the Herring Fishery Management Plan (FMP); discuss issues related to the timing of the next benchmark stock assessment for Atlantic herring, and develop a Committee recommendation for Council consideration.

Meeting Attendance (both days combined): Doug Grout, Chairman; Rodney Avila, Frank Blount, Jim Fair, Mike Leary, Glenn Libby (March 31 only), Sally McGee, Mike Armstrong (for David Pierce), Terry Stockwell, Mary Beth Tooley, Erling Berg (Day 2 only), Howard King, Herring Committee members (Gibson absent); Peter Baker, Gib Brogan, Jeff Kaelin (Day 2 only), Chris Weiner, Al West (Day 1 only), Herring Advisory Panel Members; Lori Steele and Talia Bigelow, NEFMC staff; Carrie Nordeen, Hannah Goodale, Cheryl Quaine, Aja Peters-Mason, Jon Witzig, NMFS NERO; Matt Cieri (ME DMR), Jason Stockwell (GMRI), Amy Van Atten and Sara Wetmore (NEFSC Observer Program), Jamie Cournane, Herring Plan Development Team Members; Bill Hoffman and Brad Schondelmeier (MA DMF), James Becker (ME DMR), Roger Fleming (Herring Alliance), Zach Klyver, Gary Hatch, Raymond Kane and Tom Rudolph (CCCHFA), Steve Weiner, Sean Mahoney (CLF), Jud Crawford (Pew), Peter Mullen, Eoin Rochford (NORPEL), Mike Brewer, Glenn Robbins, and several other interested parties.

Tuesday, March 30, 2010 (Day 1)

The Herring Committee meeting began with introductions and announcements by the new Committee Chairman (Mr. Grout).

Amendment 5 Catch Monitoring – Funding Issues

The first item on the agenda was a discussion of the March 22, 2010 letter from Pat Kurkul. The letter provided comments on the development of catch reporting and monitoring alternatives for Amendment 5 and funding issues related to the potential establishment of new monitoring systems. Herring Committee discussion focused primarily on the elements of the letter indicating that “the development of new monitoring programs...or specific requirements for existing monitoring programs (e.g., 100% observer coverage) would require new funding sources.” The Regional Administrator urged the Committee to continue to develop Amendment

5 and identify funding sources for alternatives that establish new or significantly expanded existing monitoring programs because “without additional funding, these alternatives are not viable.”

- Mr. King asked if there were any other programs in the Northeast with alternative sources of funding. Ms. Goodale replied that groundfish sectors and sea scallops both have differing programs.
- Ms. Tooley asked why Catch Monitoring and Control Plans (CMCP) required additional funding. Ms. Goodale responded by noting that the options in the draft document are not clear and that the “CMCP menu” is not defined, so if new elements are required like dockside monitoring or electronic monitoring, there would need to be a provision to fund those.
- Ms. McGee suggested an alternative model; the scallop observer set-aside program, which pays for a portion of trips into closed areas. She noted that the model is not quite analogous because the fisheries are so different, but pointed out that there are related concepts that should be explored.
- Mr. Stockwell noted that he appreciated the candor of the letter, but for him the amendment is too important for too many interests to take options off the table right now without knowing how things will be paid for. He then asked if the Agency will be able to fully fund the observer coverage that has been specified through SBRM. Ms. Goodale replied that the process would be the same as every year, and that needs for optimal coverage for all fisheries would be laid out and then adjusted with Council input. She pointed out that funding will depend on annual resources.
- Ms. Tooley explained that there are dockside monitoring programs in place in ME and MA, and pointed out that federal resources are not the only sources of funding available. She explained that there hasn’t been a way to mesh federal actions with state funds yet, but she felt that it should be possible. Ms Goodale responded that her concern lay with a federal monitoring program having a reliable long-term source of funding. She noted that the program cannot be dependent on state funding because of State issues or priorities and other potential unstable sources. Mr. Stockwell then pointed out that the only certainty to be had is if the program becomes 100% industry funded, which he did not feel that was possible, and iterated that putting the entire burden of responsibility on the industry shouldn’t be done. He then stated that the Committee should put forward a desired monitoring program and then figure out how to pay for it, versus coming out of the amendment with no product.
- Mr. Grout asked if non-fundable items are approvable in Amendment 5. Ms. Goodale replied that it is a bit premature to be talking about approvable, but noted that Amendment 16 (Groundfish) says that industry is responsible for funding the monitoring program absent availability of funds. She noted that optional sources can be used if they become available, but the program has to keep functioning if other funds are not available. Mr. Blount clarified the language in Amendment 16 which states that if there is no funding then the industry is responsible.
- Mr. Blount expressed his belief that a lot of additional funds are being made for monitoring and other related important issues. He stated that if the options are developed and people understand how important they are, funding can be generated, but if the options are eliminated, then the funding won’t be sought.

- Mr. Stockwell acknowledged the problems associated with requiring the industry to pay for the entire monitoring program and expressed opposition to that approach. He emphasized the need to move forward with catch monitoring, however. He suggested that the Committee move ahead with the options but focus the amendment and cull options as they go.
- Mr. Blount suggested that the Committee move forward with the language from Amendment 16 as an alternative.

1. MOTION: FRANK BLOUNT/SALLY MCGEE

To include the same language from Amendment 16 (Groundfish) regarding funding the monitoring programs

(the industry) “must develop, implement, and pay for, to the extent not funded by NMFS...”

Discussion on the Motion: Ms. Tooley expressed opposition to the motion in the absence of a catch share program for the herring industry. Mr. Fair emphasized the need to first determine what the monitoring needs are, and then determine how the funding will be generated. Mr. Leary expressed concern that the monitoring program may not be as detailed or comprehensive as it should be if the decision is made up-front that the industry will be required to pay for it. Ms. Goodale cautioned the Committee about expecting additional funds to become available.

MOTION #1 FAILED 2-7.

2. MOTION: SALLY MCGEE/HOWARD KING

To develop two funding alternatives establishing a monitoring set-aside, one in addition to the research set-aside (RSA), and one that would replace the RSA. These alternatives will include sub-options that will cover some or all of the cost of a new monitoring system. The percent allocated to the monitoring set-aside may increase as the ABC and the TAC for the fishery as a whole increases.

Discussion on the Motion: Ms. McGee referenced the section of the Amendment 5 discussion document that proposes set-asides to fund dockside monitoring/portside sampling and suggested that those options be expanded to consider sources of funding for all elements of the catch monitoring program. Ms. Steele noted that the Regional Office has expressed concerns about the proposed set-asides in Amendment 5, and Ms. Goodale confirmed that there are a substantial number of problems associated with the current options, as proposed. Ms. McGee expressed support for the concept and encouraged the Committee to continue to develop the options, try to address NMFS’ concerns, and explore the feasibility of a set-aside for funding the catch monitoring program.

MOTION #2 CARRIED UNANIMOUSLY.

The Herring Committee then began discussing the major elements of the catch monitoring alternatives and worked with the Amendment 5 Catch Monitoring Alternatives Draft Discussion Document dated for the March 30-31 Committee meeting.

Section 1.3 – Measures to Improve Quota Monitoring and Reporting

Ms. Steele provided a quick overview of Section 1.3 of the Amendment 5 Draft Discussion document, which includes measures to modify IVR reporting requirements, measures to address VTR and VMS reporting and related provisions, measures to address carrier vessels and Letters of Authorization (LOAs) for the fishery, measures to address vessel-to-vessel transfers of Atlantic herring, and measures to address trip declarations and notification requirements. The Committee then discussed each of these elements in more detail.

The Committee discussed the concept of VMS catch reporting (to replace IVR reporting) and asked for additional information about vessels that may or may not carry VMS on board. Council staff agreed to provide this for the next meeting, along with a description of how VMS reporting works (email, etc.). Mr. Witzig (NMFS Statistics) noted that the Agency was investigating a number of options for IVR and other reporting to provide the industry with greater flexibility to report using current/new technologies. VMS reporting could be required either on a daily basis or at the completion of a fishing trip, and a number of sources may be available to transmit the data to NMFS in a timely manner.

3. MOTION: MARY BETH TOOLEY/RODNEY AVILA

To include an option under Section 1.3.2 to allow for trip-by-trip VMS reporting

Discussion on the Motion: None.

MOTION #3 CARRIED UNANIMOUSLY.

4. MOTION: TERRY STOCKWELL/ MARY BETH TOOLEY

To eliminate 1.3.2.5 require VMS reporting for every offload and transfer – move to considered but rejected

Discussion on the Motion: Mr. Stockwell felt that the option was unnecessary and that the Committee should work to streamline the Amendment 5 document and focus on the best options. He stated that the measure could significantly increase reporting complexity given the number of potential “offloads” that may occur on a given trip.

MOTION #4 CARRIED UNANIMOUSLY.

5. MOTION: TERRY STOCKWELL/ MARY BETH TOOLEY

To eliminate 1.3.4.7 to restrict transfers at sea to trips with an at-sea monitor – move to considered but rejected

Discussion on the Motion: Mr. Stockwell and Ms. Tooley expressed concern about the proposed measure. Both referenced the purse seine fishery as an example and emphasized the need to encourage the sharing of fish. They felt that if transfers were restricted to only the trips with observers/monitors is on board, then discarding may result.

MOTION #5 CARRIED 7-2.

6. MOTION: MARY BETH TOOLEY/TERRY STOCKWELL

To create a sub-option under Section 1.3.3.2 that would eliminate requirement for VMS on carrier vessels of a certain size (TBD)

Discussion on the Motion: Ms. Tooley expressed concern about requiring VMS on small carrier vessels and suggested that a sub-option be created to explore the issue further and determine whether a size threshold is needed for the measure. Mr. Rudolph reminded the Committee that the overarching objective of the proposed management measures is to eliminate the reliance on self-reporting, and that all of the decisions about how fish move through the fishery are important with respect to third-party monitoring. Mr. Blount noted that provisions were being considered to require VMS on 21-foot consoles in the Gulf of Mexico.

MOTION #6 CARRIED 5-4.

Ms. Steele noted concerns associated with the option in the document that would maintain the status quo for Category D vessels that transfer herring at-sea.

7. MOTION: MARY BETH TOOLEY/TERRY STOCKWELL

To remove Section 1.3.4.6 from the document – Transfers at Sea for Cat D vessels – move to considered but rejected

Discussion on the Motion: None.

MOTION #7 CARRIED 5-3-1.

Section 1.4 – Measures to Standardize/Certify Volumetric Measurements of Catch

Ms. Steele provided a brief overview of Section 1.4 of the Amendment 5 Draft Discussion Document.

Ms. Steele noted that the measures may not be entirely independent of other measures in the catch monitoring program and may fit better as part of a dockside monitoring/sampling program. As the discussion continued, however, it became clear that the measures in Section 1.4 were intended to address the first objective of dockside monitoring/sampling, which is to confirm the accuracy of self-reported catch. Options to address the more science-based sampling (for bycatch estimates) appear in a later section of the document and relate more to a portside sampling program. After the discussion, the Committee agreed to rename this section “Measures to Confirm the Accuracy of Self-Reporting” for the time being. The entire Herring Committee discussion regarding this issue is summarized below.

- Ms. Goodale noted potential difficulties associated with trying to certify trucks (versus fish holds). Ms. Tooley felt that the approach used by the State of ME (described in the document) could apply to trucks as well.
- The Herring Committee discussed the difference between dockside monitoring for the purposes of verifying landed weight and dockside sampling for the purposes of extrapolating bycatch estimates. Mr. Stockwell agreed that the measures proposed in the section should be incorporated into some sort of dockside monitoring program, or some program to confirm the

weight of landed catch. He expressed some opposition to requiring flow scales in the fishery but was interested in additional discussion about the issue.

- Ms. Tooley stated that flow scales appear to be very impractical for the fishery and expressed concern about considering a measure to require them. She added that she investigated some potential options for flow scales based on the technology used on the West coast but was unable to find a product that could weigh fish at the rate they are pumped into the holds on herring vessels. She also investigated options for hopper scales (at the dock) but was not successful in finding a product that would accommodate the rate that herring are pumped off the vessels. For example, she noted that the pump in Rockland engages at about 3,000 pounds per 30 seconds, and the largest hopper scale she found information about handles 1,500 pounds per 30 seconds at a cost of about \$40,000.
- Dr. Armstrong again emphasized the importance of separating dockside monitoring for verifying landings (more of an enforcement role) and dockside sampling for estimating bycatch (more scientific approach to sampling) and noted that the latter requires samplers to observe entire offloads. The latter is therefore much more resource-intensive and not feasible at a coverage level of 100%.
- Mr. Brogan suggested that these measures be explored further in a white paper investigating the potential application of scales on herring vessels and at the docks. He recommended that information be obtained about industry needs, available products, capacity, costs, and operational issues. The Committee generally supported this idea.
- Mr. Rudolph explained that the measure to require flow scales was originally proposed as part of the CHOIR alternative, along with CMCPs that would provide flexibility for the industry to determine how it wants to handle catch weighing through the first receiver. He noted that his research into flow scales generated cost estimates that were different than those mentioned by Ms. Tooley. He also suggested that the Committee consider an option to require that trucks be weighed in a similar manner to how they are weighed at the dump – full weight and empty weight to determine the weight of the haul, with some correction made for ice and water. He thought that truck scales may be more portable and cost-effective.

8. MOTION: MARY BETH TOOLEY/NO SECOND

To Eliminate Section 1.4.4 Require Flow Scales on Herring Vessels – move it to considered but rejected

The Motion was withdrawn by the maker, and the Herring Committee directed Council staff to develop a discussion paper on the potential application of flow scales both on vessels and dockside.

Ms. Tooley encouraged Council staff to start their research by talking to the herring industry and identifying the needs of the industry with respect to capacity, pump rates, and operational issues. Dr. Armstrong agreed with this suggestion. There was some limited discussion about how measures to require catch weighing for either vessels or trucks could be incorporated into CMCPs.

9. MOTION: MARY BETH TOOLEY/RODNEY AVILA

To add an option to Section 1.4 that would require that trucks/transport vehicles be weighed

Discussion on the Motion: None.

MOTION #9 CARRIED UNANIMOUSLY.

The Herring Committee agreed by consensus to change the title of Section 1.4 to “Measures to Confirm the Accuracy of Self-Reporting” for the time being.

Section 1.5 – Measures to Address Maximized Retention

Ms. Steele provided the Herring Committee with an overview of the section on measures to address maximized retention, including the species to which maximized retention would apply, non permitted and unmarketable species, and other sections which had been carried over from previous documents and meetings.

- Mr. Grout suggested starting with the section regarding the species to which maximized retention provisions would apply.
- Ms. Tooley pointed out that the objectives of maximized retention are unclear. She suggested that the Committee focus on what the possible benefits of maximized retention could be and what the Committee wanted to achieve with the measures. She pointed out that retention rates in the fishery appear to be around 97-98%; one of the highest retention rates in the region. She also acknowledged concerns about slippage and the lack of ability to quantify and account for it. She then asked if the Committee to specify a goal for retention rates if they felt them insufficient.
- Mr. Leary noted the difficulties in quantifying slippage when the catch is not brought on board, and asked how it could be quantified. Ms. Tooley clarified that he was asking for both discards and the composition of the catch, and then generally asked if maximized retention was the correct tool to use to achieve those goals. Mr. Leary emphasized the difficulty in collection of data in relation to the need to quantify both the composition and quantity.
- Mr. Stockwell suggested the entire section be viewed as a component of maximized sampling, as maximized retention could be an option for achieving maximized sampling. He agreed with Mr. Leary’s points but questioned if maximized retention was appropriate.
- Mr. Grout explained that the need was for understanding how quantities caught in test tows and determination of species compositions, as well as improvement of data collection.
- Ms. Tooley requested that the goals of the measure be identified in the document. She identified some of the goals as being: a better idea of what the discards are, maximizing the sampling of the catch, and assurance of composition of catch and discards.
- Mr. Stockwell explained the difference between a test tow and an entire set; Mr. Grout agreed but noted the need for quantification in sampling. Ms. Goodale pointed out that the next section noted the discrepancy between the two sections in the document, one requesting access to composition at sea, and the other to addressing the composition once the boat lands.

- Ms. Tooley noted concern with both options for maximized retention, which both used exempted/experimental fishery permits (EFPs) and amendments to other FMPs, and asked for input from Ms. Goodale. Ms. Goodale responded that an objective is needed for an EFP, and noted difficulties on the west coast with a similar program. She suggested that an EFP could be an intermediary step to an amendment. Ms. Tooley noted other difficulties with the West Coast program. She then asked if the Committee really wanted staff time to go towards amending all the FMPs. Ms. Steele stated her understanding that NMFS would execute the measure and that it would be an omnibus amendment, and asked if it would be viable. Ms. Goodale responded that an omnibus amendment to all FMPs would not be viable, due to the very complicated issues, such as with groundfish. She guessed that other management entities would want to weigh in on the measures.
- Ms. McGee suggested that the measures be left in the document and suggested consideration from the Interspecies Committee, which has multiple management bodies represented. She noted a meeting the following week. Ms. Steele then noted it was too late and suggested the issue could be addressed in the following meeting and asked that the Herring Committee be specific in its request.
- Mr. Stockwell noted that the job of amending all FMPs would be very large and difficult to do in a meaningful and effective way, and also noted the need to move forward. He questioned what sampling measures were supportable and suggested that identifying those could move the process forward, noting that the measures were competing with one another. He also noted that other ASMFC managed species should include striped bass.
- Mr. Blount voiced support for leaving the measures in and quoted Mr. Lovewell's paper (pg. 21), which explained that funds are pooled from selling the fish in Norway, and that those funds are then used to pay for monitoring. He stated that the Committee needs to figure out how to land the fish, but that Norway has the rest of the system figured out.
- Mr. Weiner (CHOIR) stated that he believed maximized retention should be very easy if the fishery is already a clean fishery. He noted that every time maximized retention arises, the question of what to do with the fish arises, as well as issues over safety. He noted a lack of coverage in the fishery, and his desire to know how much is in the net hanging by the boat and what species it is. He asked the Committee for specifics on execution, and noted the need to rely less on fishermen's relation of knowledge. He stated the need for NMFS to finance the measures and stated his belief that the lack of finance threatens the measures and the fishermen. He questioned the intent of the letter from NMFS to which Ms. Goodale replied that the point of the letter was to emphasize that the Committee cannot design a whole program based on the expectation of money being there in the future. Mr. Weiner expressed his belief that it is the responsibility of NMFS to find the money to make this monitoring program work.
- Mr. Paquette asked that menhaden be added to the list for maximized retention. He also noted that discarding of dead fish without recording them may be the reason for many of the stock assessment issues, and asked that they be counted.

10. MOTION: SALLY MCGEE/TERRY STOCKWELL

To request the Interspecies Committee to consider developing a mechanism to allow retention of bycatch of federal and ASMFC-managed species in the Atlantic herring fishery. Also, to potentially consider allowing landing and sale of bycatch as a means to fund monitoring of the Atlantic herring fishery

Discussion on the Motion: Mr. Blount and Mr. Stockwell voiced his support of the motion. Mr. King asked for clarification on the expectations of the Herring Committee for the Interspecies Committee in terms of a timeline. Ms. McGee noted that the expectations would be high, and noted that the same expectation was coming from the scallop fishery in terms of yellowtail flounder bycatch.

Mr. Armstrong questioned if the Herring Committee was overcharging the Interspecies Committee. He noted a lack of concern for the monkfish, squid, and winter flounder bycatch. He suggested that the measure was a very strong response to the problem, and proposed that it could be cured through 100% observer coverage instead, and that it would be needed to enforce the measures that were suggested. He stated a concern for observing river herring dumped on the bait market in Massachusetts, and suggested that there may be other solutions, and pointed out that the objective is to see what is in the dumped bags.

Mr. Rudolph voiced support for the motion, but noted that the Committee should not stop work on the measure while the Interspecies Committee considered the issue. He suggested that a selection of species from the list in the document could be made in the meantime. He noted that maximized retention on many of the species of greatest concern, such as herring, mackerel, haddock, and river herring, would face no regulatory stumbling blocks. He also stated his belief that river herring is in the bait market at the present time.

Mr. Rochford (NORPEL) expressed concern over statements that the retention of the species in question was not occurring, and noted that the fish come aboard at rates between 3 and 10 tons a minute, making sorting difficult. He explained that if the fishermen do not have allowances when they come ashore, then the trip can be confiscated and that there is zero tolerance on river herring. He stated the need to have provisions to monitor catch levels of all of these species.

MOTION #10 CARRIED UNANIMOUSLY.

The Herring Committee agreed to add menhaden to the list of potential species for consideration in the maximized retention measures. Striped bass was also considered as an addition, but it was determined that an executive order would prevent them from being added. The Committee discussed the potential for utilizing an experimental/exempted fishery process for allowing herring vessels to retain unpermitted or prohibited catch under a maximized retention program. Ms. Steele suggested that an experimental fishery process may work if the program were designed to investigate the feasibility and potential for maximized retention in the herring fishery and if the program offered incentives for vessels to participate.

- Ms. Tooley expressed the need for the document to be explicit on how it would be an experiment and how the results would be incorporated into final measures once the experiment ends. She suggested adding such information as how temporary of a period the experiment would be, what species would be included, and what results would be expected. She also stated that the agency doesn't want the experiment to be in operation under an EFP for several years.
- Ms. Steele asked for clarification from the Herring Committee as to what sort of approaches should be considered and what sort of incentives could be offered through an experimental fishery process for maximized retention.
- Mr. Rudolph brought the conversation back to the question of why maximized retention would be a good idea. He suggested reducing waste, as 3% changed to pounds could be large. Maximized retention also allows for a confident assumption that landings equal catch which in turn provides a benefit from your dockside sampling program. He stated that he saw this as the most powerful incentive. He stated that if dockside sampling is an alternative that was developed, then the more that retention is maximized, the more confidence could be had on the dock in what was caught.
- Dr. Cieri expressed concern about encouraging targeting of other species if incentives are provided for maximized retention. Ms. Steele responded that exemptions from days out or allocations were what she was thinking of as incentives; i.e., relief from the herring regulations. Mr. Fair suggested that a herring allocation or relief from regulations would be needed as an incentive for the program to work; something that would be added to the regular season which provided more opportunity to fish when otherwise it would have been prohibited. He noted that bycatch should be landed and counted but not incentivized in a way that would encourage fishing for it.
- Mr. Stockwell noted his concern with the Council undoing the Commission's days out program. He pointed out that there were already enforcement issues, and that he liked the idea of giving a percentage of the quota to vessels that participate in the EFP but not days out.
- Ms. Goodale clarified that the program would be optional and voluntary. Ms. Steele clarified that it would become a research program. Mr. Grout asked if it would be only a limited number of vessels or fleet wide, and Ms. Steele was uncertain. Ms. Tooley asked who would be doing the research if something of that nature is proposed. She noted problems with the Agency conducting the research, and noted that if it were not going to be the PI, then the Committee needs to identify who that will be. She alternatively suggested that it could become a high priority for the RSA. Ms. Goodale agreed with the RSA suggestion and noting that it could be done through an RSA if it was the sole research priority.
- Mr. Rochford suggested that the plants be involved as volunteers as well, suggesting that it would be a more cost-effective option.

The Herring Committee agreed by consensus that Council staff should develop an option for an EFP process to research the potential applicability of maximized retention to the herring fishery. The Committee also agreed to revisit the issue at a later date.

The Committee then discussed the options to address disposition of non-permitted/unmarketable catch. Questions raised include who is responsible for the unmarketable catch once it is landed, can non-marketable fish be sold if they are marketable and what happens to the profits, and what happens to the unmarketable fish.

- Ms. Steele noted that some of the questions were partially addressed by the previous motion, but also noted her concern that the Interspecies Committee would be stymied by other issues and would not get around to addressing these questions. She also expressed concern about these specific measures in the document being unclear.
- Ms. Tooley explained that the industry is required to keep haddock catch, and that it comes in and the plant holds on to it and then it's put back aboard the vessel and disposed of at-sea. She then reviewed some of the species on the list being considered and where they may go after being retained. She mentioned the suggestion of some sale, but brought up issues with how the catch would be sold.
- Ms. Steele clarified that the Interspecies Committee would be tackling the issue of whether the species would be marketable but suggested that she could create an option based on the current haddock rules.

The Committee then discussed the options for verifying compliance with maximized retention provision. Options included 100% observer coverage, video based electronic monitoring, less than 100% observer coverage, addressing coverage through CMCP, and others. The Committee agreed by consensus to move the options for slippage caps to the sections which address slippage.

11. MOTION: MARY BETH TOOLEY/RODNEY AVILA

To delete Section 1.5.4.1 from the document - 100% Verification by At-Sea Observers – move to considered but rejected

Discussion on the Motion: Mr. Rudolph clarified that there have been three phases of restructuring of the document which may have created confusion, because the previous packages had been taken apart and the pieces spread around. He explained that there are two points of confusion: caps and the various measures for verifying maximized retention. He took the opportunity to clarify that the landings caps are going to be different from the slippage caps, noting that slippage caps would be used to determine how often a bag of fish could be released before needing to be sampled. Landings caps and bycatch caps were clarified to be caps on the various bycatch species in the fishery. If the caps are achieved, then the fishery would need to close. Mr. Rudolph and Ms. Steele agreed to confer and resolve the two options that relate to the landings caps at a later date following the meeting.

Mr. Mahoney questioned the utility of removing the alternative, requesting a full discussion and a public comment period. Mr. Stockwell voiced his support for the motion because it could still be incorporated into a CMCP.

MOTION #11 CARRIED 7-3.

Mr. Grout noted that Section 1.5.4.6 of the document was a carryover from another alternative.

12. MOTION: TERRY STOCKWELL/RODNEY AVILA

To eliminate Section 1.5.4.6 – Maximized Retention Techniques Developed in Amendment 5 – move it to considered but rejected

Discussion on the Motion: None.

MOTION #12 CARRIED UNANIMOUSLY.

Ms. Tooley felt that consistent terminology would benefit the amendment, particularly in regards to the various caps that are being considered. Ms. Goodale also asked for clarification on which gear types the maximized retention will apply to, citing language regarding codends and tow speeds. Ms. Steele suggested that the language was focused primarily on midwater trawl vessels at this time, and the Committee should consider how the provisions may apply to purse seine vessels as well.

The Committee then discussed the option which addresses consequences of quota or bycatch cap overages. Ms. Tooley requested clarification on attributing an overage for a fleet cap on a specific vessel, which had been proposed in one of the options. She expressed concern that the vessels would have no due process and that the possibility existed for penalties to be assigned without looking at mitigating circumstances under the option and noted that the vessel could be eliminated from the fishery if an automatic penalty was issued without due process.

13. MOTION: MARY BETH TOOLEY/ERLING BERG

To eliminate Section 1.5.4.8 from the document – move it to considered but rejected

Discussion on the Motion: None.

MOTION #13 CARRIED UNANIMOUSLY.

Mr. Stockwell noted that the phase-in options proposed for the maximized retention provisions are in need of more detail, according to NERO comments. The Committee agreed that it may revisit this issue at the May 17 meeting as part of the river herring discussion, as there may be opportunities for phasing in maximized retention spatially, based on areas where river herring bycatch is known to occur.

Section 1.6 – Measures to Maximize Sampling and Address Net Slippage

Ms. Steele provided the Committee with an overview of the section on measures to maximize sampling and address net slippage, including measures such as lifting or bringing aboard the codend, maximizing the sampling by at sea observers, and trip terminations. Ms. Tooley discussed the potential difficulties associated with some of the options due to the differences between vessels and equipment, and Mr. Rochford mentioned similar equipment difficulties associated with lifting codends above the water line. He also addressed difficulties associated with dogfish and herring fishermen's general desire to keep what they catch.

14. MOTION: TERRY STOCKWELL/RODNEY AVILA

To eliminate Sections 1.6.2.1, 1.6.2.2, and 1.6.2.3 from the document – move them to considered but rejected

Discussion on the Motion: Ms. McGee noted that if electronic monitoring was used, bringing the codend on board and making it visible so that it could be documented on the camera may be useful. She therefore recommended that option 1.6.2.3 remain in the document.

MOTION PERFECTED:

To eliminate Sections 1.6.2.1 and 1.6.2.2 from the document – move them to considered but rejected

Further Discussion: Mr. Rudolph took the opportunity to explain that the lifting provision was designed to allow observers to view the net when pumping is finished. He noted the difficulty in identifying quantities and species if the bag is in the air, and suggested letting the industry recommend the specifics, assuring that the observer is able to verify the empty codend. He also recommended alternatives to bring fish aboard for sampling. Mr. Paquette recommended that the contents of the codend be viewed by the observer on deck.

PERFECTED MOTION #14 CARRIED UNANIMOUSLY.

15. MOTION: TERRY STOCKWELL/RODNEY AVILA

To amend Option 5 of Section 1.6.2.5 to read that observers be allowed to view the contents of the codend after pumping has ended

Discussion on the Motion: Ms. Steele asked to clarify how the measures relate to purse seine vessels that do not have codends and if there should be sampling requirements for them. Mr. Rochford expressed concern that the issue of dogfish clogging the gear and making it dangerous to bring the net on board had not been addressed. Mr. Rudolph pointed out that other options in the document addressed the concern, and specified that the measure was designed to avoid triggering accountability measures like trip termination and slippage caps.

MOTION #15 CARRIED UNANIMOUSLY.

16. MOTION: TERRY STOCKWELL/RODNEY AVILA

To reconsider the tabled motion from the June 2009 Committee Meeting

Discussion on the Motion: None.

MOTION #16 CARRIED UNANIMOUSLY.

17. MOTION (BACK ON THE FLOOR, PERFECTED)

To eliminate the option at the top of p. 29 – require that all fish must be at least pumped aboard the boat so that the entire catch can be sampled by an observer – move it to considered but rejected

Discussion on the Motion:

- Mr. King questioned issues with enforcement and compliance in Closed Area I, and it was clarified that no vessels have been in the area since these measures were implemented. Mr. Fleming noted that the option had been developed for Closed Area I but that it should be considered for the whole fishery.
- Ms. McGee suggested that future fishing in Closed Area I would provide an opportunity to see how the provisions function and if modifications would be needed as a result, noting that modifications could be made if problems were discovered.
- Mr. Avila expressed concern about requirements that all fish be pumped aboard.
- Mr. Stockwell noted that the broad provisions are not applicable to the purse seine fishery but they are not considered in Closed Area I because fishing does not occur there.
- Mr. Rochford noted that midwater trawlers were already restricted 1A for most of the year, and then didn't fish on Georges Bank because of haddock bycatch issues. He noted that the exception was Closed Area I where the water is deeper so herring can be caught with less haddock bycatch. He noted that the provisions for Closed Area I were agreed upon for access reasons, but noted that fishery wide applications would not work.
- Mr. Rudolph opposed the motion, stating that it would be a large disservice to the industry if exploration of the provisions in the special rule making did not continue.
- Ms. Tooley pointed out that this measure would apply to all gear types in the fishery and that because purse seine vessels can release fish alive, it may be a waste to require pumping all fish aboard for sampling.

MOTION #17 CARRIED 6-4.

The Herring Committee discussed the option proposed in the document to require trip termination when a slippage event occurs. Ms. Tooley noted the need to define what slipping fish means and the impacts to the different gear types. She also requested specification on what the termination applies to and what is the definition of slipped fish is. Mr. Avila suggested a trip termination when there was more than one event in the same trip. Ms. Steele asked if an observer would therefore need to be on board for a trip termination to be required.

Mr. Stockwell noted that he could not support the motion without more details. He questioned what would happen in the event of technical problems and noted that a trip termination based on mechanical failure would not work, especially with days out of the fishery. He expressed opposition to punitive measures, for example, terminating a purse seine trip based on one tow of small fish, and he asked for additional rationale.

18. MOTION: TERRY STOCKWELL/MARY BETH TOOLEY

To eliminate Section 1.6.3.2, Trip Termination, from the document and move it to considered but rejected

Discussion on the Motion:

- Mr. Rudolph noted the lack of disincentives for slipping fish. He reviewed some of the history of the development of the alternative and suggested the development of sub-options to make a trip termination work, as no other options seemed viable.
- Mr. Fleming noted that the history of the measure was being a part the Closed Area I proposed rule, and supported keeping the measure in the document.
- Mr. Weiner noted that the proposed provision is one accountability component of the maximized retention provisions.
- Mr. Stockwell noted that he was not trying to remove accountability but pointed out that the option is not clear and may not be viable.

19. MOTION: TERRY STOCKWELL/SALLY MCGEE

To table the previous motion (#18) until the morning discussion

Discussion on the Motion: None.

THE MOTION TO TABLE MOTION #18 CARRIED UNANIMOUSLY.

The Herring Committee agreed to reconvene early at 8:30 a.m. to address the tabled motion.

Day 1 of the Herring Committee meeting adjourned at approximately 6:20 p.m.

Wednesday, March 31, 2010 (Day 2)

The Herring Committee convened early to resolved unfinished business from the March 30 meeting prior to moving on with the day's agenda. One motion concerning measures to address net slippage was tabled (#18), and the Committee needed to finish its discussion on the other measures under consideration to address net slippage.

20. MOTION: TERRY STOCKWELL/JIM FAIR

To reconsider the tabled motion from the March 30 meeting

Discussion on the Motion: None.

MOTION #20 CARRIED UNANIMOUSLY.

21. MOTION #18 BACK ON THE TABLE FOR DISCUSSION:

To eliminate Section 1.6.3.2, Trip Termination, from the document and move it to considered but rejected

Further Discussion on the Motion: Mr. Stockwell asked if he could withdraw the motion, but it was noted that the motion required a vote because it had already been debated.

MOTION #21 (PREVIOUSLY #18) FAILED UNANIMOUSLY.

22. MOTION: TERRY STOCKWELL/RODNEY AVILA

To task the PDT to develop trip termination options for slippage events, applicable to different gear types, vessel sizes, and observer rates

Discussion on the Motion: Mr. Stockwell noted that he wanted the PDT to consider operational differences between larger and smaller vessels, as well as between trawlers and purse seiners. Mr. Fleming expressed support for the motion but also expressed concern that the Closed Area I provisions were eliminated from the document. He felt that in eliminating the Closed Area I option, the Committee may have limited its options to address slippage and maximize sampling. Ms. Goodale was uncertain how the observer rates apply to the development of trip termination options.

MOTION #22 CARRIED UNANIMOUSLY.

Before moving on, Ms. Steele again noted that very few of the measures to maximize sampling and address net slippage were designed for purse seine vessels and suggested that the Herring Committee give this issue more consideration, perhaps at a future meeting. She also suggested that the Committee consider expanding the option to require an affidavit for slippage events to include purse seine vessels as well as midwater trawl and pair trawl vessels.

23. MOTION: GLENN LIBBY/TERRY STOCKWELL

To include all gear types in the option to require an affidavit for slippage events (Section 1.6.3.1)

Discussion on the Motion: None.

MOTION #23 CARRIED UNANIMOUSLY.

Section 1.7 – At-Sea Monitoring Program

Ms. Steele provided the Committee with a brief overview of the section related to the development of an at-sea monitoring program and management measures to enhance observer coverage.

- The Committee briefly discussed the current approach for assigning observer coverage, based on the standardized bycatch reporting methodology (SBRM).
- Dr. Armstrong suggested that the sampling program in Amendment 5 try to sample the fishery more strategically, to achieve specific objectives/priorities. Ms. Tooley noted that sampling for haddock bycatch could be focused on Area 3 and sampling for river herring bycatch could be focused on Area 2 in the winter and Area 1A in the fall.
- Ms. McGee suggested that the Committee revisit this issue at the May meeting when discussing measures to address river herring bycatch. She felt that a relatively simple approach could be to target sampling in the “hotspots” for river herring bycatch that may be identified by looking at available data.
- Mr. Stockwell felt that a broad range of coverage is necessary for the fishery but that developing a specific option based on a combination approach (at-sea and portside) for achieving the priorities is too complicated at this time.

24. MOTION: TERRY STOCKWELL/MARY BETH TOOLEY

To eliminate Section 1.7.3.4 from the document – move it to considered but rejected

Discussion on the Motion: Mr. Stockwell felt that portside sampling should complement observer coverage to generate a comprehensive monitoring program for the fishery. Portside data can be used to groundtruth assumptions and data extrapolation. However, he noted that portside sampling is much more cost-effective and emphasized the need to develop an efficient monitoring program. He stated that while additional discussion should occur about how to use both elements of the monitoring program in the most efficient way, he did not feel that this option was necessary in the document at this time.

MOTION #24 CARRIED 8-1-1.

Mr. Grout asked for further clarification on how at-sea sampling coverage could be distributed strategically to achieve desired objectives/priorities. Ms. Van Atten noted that the current observer days are allocated as strategically as possible based on priorities at the time. Currently, observer coverage is analyzed based on gear type, but further guidance from the Council can be relatively simple regarding how to define the strata for sampling – by area or season for example. She noted that while a baseline of coverage across the entire fishery is necessary, additional coverage can be allocated based on priorities. **The Herring Committee agreed to revisit this issue at the May Committee meeting as part of the development of management measures to address river herring bycatch.**

Ms. Tooley suggested that the option in the document to require 100% observer coverage may not be feasible.

25. MOTION: MARY BETH TOOLEY/NO SECOND

To eliminate Section 1.7.3.1 100% Observer Coverage from the document – move to considered but rejected

MOTION #25 FAILED FROM LACK OF A SECOND.

- Mr. Stockwell felt that the Committee should continue to consider a complete range of alternatives for observer coverage at this time but agreed that 100% observer coverage may not be feasible.
- Ms. Goodale asked for clarification that the provisions in the document for portside sampling service providers also apply to at-sea monitoring service providers (yes). Regarding this issue, Ms. Van Atten expressed concern about the proposed provisions in the document that would require service providers to meet minimum eligibility requirements including a high school diploma. She suggested that the Committee consider minimum standards that are consistent with the National Observer Program, which require a college degree but provide opportunities for a waiver from the college degree based on certain provisions. Mr. Stockwell stated that the Groundfish Committee discussed this issue in great detail and expressed opposition to changing the proposed requirements. Ms. Tooley agreed.

Section 1.8 – Dockside Monitoring Program (to be titled “Portside Sampling Program” in the Amendment 5 Document)

Ms. Steele suggested that the Committee agree on some consistent language for this section of the document – portside sampling, dockside sampling, shore-based observing, etc. are all used interchangeably at this time and may mean different things. The Committee agreed to use the term “portside sampling” to refer to this element of the catch monitoring program, which will be designed to sample landed catch to obtain information about bycatch of various species. The Committee also agreed that the objectives identified in this section should be modified to reflect the notion that this program is designed to sample for bycatch, not to confirm the accuracy of self-reporting (which is addressed in a previous section of the document). Ms. Steele suggested that some discussion of how at-sea sampling data and portside sampling data relate to each other be added to this section of the document.

The Committee discussed options for levels of coverage for a portside sampling program. Mr. Grout asked how the appropriate levels of coverage could be determined? Mr. Stockwell wondered what the minimum levels of coverage would be to allow for extrapolation of the data across the entire fishery. Dr. Cieri noted that the levels of coverage will depend on the priorities, similar to at-sea monitoring. He noted that the PDT will be looking at trips with overlapping sampling (at-sea and portside) but that there have not yet been enough overlapping trips to analyze whether the data are comparable for all species. From a technical aspect, he noted that developing a comprehensive program to achieve a specific set of objectives (in the form of CVs for bycatch estimates) would be a more appropriate approach than developing separate programs with separate objectives. He suggested that the Committee provide guidance to the PDT

regarding the desired precision estimates for priority species, and the PDT will develop some analysis to provide insight as to what the coverage levels for such a program may be. The Committee agreed to this approach.

Dr. Armstrong asked why the option for less than 100% coverage without any extrapolation remains in the document, given the Committee's discussion. Mr. Rudolph noted that this option is a remnant of the original CHOIR proposal and was not brought forward as a preferred approach at that time, nor is it preferred at this time.

26. MOTION: TERRY STOCKWELL/MIKE LEARY

To eliminate Section 1.8.4.3 from the document – move it to considered but rejected

Discussion on the Motion: None.

MOTION #26 CARRIED UNANIMOUSLY.

Ms. Tooley expressed similar concerns about the option to require 100% dockside monitoring (portside sampling) to the concerns she had about the option to require 100 observer coverage. She emphasized the need to remove options from the document that do not appear feasible and/or for which available resources cannot support. She opposed including any non-viable options in the Amendment 5 public hearing document.

27. MOTION: MARY BETH TOOLEY/NO SECOND

To eliminate Section 1.8.4.1 100% Dockside Monitoring from the document – move to considered but rejected

MOTION #27 FAILED FROM LACK OF A SECOND.

Ms. Steele reminded the Committee that the Herring PDT already expressed concerns about the feasibility of 100% dockside monitoring, given the nature and extent of the fishery. Ms. Goodale expressed concern about the option proposed in Section 1.8.4.5. She stated that the option implied that NMFS would be administering the portside sampling program, but it is not clear what levels of coverage would be required, and she reiterated NMFS' concerns about funding a new catch monitoring program.

28. MOTION: TERRY STOCKWELL/MIKE ARMSTRONG

To eliminate Section 1.8.4.5 from the document – move it to considered but rejected

Discussion on the Motion: Ms. Goodale expressed concern about this option because it implies that NMFS will be establishing and administering a portside sampling program, and NMFS resources cannot support such a program at this time. Mr. Paquette emphasized the need to consider a full range of options including industry contributions to the monitoring program.

MOTION #28 CARRIED 8-2-1.

Ms. Tooley asked the State representatives whether the proposed provisions for service providers seem reasonable, given the current MA and ME portside sampling programs. No one expressed opposition to the proposed provisions, and a few Committee members confirmed their position on the minimum standard for a high school diploma. Dr. Cieri noted that it may be problematic

to require that all service providers be able to deploy samplers to all ports in which monitoring is necessary.

29. MOTION: MARY BETH TOOLEY/TERRY STOCKWELL

To delete the final bullet on p.47 that states that the service provider must be able to deploy dockside monitors to all ports in which service is required by this section

Discussion on the Motion: Ms. Tooley expressed concern about requiring service providers to deploy observers to all ports in the fishery. She referred to the current State programs in ME and MA and expressed concern that the states could possibly not qualify as service providers if this criterion is established. Mr. Rochford emphasized the importance of understanding how the fishery operates and noted that with days out of the fishery, many samplers will have nothing to do for most days of the week, with landings events occurring in many ports on the same day(s).

MOTION #29 FAILED 4-7.

The Herring Committee discussed the options proposed in the document for specifying which entities could become service providers for portside sampling or observer coverage. Ms. Steele questions whether the options were necessary and suggested that the Committee simply determine whether it wants to restrict participation to a single service provider or allow opportunities for multiple service providers.

30. MOTION: MARY BETH TOOLEY/RODNEY AVILA

To eliminate Section 1.8.5.3 – Single Service Provider – from the document and move it to considered but rejected

Discussion on the Motion: Ms. Tooley felt that it is not appropriate to rely on one service provider, given the nature of the fishery and its geographical extent. Dr. Armstrong felt that the options for specifying service providers complicate the program and increase administrative burdens.

MOTION #30 CARRIED 10-1.

31. MOTION: RODNEY AVILA/MIKE LEARY

To eliminate options for specifying service providers and allow multiple service providers that meet the criteria specified in the amendment

Discussion on the Motion: None.

MOTION #31 CARRIED UNANIMOUSLY.

Funding Issues: Set-Asides

The Herring Committee generally discussed funding issues, including the options for a dockside monitoring program set-aside, described in Section 1.8.6 of the document. Ms. Goodale expressed concerns about how the proposed set-asides are currently structured – like research set-asides, which are awarded through a grants process. She suggested that a monitoring program set-aside could not be structured in the same way and encouraged the Committee to consider ways that this program could work. Ms. Steele also identified concerns associated with set-aside timing, incentives for the industry to utilize a set-aside, and uncertainty associated with

the magnitude of funds a herring set-aside could generate. Ms. McGee felt that the options should remain in the document for further development at this time and suggested that staff investigate the current scallop observer set-aside to determine if some elements of that process could apply to a herring catch monitoring set-aside. Some Committee members also suggested that the current Mid-Atlantic RSA process be investigated for some potential ideas.

The Herring Committee agreed to Ms. Steele's suggestion that Section 1.8.6 be removed from the Portside Sampling Program section of the document and used to form a new section titled, "Options for Sources of Funding" so that the set-aside concept could be considered in the context of the entire catch monitoring program, consistent with the Committee's March 30 motion (Motion #2). Mr. Grout suggested that additional information be included in the document to provide the Committee with some perspective on how much funding could be generated by a set-aside.

Before moving on to the next agenda item, Dr. Armstrong noted for the Herring Committee that the Amendment 5 document currently does not include measures to improve portside sampling, which would be analogous to the measures in the document proposed to improve observer coverage (safe sampling station, reasonable assistance, etc.).

Section 1.9 – Measures to Require Electronic Monitoring (EM)

Ms. Steele briefed the Committee on the proposed options to require electronic monitoring, which are not well developed in the document at this time.

- Ms. McGee expressed interest in hearing more about the current research at the Northeast Fisheries Science Center regarding video-based monitoring in the groundfish fishery.
- Mr. Stockwell expressed opposition to designating EM as the top priority for the research set-aside (RSA) but noted that there is a lot of value associated with EM in the future. He suggested that EM could be incorporated into the amendment as a pilot program, specified in an industry catch monitoring control plan (CMCP).
- Ms. Van Atten briefed the Committee on the NEFSC groundfish EM pilot program. She said that this year, at least 10 groundfish vessels will be equipped with video-based electronic monitoring (VBEM) to see if VBEM can be utilized to supplement data collected to monitor and/or quantify discards in the fishery. Groundfish sector money is funding the program, and research/data collection is expected to occur over the next 2-3 years, during which time the VBEM tool will be evaluated. She noted that the study is investigating the use of VBEM technology for the hook, gillnet, and bottom trawl sectors of the fishery. She does not believe that the video recognition technology is good enough at this time to distinguish species, but it may be useful to improve coverage of an observed trip, especially if there are multiple platforms where discarding can occur. She also noted that this is the first VBEM project of this scale on the east coast that will be administered by the government with government oversight of the data. Costs associated with this and similar projects are much higher in the earlier years because of the need to develop and test the technology and assess the quality of the data.

No specific decisions were made regarding the measures to require EM in Amendment 5 at this time, but the Committee agreed that background information about the groundfish VBEM pilot project and information about VBEM usage in British Columbia (from Alan Lovewell's summer research paper) should be added to the document for additional perspective. The Committee will revisit this issue at a future meeting.

Section 1.10 – Measures to Require Catch Monitoring and Control Plans (CMCPs)

Ms. Steele briefed the Committee on the section of the document pertaining to requirements for CMCPs. Ms. Goodale and Ms. Tooley both expressed concern about the feasibility of these measures for the Atlantic herring fishery. Mr. Stockwell expressed support for the CMCP concept but emphasized the need to fully consider the potential complications. Ms. Tooley agreed that the concept should remain in the document at this time for further consideration and discussion by the Committee.

- Mr. Grout asked for clarification regarding NMFS' concerns about the proposed provisions for CMCPs and the elements that may be required in them. Ms. Goodale stated that the proposed CMCP provisions seem to be open-ended at this time and allow for the potential for many different approaches to addressing some issues to be submitted by the industry. She suggested that the CMCPs include options for some elements, without leaving it open-ended— for example, a set of three or so options for the industry to select from in terms of complying with maximized retention (if maximized retention is adopted in the amendment).
- Ms. Steele stated that she had interpreted the CMCP concept to be open-ended in order to allow for each vessel owner (or processor, or dealer) to develop ways to comply with the catch monitoring requirements based on their individual operations/businesses. If the CMCPs were intended to be limited to a selection of a few options, she wondered why the CMCP would be necessary.
- Mr. Libby equated the CMCP concept with a HACCP (hassup) plan. He suggested that the Council should be setting general standards for the industry to meet in the CMCPs, allowing them flexibility to tailor the CMCP to their business operations.
- Mr. Rudolph clarified some issues related to the CMCP options, which were proposed by CHOIR. He emphasized that the first decision to be made is who will be responsible for ensuring the catch is monitored, i.e., who will be identified as the “first receiver.” The first receiver should develop the CMCPs, whether they are dealers or vessels. The first receivers then determine the various ways that fish could move through the operation during the fishing year and provide details of how the operation will comply with the monitoring requirements in the CMCP. The CMCP should provide for flexibility within some constraints, which should be identified by the Council.
- Ms. Steele referred the Herring Committee to the July 31, 2009 Amendment 5 Discussion Document, which provides some details about the CMCPs that are utilized in the processing sector on the west coast. She agreed to provide the CMCP performance standards from the regulations for the next meeting.

Amendment 5 Timeline

Prior to completing its work on the Amendment 5 catch monitoring alternatives, the Herring Committee asked Council staff to provide an update on the Amendment 5 timeline and upcoming milestones. Ms. Steele noted that with the number of issues still to address in Amendment 5 in addition to catch monitoring (river herring bycatch, midwater trawl access to groundfish closed areas, mackerel interactions (already addressed but should be revisited), and the recently-added issue of spawning protection), it is unlikely that the full range of alternatives will be developed for the Council to approve at the June 2010 Council meeting. Instead, the Council should approve the range of alternatives at the September 2010 Council meeting, with approval of the Draft EIS then anticipated for January 2011. Public hearings would be scheduled for early 2011 (March/April), and final decisions on Amendment 5 would be made by the Council at the meeting immediately following the public comment period. Amendment 5 would then be implemented as soon as possible during the 2012 fishing year.

Herring Committee Discussion – Timing Issues for Next Benchmark Stock Assessment

In January 2010, Paul Howard sent a letter to Nancy Thompson asking the NEFSC to consider moving the date of the benchmark stock assessment for herring from SARC 54 (June 2012) to SARC 53 (December 2011), consistent with the Council's request for a benchmark assessment as soon as possible. Dr. Thompson responded with information about the tradeoffs (available data, resources, issues to address, and analyses) that may be associated with moving the benchmark assessment to an earlier date. At its January 2010 meeting, the Council suggested that the Herring Committee discuss the tradeoffs and provide a recommendation for consideration at the April Council meeting.

Dr. Jim Weinberg from the NEFSC briefed the Herring Committee on timing issues associated with the next benchmark stock assessment and the tradeoffs to consider when recommending an assessment date earlier than June 2012 (SARC 54). Dr. Jon Deroba (herring assessment biologist) and Dr. Michael Jech (acoustic surveys) also participated in the discussion. Dr. Weinberg stated that it does not seem appropriate to conduct the assessment earlier than December 2011 or June 2012 because of the loss of data that could be used to perform a more thorough assessment. As an example, he added that even considering a December 2011 assessment could not utilize fishery information from the 2011 fishing year, so earlier dates would result in the loss of even more new data, as well as time to analyze existing data and explore new/different assessment models.

- Dr. Weinberg walked the Committee through Nancy Thompson's response to the Council about the timing of the assessment and each of the technical issues associated with available data, preparation of analyses, and timing. He noted that much of the work for the stock assessment must be completed prior to the actual date of the assessment, and considering some of the issues like ecosystem considerations and stock structure may require a significant amount of work. From the scientific perspective, Dr. Weinberg supported the later date for the stock assessment review (June 2012).
- Ms. Tooley acknowledged the technical aspects associated with the timing of the assessment but reminded the Herring Committee that from the industry's perspective, it is important to conduct this assessment as soon as possible. She asked about which models may be considered in the upcoming assessment, and Dr. Weinberg stated that all available and

appropriate assessment tools will be considered because this is scheduled to be a benchmark assessment.

- Dr. Deroba and Dr. Jech addressed some general questions about information related to spatial structure of the herring complex, survey data, and acoustic surveys.
- Dr. Weinberg suggested that time and resources play significant roles in determining the work that can be completed for the benchmark assessment. He added that addressing the retrospective pattern in the assessment is a high priority issue.
- Mr. Rochford suggested that consideration be given to conducting an egg survey for herring, and Mr. Kaelin added that the Sustainable Fisheries Coalition has expressed interest in working with scientists to develop this kind of survey for both herring and mackerel. Dr. Deroba expressed interest in exploring this issue.
- Mr. Stockwell agreed that the retrospective pattern in the assessment is a significant issue that should be addressed. He felt that the additional six months (between December 2011 and June 2012) could result in improvements in the quality of data and the depth of analysis for the assessment, which could help to resolve the retrospective pattern and improve the assessment. He added that the additional time may also complement the timeline for the new assessment model on which ME DMR and the University of Maine are working.

32. MOTION: TERRY STOCKWELL/JIM FAIR

To recommend that the next herring benchmark assessment be conducted in June 2012 (SARC 54)

Discussion on the Motion: Mr. Crawford expressed support for the motion.

MOTION #32 CARRIED UNANIMOUSLY.

The Herring Committee meeting adjourned at approximately 4:30 p.m. on March 31, 2010.



New England Fishery Management Council

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FINAL MEETING SUMMARY

Herring Committee Meeting

Sheraton Harborside Hotel, Portsmouth NH

May 17, 2010

The Herring Committee met on May 17, 2010 in Portsmouth, New Hampshire to: review and discuss available information regarding river herring bycatch in the Atlantic herring fishery provided by the Herring Plan Development Team (PDT); develop management measures and alternatives to address river herring bycatch for consideration in Amendment 5 to the Herring Fishery Management Plan (FMP); discuss elements of Amendment 5 catch monitoring alternatives that relate to documenting and monitoring river herring bycatch; and address other elements of the Amendment 5 catch monitoring alternatives.

Meeting Attendance:

Herring Committee: Doug Grout, Herring Committee Chairman, Sally McGee, Frank Blount, Mike Leary, David Pierce, Mary Beth Tooley, Mark Gibson, Rodney Avila, Terry Stockwell, Glenn Libby; Erling Berg and Howard King (MAFMC); (Fair absent); Lori Steele and Talia Bigelow, NEFMC staff; Carrie Nordeen, Hannah Goodale and Aja Peters-Mason (NOAA NERO); Matt Cieri, ME DMR; Mike Armstrong, MA DMF; Jamie Cournane (ED/UNH); Jake Kritzer (ED); Sara Wetmore (NEFOP); Dave Ellenton (Herring AP Chair), Kevin Stokesbury (SMAST), Jud Crawford (PEW), Chris Weiner, Steve Weiner, Jennie Bichrest, Jeff Kaelin (Sustainable Fisheries Coalition), Peter Moore (NORPEL/Sustainable Fisheries Coalition), Jeff Pierce (Alewife Harvester's Association), Pamela Lyons-Gromen (NCMC), Roger Fleming (Earth Justice), Patrick Paquette, Peter Baker (Herring Alliance), Tom Rudolph (CCCHFA/CHOIR), Don Swanson, Gary Libby, and several other interested parties.

Herring Plan Development Team (PDT) Report

Ms. Steele presented an summary of the April 8, 2010 Herring PDT Meeting and the ongoing PDT work regarding the development of catch monitoring measures and measures to address river herring bycatch in Amendment 5 to the Herring Fishery Management Plan (FMP). She addressed several elements of the catch monitoring alternatives regarding which the PDT is seeking additional guidance from the Committee (see April 8, 2010 Herring PDT Report for more detailed information). Several issues were discussed by the Herring Committee and audience members following the summary:

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- Dr. Pierce asked if the PDT was suggesting that the Committee adopt measures similar to those in Closed Area I (CAI). Ms. Steele clarified that the PDT was not necessarily recommending the rules, as the provisions for CAI had not been in place long enough to determine how they would perform, but noted that the intent of the rules is to maximize sampling and that there may be lessons to be learned from the CAI provisions.
 - Mr. Stockwell inquired if the Herring PDT had considered different gear types, with regards to the CAI provisions, and when the Committee needed to make recommendations to the PDT. Ms. Steele replied that only trawl gear is addressed in the CAI provisions, and that if the provisions were to be extended into alternate areas then other gears would need to be considered. She suggested that the July Committee meeting would be a good time to revisit the issue, when the entire Amendment 5 document would be revisited. The CAI provisions were already eliminated, but she added that if the Committee wanted to revisit them at the July meeting, provisions for purse seine vessels could be considered.
 - Mr. Grout recognized that the PDT had asked the Committee to address the issue of defining a “slippage event” with respect to a trip termination option. He suggested that the Committee recommend a definition such as minimum amounts, certain types of releases, or sampling from the bag. Mr. Libby pointed out that according to the documents being considered, the definition of a slippage event would be any unobserved catch.
 - Ms. Tooley disagreed with the suggestion and felt that it was too general; for example, she identified mechanical problems which could lead to erroneous penalization. She also commented on difficulties associated with assuring that the slipped fish make it onto the boat, such as the mechanics of bringing the net on board and the lack of fish in the water, and recommended that the PDT review the regulations from CAI provisions which had considered them. Mr. Grout agreed with the recommendation.
 - Ms. Steele referred the Committee to a memo from the CHOIR Coalition contained within the correspondence packet, which provides comments on slippage events and comments on how to maximize sampling and address slippage. She noted that although the issue would be considered in the July Committee meeting, discussion of the letter and the suggestions could begin at the current meeting.
 - Dr. Pierce inquired how the regulations for CAI define slippage events, and how they mesh with some of PDT concerns over defining a slipped event. Ms. Goodale read from the regulations and noted the four exemptions therein. She stated that there must be a commonly understood definition of slippage, suggesting that it would be informative to discuss how the industry defines it. Ms. Steele clarified that discarding is prohibited under the CAI provisions, and that it is reported in both VTR and IVR. She also informed the Committee that the trip termination as a result of slippage is independent within the amendment. She advised the Committee to recall the requirement for 100% observer coverage within the CAI provisions, noting that if maximized retention is considered, then perhaps the CAI provisions could apply depending on the objective of the measures.
 - Mr. Grout brought up the PDT’s concern about observers being in an enforcement role under a trip termination measure, and noted that they may have to observe illegal events, but that he did not believe they should be enforcers. He reiterated that their role should be to provide information, not requiring a captain to terminate a trip, and questioned how the process would be any different than current observations of illegal activities. Ms. Steele responded that the PDT had been considering the effects of extremely punitive measures in response to

slippage events, such as stopping a trip and going back to shore, and noted that the objective should be to foster a cooperative working environment between boat and observer. Mr. Grout then questioned if incentives, punitive measures, or maximized sampling were the objectives of the measure.

- Ms. Tooley explained that there were not a lot of events in which slippage would occur, and expressed her opinion that the objective should be to maximize sampling to meet needs for information. She also noted her displeasure with the punitive measures.
- Ms. Steele inquired into a motion to reconsider the CAI provisions in regards to maximized sampling, to which Dr. Pierce agreed. However, he further expressed concern with payment for 100% observer coverage, and questioned if the 100% observer coverage would hinder the measure, as and asked the PDT to comment on the effects of not having 100% observer coverage on the measure. Ms. Steele replied that would be no expectation that 100% observer coverage would be associated with the exploration of the provisions; the measure could be applied whenever an observer is present. She further noted the need to consider how the measures to address slippage would be applied across gear types, with the hope that there would be trips in CAI to glean information from.
- Mr. Stockwell expressed comfort with leaving the provisions in the document in an effort to get the best coverage; with the other issues in the document that have not been discussed, he said it would be premature to remove something this important. However he also noted that he was not prepared to vote, as he had been focused on river herring issues for this particular meeting.
- Mr. Rudolph briefed the Committee regarding the memo from CHOIR which suggested measures based on gear type, vessel size and observer coverage. If the purpose of the measure is to maximize sampling, then he suggested the point is to have a trip termination when there is an observer on board. The intent, he explained, should be preventative, not punitive. He suggested that the Committee start with the existing body of work, the provisions for CAI, which includes definitions of slippage events, trip terminations, test tows and concerns with observers being in an enforcement role. He noted that the observer's role is to take down everything they see and leave enforcement to someone else. He also noted that under the current provisions, test tows were neither compromised nor prohibited.
- Dr. Pierce referred to page 5 of the memo which discusses gear differences, asking if the PDT had considered suffocation and oxygen depletion under different gear types. He noted his uncertainty, acquired from working with the different gears, about which gear types may have the highest survival rates for discarded fish. Ms. Steele replied that the information available had come from tagging studies, but that there had been no specific studies to answer the question. She also noted that there had been no specific discussion within the PDT about the matter.
- Mr. Fleming noted that the provision in CAI that was originally designed to prevent unobserved dumping is currently in litigation, as it allows for a small slippage event after pumping. The concern, he explained, is that because of presorting, a lot of catch in the net after pumping is the bycatch that needs to be seen, such as larger fish, tuna, and marine mammals. He recommended that the PDT look at alternatives to get the catch on board the vessel to be sampled, and noted that the litigants are hoping that there is reconsideration of this rule to make sure that all of the catch is fully sampled.

- Dr. Crawford stated that as a group of scientists, the PDT should be responding to slippage events with a proposal for how such a bag of fish could be sampled. If the answer is that there isn't a way using good statistical approaches, he felt that this should be reported back to the committee, and noted his displeasure with the current answer that the PDT had provided.
- Mr. Kaelin noted that retention rates in the fishery are high, and that there were few fish in the bag that aren't being sampled by the observers. He explained his purse seine experience, noting that mortality does occur when a seine is pursed up, and that the issue is with the loss of scales, although he was not aware of a discard mortality study that has examined scaling. He further explained that with tagging studies in the past, researchers were careful not to dry up the twine when tagging live fish from the purse seine. He also did not support any approach that does not evaluate gear types equally.
- Mr. Libby commented on the definition of slippage by noting that there is already a CV for observing catch, and questioned if the data would be improved by examining the slipped tow up to that percentage, without counting it as a trip termination. He agreed that the observers role should be to observe and not enforce, and supported expanding the CAI rules to all closed areas.
- Mr. Paquette questioned how the Committee moved from adopting a definition within the CAI provisions to adopting the entire rule. He stated the desire to stop the waste of discards, not take punitive measures, and did not support the measures as stand-alone measures, but did not think they should be eliminated yet. He stated that the recreational community was unconcerned with gear type and desired to document all fish that were caught and killed.
- Dr. Pierce expressed a need to revise the Amendment 5 document to specifically define slippage as not just dumping the catch directly from the codend without being brought on board but as any catch released or discarded from a purse seine. He agreed with the issue of scales being removed from fish in the tows and the discrepancies in tagging studies, which treat fish differently.

2009 Landings Update

Matt Cieri provided the Committee with a brief overview of Atlantic herring landings through 2009 from the vessel trip reports (VTRs) and interactive voice response (IVR) reports. The overview included the problems and strengths of the data used, the comparison of the IVR data in different years, the differences in the different forms of monitoring and comparative data, and analysis of days-out monitoring. Following the presentation questions were asked:

- Ms. Tooley agreed with the comparison of the VTRs and IVRs, citing that the IVR are more of a hail weight while the VTRs are more detailed, meaning the fishermen had a tendency to over-hail on the forms. She also asked to clarify a discrepancy of 5,000 tons between the presentation and Table 2 of the PDT report. Dr. Cieri was uncertain as to where the discrepancy came from, and suggested that the data was queried after he had queried his data and cleaned it, and that perhaps the data had changed in that time. He agreed to re-query the data as a double check.
- Dr. Pierce speculated that if the drop in the New Brunswick weir fishery, from 2008-2009 were to continue, then perhaps in November the industry would receive another 3,000 mt allocation. He questioned, however, if the drop indicated that the resource status was changing and what may be causing the trend.

- Mr. Stockwell clarified that the increase in 2009 may have been due to an exemption from the days-out for weirs.

River Herring Bycatch Update (Cieri)

Matt Cieri provided two presentations to the Committee: (1) *Preliminary Analysis of River Herring and Shad Bycatch Using Observer and Portside Data*; and (2) *Preliminary Comparison of Portside and Observer Data for the Directed Atlantic Herring Fishery*. Presentation (1) included explanations of the observer/portside sampling project, including the methods, analysis, definition of a directed trip, results, what gear types have catch, what happened to bottom trawls, where bycatch is occurring, when the catch occurs. Following the first presentation, several issues were discussed by the Herring Committee and audience members:

- Ms. Tooley requested elaboration on the definition of a herring trip that was used in the analysis and the discussion that the Herring PDT had about that definition. Dr. Cieri responded that the definition was still being discussed at the PDT level, but that he had used a threshold of 2,000 pounds. He then elaborated on some of the PDT's ideas, such as applying a percentage or increasing the threshold, but noted that the threshold used in his analysis was capturing a lot of the fish. Ms. Steele further explained that the PDT did feel that looking at the data for most gear types, the threshold appeared to be functional; however she noted that the small mesh bottom trawl gear sector was problematic and that the PDT was still discussing how to determine which trips in that fleet were directed for herring.
- Ms. Tooley asked how many trips were taken, relative to how many were observed. Ms. Steele directed the Committee and audience Table 1 on page 2 of the background packet. She noted that from 2007-2009 the number of trips were variable and came from the VTRs. She also noted a spike in the small mesh bottom trawls in year 2007, and the low percentage of observations for those trips. Mr. Grout pointed out that it was conceivable small mesh bottom trips were not included because they didn't land more than 2,000 pounds.
- Dr. Pierce drew attention to the hotspots within the data that he felt should be attended and to a proposal, located in the background information packet, entitled River Herring Bycatch Avoidance in Small Mesh Fisheries. The proposal represents a collaboration between the Sustainable Fisheries Coalition (SFC), School for Marine Science and Technology (SMAST), and the Massachusetts Division of Marine Fisheries (MADMF) which has been submitted to the National Fish and Wildlife Foundation and is pending funding. He explained that the strategy is to increase the communication within the fleet, with the intent to address and identify the hotspots of bycatch. He also explained the likelihood that the proposal would be funded and the support that had been received by many groups and individuals, as well as the example the project would set as the industry worked together.
- Ms. Tooley asked if the high Quarter 1 results in Southern New England were due to small mesh bottom trawl vessels, and noted that those fishing in Southern New England would need to be engaged in the amendment process. Ms. Tooley and Dr. Cieri discussed breaking the results down by gear type and area, and Dr. Cieri explained that the sampling for the small mesh bottom trawl fleet was improving both portside and at sea.
- Ms. Goodale clarified that no fish classified as "unknown herring" or "unknown fish" in the database were used in the analysis, and noted that for the analysis just presented, the assumption would be that no herring would be in those classifications. She asked if trips were

included that had discarded river herring but that had not caught 2,000 pounds of herring. Dr. Crawford raised a similar issue and noted that the objective is not only to understand river herring as sea herring fishery bycatch, but to understand to what degree the sea herring fishery is affecting river herring relative to other fisheries. He asked Dr. Cieri if it is possible to better evaluate the nature and extent of bycatch and its relationship to total river herring mortality. Dr. Cieri responded that the previous work could be expanded and improved, but that a more comprehensive analysis may be beyond the scope of the Herring PDT. Dr. Cieri noted that his work to date has been focused on supporting the development of management alternatives for the Atlantic herring fishery, at the direction of the Committee. Dr. Crawford reemphasized the need for more knowledge regarding the impact of the Atlantic herring fishery on the river herring catch total and the overall population of river herring.

- Mr. Paquette asked of the MADMF portside data was included in the analysis, to which Dr. Cieri replied that the addition would occur after the 2009 data was updated in the presentation.
- Mr. Kaelin agreed with Mr. Crawford's comments on the need to look at river herring bycatch in a more holistic manner. He expressed interest in discovering if the bycatch is significant to the river herring resource and what the relative contribution from all the sources of mortality may be on river herring. He pointed out that the ASMFC stock assessment for river herring would not be complete until 2012, and therefore questioned if there is data to support the conclusion that the sea herring fishery was having a significant impact relative to other fisheries; Dr. Cieri acknowledged the uncertainty associated with this conclusion at this time. Mr. Kaelin then discussed the SFC river herring bycatch avoidance proposal and explained that the proposed program tries to connect the bottom trawl fishery with the herring fishery by establishing collaboration between different fleets.
- Ms. Gromen pointed to an overlap area in catch which could prove beneficial for shad if it was closed. She also suggested working with the stock assessment team for ASMFC river herring, and Dr. Cieri clarified that he had been working with an individual from that team.
- Mr. Rudolph suggested defining directed herring trips differently, suggesting that trips had been missed previously which had discarded most of all of their catch but had found river herring. He thought it therefore may be useful to define a trip as having landed less than 2,000 pounds to check if large amounts of river herring were missed. He also asked if the Wigley paper would have that analysis, to which Dr. Cieri replied no, because the paper used a discard to kept ratio. Dr. Cieri then discussed the advantages and disadvantages of using all the small-mesh trips for the analyses.
- Mr. Moore inquired into the coverage of port samplers and observers, and asked how the differences in coverage between fisheries would be accounted for, expressing uncertainty that it could be done. Dr. Cieri cited Susan Wigley's paper methodology and referred the question, in part, to the observer program.

Presentation (2) included a discussion of the objectives, methods, comparison of bycatch from both programs, and an overview of future improvements and work to be completed. Following the second presentation, several issues were discussed by the Herring Committee and audience members:

- Mr. Grout asked why, in comparing the portside and dockside observations, the river herring observations were three times greater than the portside observations. Dr. Cieri agreed that the

question was a good one, and suggested that perhaps differing sampling techniques were the reason. Observers use baskets for their estimates and portside samplers see everything but may miss a few.

- Ms. Tooley wondered if considering percentages, rather than pounds, would be a better comparison. Dr. Cieri explained that because both data sets were expanded up to the entire trip, the estimates should be comparable. Ms. Tooley also felt that due to the numbers of river herring and dogfish caught in the analysis of the 46 trips, the numbers may not be representative of the entire fleet, and suggested more analysis broken down by time of year or another parameter.

Presentation and Discussion: *Developing Alternatives to Mitigate River Herring Bycatch At-Sea*

Dr. Jamie Cournane (Herring PDT member) briefed the Herring Committee about her ongoing work to develop a model to evaluate management strategies to mitigate river herring bycatch. Her presentation included an overview of the management response to commercial herring decline, the importance of herring to the ecosystem, the life history of river herring, the impacts to river herring including the sea herring fishery, objectives and methods for the project, datasets and databases utilized, patterns in both blueback and alewife in the different seasons using the NMFS bottom trawl survey, patterns of alewife, blueback, and unclassified herring bycatch events for all gears and targets, next steps for the project, and questions for the Committee regarding the development of management alternatives. Following the presentation the Herring Committee and audience discussed several issues:

- Dr. Pierce expressed disapproval for the reliance of the analysis on the Bottom Trawl Survey (BTS), suggesting that the survey may not be optimal for sampling pelagics such as herring and characterizing it more as a presence/absence survey. He asked if guidance had been received from the PDT on how to use the points of data which had differing metrics. Dr. Cournane explained the decision to use the survey, and noted the benefits of a long-running survey in which relative change over time could be examined. She explained that although the survey covers the lower end of the pelagic distribution, it can still indicate here and when catch occurred. She also noted that all surveys have limitations, but strength can be derived from using them together. Dr. Pierce suggested that the PDT weigh in on this issue formally.
- Mr. Gibson inquired if, on slide 10 of the presentation, first bullet, the presenter meant to imply that the different stocks have different distributions at sea, and what the assumption was based on. He pointed out that if the model is developed based on fishing effort and the distribution of river herring stocks then the policy implications may change. Dr. Cournane replied that there is still some uncertainty; she is aware of migration and mixing in the Gulf of Maine, but she is also aware of Jason Stockwell's work at the Gulf of Maine Research Institute in which he is trying to develop a method to identify stock structure using commercial and biological data. Mr. Gibson noted that the BTS establishes the seasonal distribution and migratory paths and suggested working on the winter distribution as well as the identification and location of individual stocks.
- Mr. Stockwell clarified the anticipated completion of the modeling work, around three months. He then asked for an example of the language for the move-along rule codification, and Mr. Grout agreed to the need and asked Dr. Cournane to find the language. Mr. Grout asked when the management model would be produced and what the model would look like,

and Dr. Cournane clarified and asked the Committee to identify options for consideration. Mr. King asked how specific the options needed to be.

- Mr. Gibson asked if a temporary closure would be considered in addition to the move along rule. Dr. Cournane explained that typically there was a time or distance associated with move-along rules, and she could incorporate those combinations in the analysis.
- Dr. Pierce supported the analysis and was hopeful that the data could reveal a combination of fixed closures and hotspot closures for use. He also clarified that the model was a new model based on existing literature and models for the framework. Dr. Cournane identified the program she would be using, and Dr. Pierce suggested also incorporating an older database from the 1970s for a more historical analysis.
- Mr. Gibson supported the development of time area closures in Southern New England, and suggested focusing on pre-spawned fish that may be aggregating inshore, due to the timing of the BTS.
- Ms. McGee reminded the Committee of a motion that was passed to task the Interspecies Committee, and suggested that more information be gathered regarding other fisheries around the world that use similar systems.
- Dr. Crawford reminded the Committee about the motion made in October of 2008 to consider time-area closures. He suggested that although the measure showed promise the PDT should consider independent sets of data to see if hotspots can be identified using the research surveys rather than just the observer data.
- Dr. Pierce explained that for the last nine months his organization had been working with the Sustainable Seafood Coalition about the move-along rules. He then described the proposed move-along program, which would not target one type of gear or one fishery.
- Mr. Moore questioned what the issue was that the Committee was trying to address. He asked what the river herring bycatch represents relative to the whole resource, noting that the maps used did not include Canada. He suggested that the measures be delayed for more information, and agreed with Dr. Pierce's earlier statements and the need for fine scale information. He then described the SFC river herring bycatch avoidance proposal and noted that one of the objectives was for the fishery to be more selective, and voiced his support for the SFC river herring bycatch avoidance proposal, noting that S Mast and MADMF would add a lot to the process.
- Mr. Libby agreed that both the move along rules and the time-area closures were good ideas, and he noted that a combination of the two would bring in better data and offer more protection using lowered quotas.
- Mr. Paquette asked if Dr. Cournane had mapped the "herring NK" category, to which she replied that upon visual inspection they seemed to be in similar places as herring and blueback, but that she had not gone back to analyze them specifically. She noted that there could be several species in that category and that although there have been recent improvements for observer data, the nature of catch is to be unidentifiable due to damage or other unforeseen issues. Mr. Paquette expressed concern that there could be large numbers in the unknown category. Ms. Gromen agreed with Mr. Paquette, pointing out that the numbers in the "herring NK" category went down recently, but that "fish NK" went up, and asked if Dr. Cournane had looked at the latter category, which she had not.

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- Mr. Kaelin expressed concern that the five years of data had been overlaid, and he suggested that seasonal and annual trends would not be visible and would only be useful for general areas of concern. He also suggested the development of a test tow approach rather than months or weeks of time closed off to the fishery. He did not support time area closures, suggesting that the fish may be missed as a result, and that they would not be adaptable to the different problems encountered in different years. The real-time system that was proposed was the solution, he felt, and added that those working with the scallop and groundfish industries were encountering similar issues. He also noted that he was not certain that mitigation of other impacts on river herring had been implemented. Dr. Cournane responded that she was not trying to suggest that bycatch was the only impact on river herring, but an important one to mitigate as part of a comprehensive restoration program.
 - Ms. Bichrest expressed support for the SFC river herring bycatch avoidance proposal. She described the herring as being strongly affected by water temperatures, explaining that closed areas would not take that into account. She suggested that the reason there were more river herring in ME was that there is more habitat available, but acknowledged that the fishery was likely to bear the cost of rebuilding; therefore, she voiced her support for the move along rules.
 - Ms. Wetmore described the common instances in which a herring would be classified as “NK” such as trawls in which the net is split and the fish are too rapidly shoveled into the hold to get a sample. Misidentification of a herring which is sent in to the program for verification can also lead to classifying all the herring in a trip on the discard log as unknown, she explained.

Dr. Stokesbury of the SMAST gave a brief overview of the SFC river herring bycatch avoidance proposal, noting that MADMF, the SFC, and industry members would be joining SMAST in the project. He explained that the purpose of the project focuses on hotspot areas in which high catches of river herring occur, and cited an example on the west coast, in which the move along rules were implemented and as a result the fishery season was extended. The program on east coast would be designed to collect the bycatch data and notify the fleet to try to move off those areas on a real time basis.

Committee Discussion – Development of Management Alternatives to Address River Herring Bycatch

Ms. Steele asked the Herring Committee for guidance on what management measures should be considered to address river herring bycatch, suggesting time-area closures, bycatch quotas, and move along rules as examples. She presented the example regulatory language from the Commission for Conservation of Antarctic Marine Living Resources (CCAMLR). She also urged the Committee to remember that the measures to address catch monitoring could also be considered as measures to address river herring bycatch, such as directing observer coverage to monitor river herring bycatch.

Dr. Pierce suggested that the Committee was not prepared to pursue time-area closures. He noted that the objectives of the measures were to address river herring and shad bycatch, suggesting that using the strategies from the CAI provisions may achieve that objective.

1. MOTION: DAVID PIERCE/TERRY STOCKWELL

To task the PDT with further review of river herring and shad observer data to identify gear-specific times and areas where Closed Area I bycatch regulations may be applied. Emphasis should be on identification of bycatch seasonal hotspots

Discussion on the Motion: Mr. King clarified with Dr. Pierce that the timeline would be moved forward as soon as possible with the PDT, and Dr. Pierce noted the familiarity of the PDT with the database already as evidence that it could happen. Ms. Steele asked to clarify the intent of the motion. Dr. Pierce replied that the PDT would need to consider where these areas are and bring back a recommendation using the referenced approach to apply to those areas. Mr. Grout asked if the scope should be narrowed to a scale smaller than the statistical areas/quarters, and Dr. Pierce replied that it should be possible to identify areas of a smaller scale by using the database. He suggested that management strategies could be addressed further following the recommendations from the PDT.

Mr. Stockwell supported the motion, as it gave direction to the PDT to better define where the areas of high bycatch were occurring, and mentioned another congruent motion should the motion under consideration be passed. Ms. Tooley also supported the motion and thought it was a way to move towards adopting the CAI rules; and asked Dr. Pierce if the intent was to ensure complete coverage in the hotspots as possible, which Dr. Pierce affirmed. Mr. Libby also supported the motion, liked the idea of including the CAI rules, and suggested moving into the move along rules.

Mr. Rudolph supported the motion as well, and his understanding of the CAI rules was that they were to be monitoring measures. He also was encouraged by the discussion of other measures to control and reduce river herring bycatch. Mr. Fleming supported the motion as well, but noted that the measure would not minimize bycatch and encouraged the Committee to further discuss this issue. He thought that the discussion should consider an appropriate threshold, and noted that the CAI rules give the RA the authority to exclude trawlers when the threshold is reached.

Mr. Ellenton requested that the CAI rules be read aloud again. Dr. Pierce reiterated that the PDT would need to first identify the hotspots and then CAI rules could be used as a strategy to address those areas, but noted that he was not clear how the regulations would be developed. Ms. Goodale read the regulations aloud for the Committee and audience and answered some of the commenter's questions, recalling some uncertainty around the trigger point and asked that the Committee provide more clarity if a trigger point was utilized. Dr. Pierce did not know which trigger points to use, but pointed out that the river herring distribution is unique, and a trigger point may not be possible. Ms. Goodale mentioned the provision within the CAI rules that specifies if a vessel does take advantage of the rule and slips a catch then they have to leave the CA. Ms. Tooley pointed out that a move along strategy could be a solution to Ms. Goodale's comment.

Ms. Tooley noted the difficulty associated with requiring an observer on any vessel fishing in a certain area, and that the most important part of the measure, in her opinion, was to identify hotspots and maximize sampling, to the extent possible, in those areas. She suggested a friendly amendment to Dr. Pierce, but Dr. Pierce did not accept it. Ms. Steele stated that if the motion

passed, she would work with the PDT to identify times and areas and then work with the Regional Office to develop measures. Then, the Committee could modify the measures, at which point triggers could be added or other issues that may arise can be addressed.

Mr. Kaelin asked how the PDT could be tasked to address other measures for other fisheries, and if that was possible, pointing out the importance of other fisheries' impacts on river herring. Mr. Grout replied that Dr. Cournane's work may illuminate other fisheries of concern, and if the issues are similar, then the information could be passed on to other species Committees. Ms. Steele agreed and pointed out that when the Committee has been talking about the limited access fishery they have been talking about Permit A and B holders (limited access), but noted that a good amount of the bycatch occurs in Category D (open access), which may be targeting other species in addition to herring. She asked the Committee to consider to whom the measures may apply, pointing out that if the measures are applied to all the herring permit holders, then other fisheries would be affected by the measures. Dr. Pierce clarified that the measures would be for the directed fishery for sea herring, and that other fisheries such as small mesh bottom trawlers would have large bycatch events and would be effected as well. He also agreed that the applicability of the issues may extend to other fisheries, and noted that he would bring the matter to the attention of the MAFMC. Mr. Berg explained that future meetings would be addressing river herring and shad bycatch. Mr. King clarified that the measure would not preclude Dr. Cournane from providing other insights on the data as she encounters them.

MOTION #1 CARRIED UNANIMOUSLY.

2. MOTION: TERRY STOCKWELL/DAVID PIERCE

That the PDT further develop the move along concept to reduce river herring and shad bycatch similar to the approach to be undertaken by the Sustainable Fisheries Coalition bycatch avoidance proposal

Discussion on the Motion: Mr. Stockwell reiterated that the motion supports the industry as well as the other motion; noting that if the motion was to move forward, it has to develop codified rules that can be implemented by NMFS. Dr. Pierce supported the motion and noted that sectors provide a way in fishermen can communicate about species that they have very little quota for, he then noted that the motion is consistent with Council attitude towards letting the industry work issues out on their own.

Mr. Fleming pointed out that although the measure was valid, it is only one alternative to minimize bycatch, and voiced his concern that move along rules are new. He encouraged the Committee to also include time area closures as a possibility for measure alternatives, and also recommended that a bycatch quota be analyzed so that at least a few additional alternatives could be considered.

Ms. Steele explained that there may be several management measures or alternatives within the motion which would be clarified as it progressed and also noted that the CCAMLR rules include a bycatch quota. She asked the Committee to clarify if a bycatch quota should be developed along with the move along rules. Ms. Tooley reiterated the PDT's concerns that not enough data exist on which to base time-area closures, and also pointed to the lack of an assessment or stock status for river herring. Ms. Steele suggested using the observer data and extrapolating an

estimate of bycatch while being careful not to set an extremely conservative quota. She stated that if the PDT develops options for a quota, the approach will be clearly explained but is not expected to be statistically valid based on the available data and the CVs associated with the bycatch estimates. The available data have been presented in every form possible, and Ms. Steele clarified that there would be no new information, but that the Committee would need to use what exists to come up with an approach.

Ms. Tooley questioned the data and how a statistically validated cap could be created using it. Dr. Pierce also felt the data would be extremely difficult to use, and suggested that the PDT look at the viability of the option. Ms. Steele reiterated that there would be no ability to create a statistically sound estimate. While whatever approach is utilized can be described, the decisions related to implementing a quota and/or other measures become less technically-based and more policy decisions for the Committee and Council to make. Ms. McGee recalled the development of the haddock catch cap and that there wasn't adequate observer data to develop a statistically sound quota. Ms. McGee expressed support for the motion, and asked that the Committee not eliminate bycatch quotas from consideration yet.

Mr. Grout agreed that the PDT could analyze the time-area closures as a follow-up to the original motion. Dr. Pierce explained that the objective of the SFC river herring bycatch avoidance proposal is to achieve measureable reductions of river herring bycatch while maintaining fleet productivity, and that he is concerned that the addition of a catch quota may not work. Given his desire for the SFC river herring bycatch avoidance proposal to succeed, he felt that the development of such measure would undercut support for the initiative. Ms. Steele clarified the difference between the motion, which was specific to the SFC river herring bycatch avoidance proposal, and the CCAMLR language which includes a bycatch quota. She therefore suggested that the motion be perfected to charge the PDT with further developing the SFC move along concept as one alternative, with the flexibility to develop alternatives that are based on other kinds of move along rules.

MOTION #2 PERFECTED

That the PDT further develop the move along concept to reduce river herring and shad bycatch similar to the approach to be undertaken by the Sustainable Fisheries Coalition bycatch avoidance proposal as one alternative to consider in Amendment 5

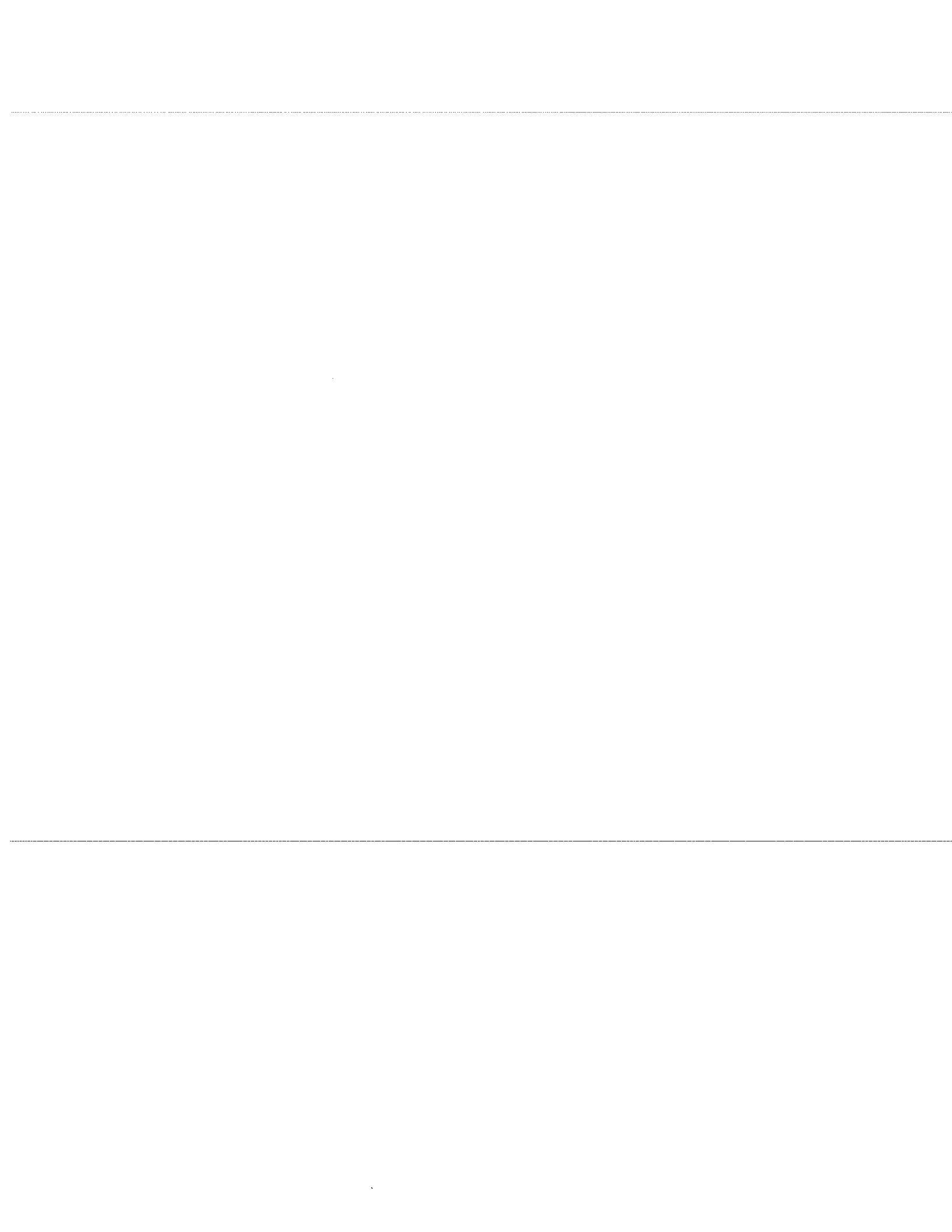
Additional Discussion on the Motion: Ms. McGee expressed concern that the perfection would narrowly prohibit the PDT, noting that the Committee and PDT were still learning about different approaches to address bycatch, and that she wanted to leave the PDT free to add more if it needs to be considered. Mr. Stockwell agreed. Ms. Tooley did not support the development of other move along rules, but supported the idea of bringing other, more general concepts back to the Committee. Ms. McGee agreed and requested that the PDT bring more detail on other approaches to the Committee. Mr. Stockwell emphasized that the motion was specifically made to support the SFC river herring bycatch avoidance proposal, and anticipated that the PDT would develop other measures for consideration.

MOTION #2 CARRIED UNANIMOUSLY.

Ms. Steele asked the Committee to clarify its position regarding the development of options for time-area closures and bycatch quotas, noting that Dr. Cournane's work may likely consider these measures anyway, but that the PDT needs more direction to determine work priorities for the Committee. Dr. Peirce did not support going in the direction of quotas or time/area closures, and he was satisfied with the action the Committee had taken to task the PDT on this issue. He added that if some alternative were to appear then the PDT can bring it to the attention of the Committee.

Mr. Grout asked to clarify that the PDT would be bringing back additional information on the move along rules, and Ms. Steele confirmed but also asked for additional information from the Committee or audience if it was available. Ms. Tooley responded that the Bering Sea fishery uses move along strategies, but Mr. Ellenton voiced his opinion that world examples were unnecessary. Jeff Pierce from the Alewife Harvesters of Maine agreed that the rule could be simple and would not require quotas or area-time closures, but that big bycatch events would be avoided. Mr. Moore explained that the SFC river herring bycatch avoidance proposal project has not started yet, and questioned where the timing was with the amendment with the thought that if the measure could be held off until the project was more developed so that it could be constructive and more helpful for minimizing bycatch.

The Herring Committee meeting adjourned at approximately 4:15 p.m..





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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

FINAL MEETING SUMMARY

Herring Committee Meeting (Two Days)

Holiday Inn By the Bay, Portland, ME

July 27-28, 2010

The Herring Committee met on July 27 and 28, 2010 to: continue the development of the catch monitoring alternatives for inclusion in Amendment 5 to the Herring Fishery Management Plan (FMP) and to develop management alternatives to address river herring bycatch.

Meeting Attendance (both days combined): Doug Grout, Chairman; Rodney Avila, Frank Blount, Jim Fair, Glenn Libby, Sally McGee, David Pierce, Terry Stockwell (Day 1 only), Mary Beth Tooley, Mark Gibson, Erling Berg, Howard King, Herring Committee members (Mike Leary absent); Dave Ellenton (Herring Advisory Panel Chair), Peter Baker, Jeff Kaelin (Day 2 only), Peter Moore, Chris Weiner, Peter Mullen, Herring Advisory Panel members; Lori Steele and Talia Bigelow, NEFMC staff; Carrie Nordeen, Hannah Goodale, Aja Peters-Mason, NMFS NERO; Gene Martin (NOAA GC, Day 2 only); Matt Cieri (ME DMR), Amy Van Atten (NEFSC Observer Program), Jamie Cournane, Herring Plan Development Team Members; Jason Didden (MAFMC), Brad Schondelmeier (MA DMF), Roger Fleming (Herring Alliance), Zach Klyver, Gary Libby, Raymond Kane, Ben Martens and Tom Rudolph (CCCHFA), Steve Weiner, Greg Wells, Sean Mahoney (CLF), Jud Crawford (Pew), Eoin Rochford (NORPEL), Patrick Paquette, Glenn Robbins, and several other interested parties.

Tuesday, July 27, 2010 (Day 1)

The Herring Committee meeting started with a presentation from Council staff regarding the development of the Amendment 5 management alternatives and the timeline for completing work on Amendment 5. The Council is scheduled to review/approve alternatives for the Draft Environmental Impact Statement (EIS) at its September 28-30, 2010 meeting, so the Herring Committee will hold another two-day meeting at the beginning of September to try to complete the development of catch monitoring alternatives and measures to address river herring bycatch, and to address any other outstanding issues, as time permits. A few Committee members asked some clarifying questions about the slippage information that Ms. Steele presented as part of her update. Mr. Moore suggested that the Committee consider meeting jointly with the Herring Advisory Panel (AP).

Amendment 5 Catch Monitoring – Funding Issues

The Herring Committee reviewed and discussed potential options for funding the Amendment 5 catch monitoring program. Ms. Steele summarized some preliminary cost information provided by the Herring Plan Development Team (PDT), including estimates of the cost of observer coverage (100%), portside sampling, and electronic monitoring. Dr. Peirce asked some clarifying questions and wondered how the Committee can determine whether or not the options under consideration fall outside of the scope of resources available to NMFS for monitoring the herring fishery. Ms. Goodale briefly described the process for determining levels of observer coverage (from the Standardized Bycatch Reporting Methodology, SBRM) and emphasized that the SBRM coverage levels are just targets, and that adjustments are made to those levels based on available resources and priorities. She suggested that if the Council is going to **require** levels of coverage beyond the SBRM targets, a mechanism for funding the coverage will be necessary to include in the amendment.

Mr. Stockwell emphasized the importance of developing the appropriate catch monitoring program to achieve the Council's objectives regardless of available funds. He believes that the Council should move forward with developing the most appropriate monitoring program while interested stakeholders continue to request additional funding from the government. He also feels that the herring industry is not in a position to fund a catch monitoring program at this time. Mr. Fleming encouraged the Committee to develop a complete range of alternatives, including ones that may not be legal or "fund-able" because the development of these alternatives could lead to the availability of more funds and/or changes in the law. Ms. Goodale expressed concern over the funding alternatives currently in the Amendment 5 document (all based on set-asides) and suggested that the Committee develop a more complete range of options for funding the catch monitoring program. Mr. Moore reminded the Herring Committee that the industry has lobbied for additional funding for monitoring for at least six years and has not been successful. He suggested that the catch monitoring program developed by the Council should be realistic and should be based on what is known to be available for funding.

Mr. Grout asked the NMFS Regional Office staff to elaborate about their concerns regarding the proposed set-asides to fund the catch monitoring program. Ms. Nordeen provided additional information:

- The alternatives proposed in the document to fund catch monitoring through a set-aside are similar to the current research set-asides (RSAs). The RSA process is a competitive grants process administered by the Northeast Fisheries Science Center. Proposals are requested for research, and incoming proposals are reviewed and ranked by a technical body. With competitive grants awarded through this process, different entities will apply. For catch monitoring, it is important to ensure that only qualified entities apply, and it would be difficult to ensure a consistent monitoring program with multiple entities potentially competing for the available funds in any given year.
- Available funds to utilize under a catch monitoring set-aside would be limited and uncertain. Not all of the herring quotas are fully utilized. Set-asides have potential to be utilized only in areas where the quota is fully utilized and the fishery closes. The set-aside, therefore, would be limited to only the areas that close regularly (1A and possibly 1B) and could vary in

amount from year to year depending on the total quota and the percentage selected for the set-aside. Overall, funds generated from the set-aside may not be significant.

- Timing is an important consideration. For a set-aside process to become effective, there is a one-year lag time to generate the funds. Timing is important for the fishery as well; there have been instances with past set-asides where fish were awarded but circumstances prevented those fish from being harvested and funds being generated. There are also substantial vessel costs associated with harvesting a set-aside; these costs must be factored into consideration of how much funding a set-aside could generate.
- Herring is a relatively low value fish. The costs of administering a set-aside program and harvesting fish under the set-aside may preclude the ability to generate a significant amount of funds.

Ms. McGee asked about the set-aside in the sea scallop fishery and whether elements of that process could be applied in some form to the herring fishery. Ms. Goodale confirmed that the scallop example had been considered, but the fisheries are so different that there doesn't appear to be much that can carry over to the herring fishery at this time. Scallop vessels have individual allocations of harvest or days at sea (DAS), so there is a way to translate the set-aside for scallops into currency that the vessel operator can use above what they start the fishing year with. The accrual of DAS is slower when carrying an observer, so the vessels receive more days in the end. When fishing in the access areas, the vessels get more harvest. They are given an assurance that the area will remain open for them to harvest the additional tonnage, so they are able to turn the set-aside into something that they can utilize during that fishing year. Ms. Goodale noted that there are not the same incentives available to utilize in the herring fishery so that the set-aside is worthwhile for both sides. Ms. McGee suggested that the scallop observer set-aside process has managed to spread the available funds out to cover more of the fishing year (by changing how much each vessel was compensated) and that there may be ways to allow the set-aside to pay for part of the coverage, with funds coming from other sources as well. Dr. Pierce noted that even a 3% set-aside doesn't appear to generate a significant amount of funds. He requested that information be provided to the Herring Committee regarding the use of the herring RSA since it was established.

Mr. Libby suggested that perhaps the Committee was focusing too narrowly on one user group (herring fishermen) and should consider expanding requirements to fund catch monitoring beyond just those who catch the herring. Mr. Rochford told the Committee that he participated in the RSA program for herring. Based on his experience, he estimated that the cost of harvesting the set-aside is minimally \$110 per ton, so he does not believe that many people would even be interested in bidding on the fish that may be available under a set-aside. Mr. Moore recalled that the Herring AP was opposed to eliminating the RSA and emphasized the importance of continuing to fund cooperative research in the fishery. Mr. Ellenton agreed.

1. MOTION: SALLY MCGEE/GLENN LIBBY

To include an alternative that funds catch monitoring from multiple sources, including federal funds, dealers, and buyers

Discussion on the Motion: Ms. McGee stated that the intent of the motion is to consider options that extend funding responsibilities beyond just the fishing vessels and to consider options for generating funds from dealers and buyers. Ms. Tooley expressed some concern with the motion. Several individuals noted that if fees or taxes are imposed on dealers, then the dealers will simply derive those costs from the vessels, so ultimately, it would be the vessels that would pay the price.

1A. MOTION TO AMEND: TERRY STOCKWELL/MARY BETH TOOLEY

To include an alternative that funds catch monitoring from federal funds

Discussion on the Motion to Amend: Ms. Goodale expressed concern about the motion and reminded the Committee that Congress appropriates funds and that Fishery Management Plans cannot appropriate or require funds. She also reminded the Committee that the Agency (NMFS) cannot accept money from the industry except through a catch share program, as authorized by the Magnuson-Stevens Act.

MOTION #1A TO AMEND CARRIED 7-3.

MAIN MOTION 1A, AS AMENDED:

To include an alternative that funds catch monitoring from federal funds

Further Discussion: Ms. Goodale reminded the Committee that the Herring FMP can require the participants in the fishery to pay for certain things. In the scallop fishery, once the set-aside was utilized, the industry was required to pay for observer coverage. In Amendment 16 (groundfish), the language states that the industry is responsible for funding the monitoring program if federal funds are not available to do so. She suggested that the Herring Committee consider this approach.

MAIN MOTION 1A, AS AMENDED, CARRIED UNANIMOUSLY.

2. MOTION: TERRY STOCKWELL/SALLY MCGEE

To include an alternative that funds catch monitoring from federally-permitted dealers

Discussion on the Motion: Dr. Pierce stated that he does not support the motion because the dealers will pass on the costs to the vessels. Mr. Libby felt that this motion provides a mechanism to incorporate other users into the funding program and supported its consideration. Mr. Ellenton stated that if a tax is imposed on the dealers to pay for catch monitoring, then the dealers will pass these costs on to the distributors, the lobstermen, and the consumers. Price will increase, and demand will decrease. Mr. Moore emphasized the need for sectors or catch shares in this fishery to provide a mechanism for the industry to pay for catch monitoring. He suggested that the Committee consider a mechanism to allow for interest groups that are not directly involved in the fishery to pay for some of the monitoring costs through their memberships.

Mr. Paquette noted that when he goes fishing recreationally, he pays several taxes – hook tax, excise tax, gas and road tax, etc. He stated that the industry is paying for monitoring in other fisheries and encouraged the Committee to move forward with requirements for the herring industry to pay for monitoring. Mr. Weiner agreed that an industry-funded alternative should be considered in Amendment 5. He also agreed that the money will ultimately come from the fishermen no matter who they are collected directly from. Mr. Blount felt that a reasonable tax on bait would not be likely to put the lobster fishery out of business.

MOTION #2 CARRIED 8-1-1.

Council Staff Discussion Paper: Potential Applicability of Flow Scales, Truck Scales, and Volumetric Measurement in the Atlantic Herring Fishery

Measures to Confirm the Accuracy of Self-Reporting (Section 2.5)

Ms. Bigelow presented a Council staff white paper that explores the potential for using flow scales, hopper scales, and truck scales in the herring fishery to generate more accurate estimates of catch weight and to move away from reporting catch through volume-based estimation. She summarized the presentation by noting that some of the issues to be addressed/resolved if scales are going to be required in any aspect of the fishery include: accounting for water weight; weighing speed; scale installation, calibration, certification, and maintenance requirements; and selection/approval of scale vendors. Following the presentation, several Committee and audience members asked questions:

- Mr. King asked for some clarification on how water is addressed when certifying fish holds and how a volume is translated into a weight. Ms. Bigelow noted that conversions are used to estimate weight, and that no matter what approach is used, it still results in an approximation.
- Mr. Ellenton suggested that the Herring Committee consider certifying the capacity of trucks. Ms. Bigelow noted that while the capacity of trucks are known, it would be difficult to seal and certify a truck based on a volumetric measurement like what can be done for fish holds. Trucks leak water and cannot be completely sealed, and issues associated with truck rentals or temporary transport vehicles would need to be addressed.
- Mr. Moore expressed support for further consideration of certifying fish holds and converting volumetric estimates to pounds using a process that is commonly referred to as “sticking” or “dipping” the tank.

The Committee reviewed the alternatives under consideration in Amendment 5 to confirm the accuracy of self-reporting. Dr. Pierce **suggested that herring carrier vessels be included in these measures, and the Committee agreed by consensus.** Ms. Tooley noted that the measures proposed to certify dealer trucks came from the industry and suggested that they should be discussed further by the Herring AP. She emphasized the need to identify who would be doing the measuring/certifying and what the standardized unit of measure would be. Dr. Pierce felt that the Council staff presentation suggested that it may not be feasible to require flow scales on herring vessels at this time. Ms. Tooley agreed but suggested that the AP be given an opportunity to weigh in on that issue. Mr. Grout expressed support for referring these issues to the AP but emphasized the importance of working out the details of these measures, i.e., who

will be certifying/weighing/sticking/etc. He suggested that the AP consider whether it would be more appropriate to deal with trucks on a volume basis or a weight basis. Ms. Tooley offered that an option could be developed to require trucks to get certified and allow them to be weighed somewhere if they are not certified.

Mr. Fair wondered if the measures under consideration are becoming too complicated. He questioned the need to weigh trucks. He feels that if the fish are measured in the fish hold and verified by a third party, then there would not be a need to try to measure/weigh that fish somewhere else down the transport line. He said that if you know how much fish is coming ashore, then you know how much will be in the trucks. While the industry may want to weigh trucks and confirm weights of fish that are sold to dealers, Mr. Fair stated that he doesn't see a need for the Council and NMFS to be doing that. Ms. Goodale expressed concerns about the measures related to certifying trucks, as NMFS does not permit trucks and has no mechanism to measure them and/or certify them. Ms. Tooley noted that in the State of Maine, trucks must possess permits. Each truck has an individual permit number that could somehow be linked back to the Federal dealer permit.

Ms. Steele questioned the direction the Herring Committee was headed and wondered what improvements to catch/landings data such a complicated program may provide. Mr. Berg agreed and felt that the Committee was developing a program that is overly-complicated. He stated that in a high-volume fishery like the herring fishery, it will not be possible to account for every pound of fish that is landed. Ms. Tooley stated that one of the intentions of these measures is to more closely align dealer data with vessel trip report (VTR) data. Mr. King noted that implementing a measure that would require trucks to leave the dock and be weighed somewhere else does not appear to help align dealer and VTR data. Dr. Pierce stated that the primary intent of these measures is to minimize opportunities for inaccurate reporting. Ms. Tooley suggested that the option for "sticking" the tank be incorporated into a portside sampling program, but that all kinds of third parties should be authorized to perform that task (law enforcement, NMFS personnel, observers, State officers, etc.).

Mr. Rochford briefly described the process for "dipping" tanks that is utilized in Europe. The tanks are dipped 100% of the time at every port a vessel may land fish. The quota is managed by the EU, and the entities that are dipping the tanks were initially paid for by the government and then became independent contractors. He suggested that the captains could dip their tanks when they land to get a more accurate estimate to report on the VTR. Then, someone from a processing plant could dip the tank, or a portside sampler could do it and confirm the captain's report. Mr. Mullen emphasized the need for fishermen to verify the amount of fish being pumped into a truck and encouraged the Committee to consider options for weighing trucks. The Herring Committee agreed to refer this section of the Amendment 5 document to the Herring AP for feedback.

Comparison of Bycatch Estimates from Portside at At-Sea Observer Sampling Programs in the Atlantic Herring Fishery

Dr. Cieri provided the Herring Committee with an overview of the Herring PDT's ongoing analysis of data collected on fishing trips with both an observer on board and a portside sampler at the dock. In general, the differences between the two data sets and the variability within the data do not allow for observer and portside sampling data to be combined at this time. Both programs are valuable for monitoring the fishery and collecting bycatch information, but the variability in the data needs to be explored further before the data can be treated in an additive manner. The Herring PDT will be forming a working group to continue to explore the data and address sampling and other issues during the development of Amendment 5. The PDT may come forward with additional recommendations to incorporate into Amendment 5 regarding sampling and other aspects of these two programs.

- Mr. Grout asked about basket sampling from observers and whether or not additional basket samples could be taken. Dr. Cieri responded that for the most part, observers are collecting basket samples as quickly as possible on each haul. He also stated that the number of basket samples is not what appears to be causing the variability in the data; the Herring PDT needs to explore the problem more to determine what the primary factors are that drive the variability.
- Dr. Pierce asked if portside sampling data may be more accurate for generating estimates of river herring bycatch. Dr. Cieri stated that both observers and portside samplers can identify river herring, so the variability and the large confidence intervals relates more to the expansion of the basket samples to the entire haul. He believes that it is too premature to determine which program may be better than the other for estimating river herring bycatch or the catch of any other species.

The Herring Committee members discussed the possibility of developing options in the amendment to levels of coverage that would achieve a specific level of precision (expressed as a coefficient of variation, CV). Mr. Stockwell asked if a 30% level of observer coverage would be adequate to generate a river herring bycatch estimate with a 20% CV. Dr. Cieri responded that it may not be possible to provide information regarding a level of coverage that will consistently achieve a specific CV for a species. Therefore, the CVs may need to be targets, with levels of coverage adjusted annually to achieve them. Mr. Paquette asked a question about portside sampling methodology, and Dr. Pierce assured Mr. Paquette that there is no bias introduced into the portside sampling data from the processing plant operators.

Measures to Address Maximized Retention, Maximize Sampling, and Address Net Slippage (Section 2.6 and 2.7)

The Herring Committee discussed the options under consideration to establish maximized retention (MR) in the herring fishery. Ms. Steele summarized a strawman option that would explore the potential for MR in the herring fishery through the experimental fishery process. Mr. Grout and Mr. Stockwell expressed concern about including river herring and shad in a maximized retention program because the ASMFC is moving forward with prohibitions on fishing/landing river herring in any States.

Ms. Tooley emphasized the need to clearly identify the objectives of MR and felt that many of the objectives could be achieved by maximizing sampling. She reminded the Committee that the goal of the amendment is to create a cost effective catch monitoring program that is supported by the industry and other stakeholders, and she felt that MR would not be supported by the industry. She stated that her preference would be to eliminate the MR options from consideration at this time but wanted to get thoughts from other Committee members first. Dr. Pierce was uncertain about the differences between establishing a MR program and addressing/minimizing net slippage. He wondered why MR would be necessary if measures are implemented to address net slippage and maximize sampling. Mr. Libby agreed that if observer coverage is increased significantly, MR may not be necessary, as the intent is to increase monitoring and generate better data.

Dr. Pierce felt that the strawman option to explore MR through an experimental fishery seemed like a reasonable approach to consider. Ms. Steele explained that there had been some concerns about retaining river herring and shad through a MR program, as they are currently illegal to land in most states. Ms. Tooley expressed concern about requiring boats to pump fish aboard that may not fit through the pump, and noted that vessels could encounter that problem with many of the species on the proposed MR list. Dr. Pierce suggested that the issue be remanded to the Herring Advisory Panel, and Ms. Steele clarified that MR had already been opposed by the AP. Mr. Moore felt that the draft options for MR were more complete than the previous version, but he expressed opposition to the second bullet, which would prohibit the sale of the fish for human consumption. Mr. Rudolph felt that the strongest attribute of MR was that for the purposes of dockside monitoring, landings could be assumed to be more equal to catch. As a result, he felt that MR increases the value of portside sampling programs. He said that he does not think that river herring and shad retention would be a problem, because there is no current restriction on the retention of river herring and shad in federal waters, even if landings were prohibited in inland and state waters.

Mr. Libby felt the MR options should be left in for the Council to consider. Mr. Rochford explained what bycatch he had seen as a plant manager, and expressed concern over shutting down the fishery for a species which has a zero tolerance rule, thinking that it causes many fish to be dumped. He asked for full monitoring of bycatch and a realistic approach that did not involve zero tolerance. Mr. Paquette questioned if eliminating MR would also eliminate the option in the document to pump all fish across the deck. Mr. Weiner encouraged the Committee to leave the strawman option to consider MR in the document, and to revisit the option once the concerns of slippage are addressed. Ms. Goodale noted that the alternatives in the section were conceptual, and questioned when the alternatives would be developed further.

Mr. Ellenton confirmed the Herring AP recommendation in May 2009 to eliminate maximized retention from further consideration in the amendment. To address Mr. Rudolph's earlier point, Mr. Stockwell explained that the ASMFC-managed fish – shad and river herring – may be subject to zero landing rules, which includes both fishing and possession. He emphasized that under MR, the fish would have to be landed in a state and that it would require a state landing permit. He also emphasized that the Board was likely not going to support what they would perceive as an open opportunity to catch shad and river herring. He told the Committee he would talk to the Board Chairman and provide the Committee with more information about the issue at

the September 1-2 meeting. Ms. Tooley pointed out that MR would only apply when an observer was on board a vessel under the strawman, and that therefore the assumption could not be made that landings would equal catch. She also noted that the Coast Guard was concerned about requiring MR, and that trip termination could be dangerous.

3. MOTION: MARY BETH TOOLEY/DAVID PIERCE

Recommend to the Council to eliminate Section 2.6.3.4 and Sections 2.6.3.5 – Modified Maximized Retention with Vessel Based Electronic Monitoring (VBEM) and Landings Caps

Discussion on the Motion: Ms. Tooley supported the motion, noting that the PDT was unlikely to support the development of the options for landings caps. Mr. Rudolph opposed the motion, noting that he did not think there was much work left to do. He felt less concern that Section 2.6.3.4 may be removed, because it had lost its purpose with the dismantling from the original CHOIR proposal, but was concerned that the removal of Section 2.6.3.5 would be premature. He also recommended if the PDT cannot develop landings caps from a technical or statistical basis, the Committee could set the cap based on recent reported or observed catch of a species in the fishery, to ensure that there is no incentive to target other species.

Mr. Libby expressed support for further exploration of landings caps for non-target species, noting that similar caps have been implemented in the groundfish fishery. He also noted that despite the caps being tied to MR, the measure appears to be working for haddock bycatch, as participants in the fishery are trying to avoid haddock. Ms. McGee also opposed the motion, as Section 2.6.4.2 may allow for vessels to address bycatch issues with VBEM.

3A. MOTION TO SPLIT: JIM FAIR/HOWARD KING

To split the previous motion

MOTION #3A TO SPLIT FAILED 4-5.

MAIN MOTION #3:

Recommend to the Council to eliminate Section 2.6.3.4 and Sections 2.6.3.5 – Modified Maximized Retention with VBEM and Landings Caps

Further Discussion: None.

MAIN MOTION #3 CARRIED 6-3.

4. MOTION: MARY BETH TOOLEY/ERLING BERG

That under Section 2.6.3.2, the final bullet on p. 33, Options for Exemptions to Maximized Retention Provisions, be eliminated

Discussion on the Motion: None.

MOTION #4 CARRIED UNANIMOUSLY.

Dr. Pierce emphasized the need for ASMFC to consider the potential problems associated with maximized retention for river herring and shad and try to accommodate landings under a MR program if the Council implements one in this amendment. The Herring Committee agreed to reconvene early at 8:30 a.m. to address outstanding agenda items.

Day 1 of the Herring Committee meeting adjourned at approximately 6:30 p.m.

Wednesday, July 28, 2010 (Day 2)

Measures to Maximize Sampling (Section 2.7.2)

The Herring Committee convened early to resolve unfinished business from the July 27 meeting prior to moving on with the day's agenda. Ms. Steele began the discussion by reviewing where the Amendment 5 Draft Discussion Document stood with respect to measures to maximize sampling and address net slippage. Several issues were discussed by the Herring Committee and audience members:

- Mr. Grout clarified with Ms. Steele that the regulations would apply to Category A and B vessels, as per the Committee's previous motion, with the caveat that consideration of applying measures to Category C vessels would occur once the measures become better fleshed out.
- Dr. Pierce suggested that the option to ensure complete sampling through a minimum amount of fish to be brought on board be deleted, and that the option to bring codends aboard the vessels be modified to say that the codend be close enough for visual access, as suggested by Council staff. He also expressed hope that the CMCP (Catch Monitoring and Control Plan) option would be a way to address the issue for purse seines. Ms. Tooley agreed with Dr. Pierce's suggestions, but did not feel that the CMCP option would address the purse seine issues. Mr. Avila further explained that when the purse seine process is completed, there is no codend, but that the entire net is brought on board before being set out again. He therefore suggested that "codend" be replaced with the word "net."
- Mr. Libby pointed out that there seemed to be two different arguments, and therefore two different issues – the first involves too many fish, and therefore too much weight for the net to be brought aboard; the second issue when there are a small amount of fish left in the net that cannot be pumped.

5. MOTION: DAVID PIERCE/RODNEY AVILA

To eliminate the option to determine and apply a minimum portion of a slipped catch that would be required to be pumped on board a vessel to ensure complete sampling, and to modify the option to bring the codend on board to instead require that vessel operators provide the observer with visual access to the codend and its contents after pumping has ended

Discussion on the Motion: Mr. Gout acknowledged the concern brought forth by the Herring PDT in regards to creating a minimum percent for slipped catch, and questioned if there was any way to gain information on species composition of slipped catch without being subjective. Ms. Steele clarified that the current observer discard logs (implemented in January 2010) are addressing the issue and that other measures, such as the Closed Area I (CA I) rules would require fish to be pumped across the deck, if the Committee desired to reconsider that option.

Dr. Cieri explained that in order to be used in analysis, the catch would need to be identified down to the species level, and also pointed out that when scientists are analyzing the data, they may choose to drop or use trip information based on the completeness of the data and/or comments regarding how the catch was observed.

Dr. Pierce suggested that the Committee consider the amount of slipped catch to be observed when the issue of river herring is addressed on the agenda, pointing out that monitoring issues could be addressed on an area-by-area basis. Mr. Blount questioned if the Committee was intending to use the information for assessment purposes or for enforcement, such as monitoring bycatch caps and quota monitoring. Ms. Steele explained how observer data was used to monitor the haddock catch cap. Mr. Blount then described the groundfish assumed discard rate, and noted that the measure would mean the opposite for the herring fishery. Mr. Fair noted that conversations with the observer program had indicated that the monitoring situation had improved.

Ms. McGee inquired if it would be more sensible to instead require that the net be brought on board when possible, and to require visual access for the observer in cases where bringing the net aboard is not possible. Ms. Tooley noted that most of the time it is not possible for the net to be brought aboard vessels. Ms. McGee asked for clarification from the observer program to understand what is possible on a vessel, and expressed confusion over the PDT summary regarding this issue. Ms. Van Atten replied that the discard logs just started in 2010, and that as a result, no analysis had been completed on the data yet, but she said that she would brief the PDT as the information becomes available. She further explained the changes to the observer program, such as more options for recording discards on the discard log and the sampling protocol changes, all aimed at improving sampling and quantifying slippage events. The purpose of the changes was not necessarily to improve stock assessments but to better understand the scale of the issue. Ms. McGee further inquired to Ms. Van Atten if there was a possibility of developing a protocol for observers which would have them sample a net which was going to be slipped while still in the water. Ms. Van Atten replied that between the observer program and the PDT, it had been determined that it would not be possible to do so, based on procedural difficulties.

Mr. Avila described the safety issues that could accompany bringing the net on board. Mr. Libby inquired in what amounts the fish were being brought on board. Ms. Van Atten explained that while some boats could bring the fish aboard in small amounts, other vessels would have difficulties bringing the net aboard with any fish in it. Mr. Blount suggested that if there were bycatch limits applied, then there would have to be an assumed discard rate, which would have to come from observed catch. In that way, if the captain thinks that the catch is less than what is assumed under the discard rate then he or she will have to figure out how to get the net and fish on board for accurate sampling. Dr. Pierce felt that bycatch caps would not work and are not being considered in the document at the present.

Mr. Paquette expressed concern that the bags being collapsed would hinder the observers from seeing the contents, as they were shown to be at a previous Committee meeting in a video. Mr. Libby noted that the fish should be pumped aboard, as they can be released again, and also pointed out that in the groundfish fishery, what the observer records supersedes all other

assumptions. Mr. Rudolph opposed the motion, noting that the structure of the document was not clear and that visual access will not be good enough to determine what is in the net. He stated that if there is a small amount of fish in the net, then they should be brought on board; otherwise, there should be consequences, and this should apply to the fishery as a whole, not just hotspots. Mr. Crawford expressed concern over the ability of the observer to observe fish in the net, in the water.

Mr. Moore supported the motion, pointing out that the herring assessment process already includes deductions as a precaution for uncertainty. He also explained that in a high volume fishery, it is difficult to sample every fish. Mr. Rochford noted that the Coast Guard had agreed that bringing the net aboard would be dangerous, and urged the Committee to apply safe practices for the fleet. Mr. Avila stated that the majority of the catch was being observed, and that the issue in question was only at the end. Dr. Pierce stated the Committee's need to be guided by PDT advice, noting that although he would like to see all the fish observed, it is not a possibility, and cited the need for realistic measures.

Ms. McGee suggested that the rules from CA I, which had been moved to the considered but rejected section in a previous Committee meeting, could be re-considered. This would provide access to the fish without the visual and safety issues. Mr. Martin questioned what "visual access" meant, and who would make decisions about visibility, which could ultimately put the observer in an enforcement role. Mr. Martin expressed concern over the observer being put in the role of enforcement. Mr. King did not feel that the document was moving the industry in the direction of sampling all fish. Mr. Libby also felt the direction was lacking, and suggested that the language cover both purse seines and trawls. He did not support the motion and thought it removed the incentive for the industry to fish "clean."

5A. MOTION TO AMEND: SALLY MCGEE/GLENN LIBBY

To eliminate the option to determine and apply a minimum portion of a slipped catch that would be required to be pumped on board a vessel to ensure complete sampling, and to modify the option to bring the codend on board to instead require that vessel operators provide the observer with visual access to the codend and its contents after pumping has ended. Also, to add an option to require that all fish must be pumped aboard the vessel so that the entire catch can be sampled by an observer (reconsider option as written on p. 111)

Discussion on the Motion to Amend:

- Dr. Pierce felt the measure should not be applied across the entire fishery and should only apply to hotspots. Ms. Tooley did not support the motion, and neither did Mr. Avila, citing procedural difficulties. Some Committee members had wordsmith suggestions, which Ms. Steele suggested should be addressed at a later time.
- Ms. Tooley expressed concern that the CA I rules were new and still a work in progress, and noted that the Committee had agreed to put those rules in the considered by rejected section because of the safety concerns involved with a fishery-wide application.
- Mr. Weiner stated that he did not understand where the safety concerns were coming from, and noted that there were enough exemptions in the CA I rules that fishermen would not always be required to pump fish aboard.

- Mr. Rudolph noted that the alternatives were merely being selected, not decided upon, and urged the Committee to support the amendment.
- Mr. Rochford expressed concern about how the rules would be applied by enforcement, citing issues already existing with the CA I rules. Mr. Mullen supported the original motion, as he felt it allowed for cooperation between observers and the industry.

MOTION #5A TO AMEND CARRIED 6-5 WITH THE CHAIRMAN VOTING TO BREAK THE TIE.

MAIN MOTION 5A, AS AMENDED:

To eliminate the option to determine and apply a minimum portion of a slipped catch that would be required to be pumped on board a vessel to ensure complete sampling, and to modify the option to bring the codend on board to instead require that vessel operators provide the observer with visual access to the codend and its contents after pumping has ended. Also, to add an option to require that all fish must be pumped aboard the vessel so that the entire catch can be sampled by an observer (reconsider option as written on p. 111)

Further Discussion: None.

MAIN MOTION 5A, AS AMENDED, CARRIED 6-5 WITH THE CHAIRMAN VOTING TO BREAK THE TIE.

Measures to Address Net Slippage (Section 2.7.3)

Ms. Steele provided the Herring Committee an overview of the proposed measures to address net slippage and summarized the decisions the Committee should make. Dr. Pierce reiterated the Herring PDT consensus to not support the development of slippage caps in Amendment 5.

6. MOTION: DAVID PIERCE/RODNEY AVILA

To recommend that Section 2.7.3.1 (options to establish slippage caps) be eliminated from consideration

Discussion on the Motion: Mr. Libby noted that the proposed slippage cap is an accountability measure, and opposed elimination on the basis of wanting the industry to be accountable for discards. Mr. Rudolph also opposed the motion, citing the need for a broad range of alternatives in the document. He explained that the Committee could establish a slippage cap without statistical help from the PDT, noting that there have been other caps in many of the fisheries without technical basis based on recent catch. Mr. Mullen supported the motion, and commented on the process issues around the involvement of different organizations. Ms. Steele explained that her work was directed entirely by the Committee. Mr. Rochford supported the motion, pointing out that there would be no reason for fishermen to want to release fish if the possibility of profit exists. He noted issues with finding an observer to take into CAI. Mr. Paquette opposed the motion.

Dr. Pierce walked through the difficulties of implementing a slippage cap. He also explained that the expansion of the data to the fishery could cause the cap to be reached quickly and close the fishery without a technically-sound basis for setting the cap. Mr. Blount opposed the motion, suggesting that the same management uncertainty that is used in setting quotas be applied for the expansion of numbers. He reiterated the Herring PDT memo, which said that the PDT had gone as far as possible in setting the caps, and questioned if the intent of the amendment was to get better information by monitoring current fleet activity, as the memo suggested, or to change the way the fleet operates to make monitoring easier. Ms. Tooley supported the motion and sighted the need for alternatives by September, noting that if the PDT did not support the motion, the Committee could not develop the motion, and it could prevent the fishery from achieving OY, then it should be removed.

Ms. McGee explained that cap for yellowtail flounder had been reached in the scallop fishery in the previous year, which closed the fishery a few weeks after opening. She noted that the industry had to figure out how to avoid yellowtail in the current year, and noted that the measure changed the fishery. She also explained that the difficulty with the bycatch caps had been legal limitations, and suggested that the slippage cap was a remaining way to promote change in the fishery. Mr. Avila disagreed, explaining that the change in the scallop industry was due to the lack of yellowtail flounder in the area. Ms. Tooley pointed out that herring is a species being directed on, making it different than a bycatch cap, since a large degree of slippage consists of herring. She noted that sometimes dogfish are on top of herring, as they were in the year previous, and despite the best efforts of the fishery, not all could be brought on board. If the industry is again in this position, the cap could easily shut the entire fishery down, and she felt this would be punitive to the industry and unnecessary. Mr. Gibson expressed similar concerns to Dr. Pierce, and did not think expanding samples across the industry and possibly shutting it down as a result would not be a good idea. Mr. Libby did not support the motion, noting that it could be a good accountability measure, and that no final decisions were being made.

MOTION #6 CARRIED 6-4.

7. MOTION: MARY BETH TOOLEY/DAVID PIERCE

To recommend that trip termination option be eliminated from the document (Section 2.7.3.3)

Discussion on the Motion: Ms. Tooley further explained her motion by noting that a trip is a major investment and that it would be punitive to the captains and crew to make them return and end a trip if they run into a gear or haul problem. Dr. Pierce agreed, asking why a termination would be necessary if a captain would be punished for trying to protect a boat and crew, and suggesting that the measure to be eliminated could cause the captain to bring catch on aboard even if it is unsafe, to avoid ending a trip. Mr. Avila explained that the same trip rule had been imposed on the scallopers, which had potentially caused significant loss of life by forcing the captain to stay in an area, and noted that the rule could put the burden on the captains.

Mr. Weiner expressed similar concern, but wanted the industry to offer ideas which would deal with the problem. Mr. Rudolph stated a need for accountability measures for dumping, noting that slippage caps had been eliminated as an option to do so. Mr. Moore responded to Mr. Weiner by explaining a program which the industry had proposed in conjunction with a study

fleet, in which the frequency and duration of slippage events could be tested using net sensors, noting that it was a low cost and effective measure. Ms. Steele clarified that there would be no time to address the proposal on the current agenda, but that she would continue to work on the electronic monitoring section. Mr. Rochford stated some of the current restrictions that the herring fleet is facing, and pointed out that the less time spent on the water, the more slipped tows there would be, because there isn't enough time to find the fish.

Mr. Libby stressed the importance of having an accountability measure on the table for the Council to consider. Mr. Paquette opposed the motion, also sighting the need for an accountability measure. He also stated that if the industry was operating gear that puts the crew in jeopardy, then the industry needed to change their behavior. Mr. Rochford and Mr. Avila both responded that it was the regulation that compromises the safety, not the gear, and asked that the skipper be left in charge. Dr. Pierce further responded that the measure was not an accountability measure. He noted that pumping the catch could compromise safety, and that the industry had taken the initiative to come forward with a bycatch solution, and therefore felt that measures should not be punitive, as they would be counter to the relationship that the Council is trying to cultivate in coming up with joint solutions.

MOTION #7 CARRIED 9-1.

Because the Committee was far behind schedule, Mr. Grout clarified that the 9 a.m. agenda item (discuss Amendment 5 catch monitoring: measures to improve quota monitoring/reporting (Section 2.4), measures to require electronic monitoring (Section 2.10), and measures to require CMCPs (Section 2.11)) would not be addressed by the Committee unless there was time remaining at the end of the day.

Identification of River Herring Hotspots At-Sea Using Multiple Fisheries Dependent and Independent Datasets

Dr. Jamie Cournane (Herring PDT member) briefed the Herring Committee about her ongoing work to develop a model to evaluate management strategies to mitigate river herring bycatch. Her presentation included an overview of some preliminary results, including fishing effort and river herring bycatch using data from both VTRs and river herring bycatch events (Northeast Fisheries Observer Program (NEFOP)), and river herring hotspot rankings and river herring bycatch viewed through hotspot ranking (using the bottom trawl survey) and river herring bycatch events (NEFOP). Ms. Steele summarized the recommendations from the July 22, 2010 Herring PDT memo. Following the presentations the Herring Committee and audience discussed several issues:

- Mr. Blount asked why the analysis focused on the most recent 15 years or so, and Dr. Cournane explained that the PDT advised that she look at recent years. She analyzed the five most recent years initially, but found that there were not enough observations to look at large scale patterns.
- Dr. Pierce commented that he was finding it difficult to determine the importance of percent occurrence in bottom trawl tows, noting that there could have been many tows with only one or two river herring in them. As a result, he was not convinced that the areas highlighted in red were the ones on which he should focus. He sighted Ipswich Bay as an example hotspot he knew was a hotspot, but due to its small existence in a larger statistical area, he did not

know how far away from the bay he should go, as the rest of the tows outside the area could have been tows with only one or two fish occurring. He then asked if the PDT was examining to what extent the percent occurrence approach could be misleading. Dr. Cournane replied that she had looked at the maps with the number of individuals, with all of the metrics. She and the PDT noticed a similar pattern occurring all over years, and recommended the percent occurrence approach. She then asked for guidance as to whether the recommendations fit with the intent of the Committee.

- Dr. Pierce asked for further guidance in regards to Ipswich Bay and the colorations. He also asked to what extent the analysis was changed by observed hauls. Dr. Cournane responded that the PDT had decided to overlay bycatch events with where the fishery was operating to see if the areas were similar. Ms. Steele noted that the areas match relatively well and that the areas of concern are consistent with the data.
- Dr. Pierce asked about a certain area which had not presented as a hotspot in the analysis and Ms. Steele reminded the Committee that the decisions did not have to be based solely on the analysis; if there was a hotspot that the Committee was concerned with, then the Committee should identify it.
- Mr. Grout inquired what was being lost by not using the Q metric, and if the Committee could still tell where the herring were based on percent occurrence. Dr. Cournane explained that the two analyses had produced similar patterns, but that when the data were limited to the most recent 15 years the structure of the data for individuals weakened, and therefore there was less confidence in the information produced by the Q metric. She also noted that the percent occurrence metric for the past 15 years showed similar patterns to all the data, but allowed other sources of data to be used on the same scale, to determine if there was agreement.
- Mr. Gibson commented that he would like to see a measure of relative exploitation or catch per abundance to better know how to target the areas of concern.
- Mr. Grout expressed concern about the statistical areas being too broad, but noted that it would depend on the management measures being considered. He then asked for the data to be looked at in monthly or bimonthly steps and in blocks of quarter-degree squares.
- Ms. Steele reminded the Committee that the data being presented is the same data that had been presented before, and suggested that the Committee may already have a good idea of where the hotspots are. She suggested that the Committee identify the specific hotspots later, and lay out the different options concerning the hotspots during the meeting. Dr. Cournane agreed that the data would be the same and the patterns would likely be similar.
- Mr. Kaelin noted that the analysis only looked at directed herring trips, and asked if it would be a recommendation from the Herring Committee that the Groundfish Committee pursue a similar investigation. He recalled that other fisheries had been implicated in taking as many river herring as the directed herring fishery, and pointed out that if there was no biological information on the impact of the herring fishery, then other fisheries should be investigated and regulated as well.
- Mr. Crawford agreed with comments on refining the analysis to account for fishery independent data and the survey. He inquired if there was information on pre-spawning individuals or a way to differentiate those fish from other phases of the life cycle, and Dr. Cournane explained her request for length data and other aged based data, and her

uncertainty as to how the data would look. Mr. Paquette also asked for information concerning the differentiation between adults and juveniles, to which Dr. Cournane referred to her data request and stated the ASMFC Technical Committee's interest in the findings.

- Ms. Alexander explained her work with historical river herring information, and confirmed that the yellow and red spots on Dr. Cournane's maps matched well with the historical information. She emphasized the need to preserve river herring, and suggested that the Committee consider historical data.
- Mr. Rochford asked some clarifying questions about Dr. Cournane's analysis and expressed concern that the data were too broad to highlight the areas of interest. He explained that two boats had heard that an area of Long Island Sound was of concern for river herring so starting in either 2006 or 2007 the boats avoided those areas and had great success in avoiding the capture of river herring. Dr. Cournane stated that the data was pooled for 2005-2009 and that if there was a change in fishing behavior in that time, that the years needed to be considered differently.
- Mr. Moore inquired how the breakpoints in the data had been created, and expressed concern over magnitude and the need for tables, and Dr. Cournane explained the statistical approach used to bin the data, and how in hotspot areas the analysis allows for looking at the overlap and range of observations more closely.
- Mr. Hughes asked if the analysis included Canada, and Dr. Cournane explained that there is an agreement between the US and Canada for the survey to operate on the other side, and that her analysis included those observations.

The Herring Committee then discussed what guidance to give the Herring PDT in regards to further analysis of times and areas for identifying river herring hotspots. The issues that the Herring Committee and audience discussed included:

- Dr. Pierce commented that it would be useful to have the statistical areas broken down by **quarter degree square**, particularly those statistical areas where the fleet operates and for the seasons in which they are most prevalent. He also suggested they be broken down into **monthly or bimonthly increments**, as he felt there would be more support for measures which looked at a smaller area on a smaller timescale. He noted that the strategies which had been outlined for hotspots seemed restrictive, and voiced support for a move along rule. He also suggested that the Committee focus on the areas of the maps where the river herring bycatch circles are aggregated, with the caveat that some areas may change.
- Ms. Tooley asked if anyone had focused their river herring hotspot work on all gear types across all fisheries, rather than directed herring trips. Ms. Steele noted that Susan Wigley (NEFSC) generated estimates of discard rates for areas identified in the SBRM approach, and that the highest rate of river herring bycatch was in the small mesh bottom trawl fishery. Ms. Tooley commented that the distribution of the river herring in the bottom trawl survey was wide, and that ASMFC and MAFMC were looking into the issue of river herring bycatch across all fisheries. Ms. Tooley asked if the ASMFC would be looking at the issue across all fisheries, and if they would be recommending that the Council do the same. Mr. Grout replied that they were considering all fisheries in state waters and Dr. Cournane mentioned that she had been providing updates to the ASMFC Technical Committee for shad and river herring across all fisheries, and that they had asked for the updates to continue. Ms. Tooley

suggested that the herring fishery could be completely regulated for river herring bycatch but have no impact on river herring because of the mortality in other fisheries.

- Mr. Avila suggested that different gears be looked at separately, in order to find **hotspots caused by other fisheries**. Dr. Pierce expressed interest in knowing what gear is being used in differing areas, and stated that he would make the ASMFC aware that the hotspots may affect the mackerel fishery as well.
- Ms. Tooley clarified that the measures would apply to **Category A and B vessels**, with some **possibility of Category C vessels** being considered depending on the measures. Ms. Steele pointed out that there are approximately 45 Category A and B permit holders, but that many small mesh bottom trawlers are Category D, and that adding Category D would increase the scope of the amendment to another 2,200 permit categories. Mr. Berg noted that the Hudson Canyon area had a lot of whiting and loligo fisheries, not just mackerel, and that any small mesh trawl bottom trawl would interact with the river herring.
- Ms. Steele clarified that the PDT could bring the analysis back to the Committee in September, and that the Committee was supportive of **percent occurrence** as a metric. She also noted her concern that options needed to be identified at the next meeting, and asked the Committee if they could further define certain squares at certain times for the PDT to focus on. Mr. Avila agreed with Ms. Steele that the hotspots were already defined, but reiterated his concern with other fisheries taking river herring.
- Dr. Pierce asked that the analysis be refined by only including those percent occurrences where there were **five or more river herring per tow**. He questioned, however, what number per tow would be appropriate, and asked that the PDT provide insight on what threshold may be appropriate. He then suggested that the Committee look at locations where **75% or more occurrence** of river herring is found, with tows where there are five or more river herring, and compare them to where the fleet is operating now. He also clarified that it was only river herring being considered in the analysis. Dr. Cournane noted that if the tows of five fish or more were used, then the analysis would likely require **all the years of data**, and Dr. Pierce agreed, noting that it would include the data when river herring were abundant. He recommended that she also focus on observer information and compare that with the quarter-degree square analysis. Dr. Cournane noted that a threshold would have to be determined in advance of the next Committee meeting, and suggested that there may be value in not having a threshold if considering all the historical data. Ms. Steele noted that including the historical data may introduce new hotspots where no bycatch or fleet effort currently exists.
- Ms. McGee pointed out there is not a mechanism identified for updating the hotspots, once they have been identified. She also questioned what frequency of updating the hotspots would need. Dr. Cournane noted that the survey data used in her analysis only spanned through 2008, at which point the survey was transferred to the Bigelow survey vessel. She added that there were gear operation, shape and selectivity differences in the two different survey nets, and pointed out that dealing with the differences would be important in the updates of the hotspots. She also explained that if the observer data was used, a time frame could be chosen which could be continuously updated, as the observer data would not change.

- Mr. Grout noted that river herring would not always be in the same area, and suggested that the **frequency of occurrence of catch in the observer data be analyzed as well**. He also suggested that this information may be helpful for determining a threshold for a move along rule.

Development of Management Alternatives to Address River Herring Bycatch

Ms. Steele presented a summary of the “strawman” management alternatives to address river herring bycatch in the discussion document (Section 3.0). Following the presentation, several issues were discussed by the Herring Committee and audience members:

- Ms. Tooley commented that the Bering Sea pollock fishery operates the way it does because it is voluntary industry agreement, and differing rules apply to industry members who participate and who don’t. She noted that a similar system may work in the herring fishery. In regards to Alternative C from the working document, she felt that rather than be specific in the regulations, she would like to see a conceptual alternative based on the same program, where those who participate have different rules than those who don’t.
- Mr. Blount asked to clarify how a “test tow” would be defined in the regulations, and Ms. Tooley suggested that it be of short duration on low volumes of fish, but noted that over time the regulation may need to change, which could be problematic. Mr. Grout suggested that the Sustainable Fisheries Coalition Bycatch Avoidance Program may be able to determine an appropriate amount of time for a test tow.

8. **MOTION: MARY BETH TOOLEY/DAVID PIERCE**

To not develop the alternative drafted in Section 3.3.3 – Apply Closed Area I (CAI)
Proposed Rule Provisions

Discussion on the Motion: Mr. Blount asked for clarification about trip termination. Mr. Rudolph opposed the motion, noting that consistency was important, and Dr. Pierce pointed out that he was looking for consistency with the policy in place for haddock.

Mr. Paquette asked for clarification from Mr. Martin regarding the final ruling in the court on the CAI provisions. Mr. Martin articulated that there was no determination about the validity of the rule that is in place, but rather an agreement to re-promulgate the rule to establish the requirement to have observers in CA I and the requirement to bring all catch on board with certain exceptions. The Agency has agreed to go out to the public again for comments on those provisions, particularly the provision which requires catch to be brought on board, which doesn’t apply to operational discards. This process is not a Council action; it is an action taken by the Secretary as an independent process that will not necessarily effect the development of Amendment 5. If Amendment 5 includes a provision that elaborates on the Agency’s rule or changes it, then it will need to specify what it intends to do with the rule that the Secretary has promulgated or may re-promulgate after the comment period; in other words Amendment 5 will need to be clear how it will affect the Secretary’s rule. The Agency will have to publish a Proposed Rule by September 1 and have a final rule by November 15.

Mr. Ellenton expressed support for the motion, noting that it asked for the same thing as the trip termination motion earlier in the day. Mr. Kaelin also supported the motion, referencing the substance from the Agency's brief on the CAI rule that bycatch from the herring fishery is minuscule. Mr. Libby did not support the motion, pointing out that there is a lot more to the section than trip termination.

MOTION #8 CARRIED 5-3-1.

9. MOTION: SALLY MCGEE/DAVID PIERCE

To include the remaining alternatives in Section 3.3 in Amendment 5 for further consideration at this time

Discussion on the Motion: Ms. Goodale asked clarifying questions about the alternatives and expressed concern with the proposed approach, especially the alternative that relies on CMCPs. She pointed out that if there was an alternative that required third party monitoring and establishes a threshold for leaving the hotspot areas, there would be no need to report to the Agency, and no need for CMCPs.

- Mr. Grout clarified that a threshold referred to a limit to be reached in a trip, and that a cap was a limit for the entire fishery to reach.
- Ms. Spitfire explained the materials she had distributed to the Committee and noted that she felt the regulations were too complicated and don't consider the fish. She also provided comments on behalf of the river herring.
- Mr. Bravolo clarified that the threshold is measured in pounds and asked how many river herring were in a pound, noting that he did not feel a true picture of how many herring are caught could come from pounds. He also explained that many towns were making an effort to restore river herring runs, but that the results are no as large as expected, and expressed the continued need to address access for these fish to the spawning grounds and everything that happens at sea.
- Mr. Hughes, as the Wellfleet Warden for the past ten years, further explained the measures being taken to restore fish runs and ladders for river herring, the large cost associated with the efforts, and the strongly varied response of the river herring. He noted the importance of bycatch events and suggested a comprehensive monitoring program in which to prevent localized depletion, which would break the coast up into nine areas. As migration starts, the program would close the first three areas and then move the closure up the coast as more fish began to migrate. He also noted the importance of protecting the species before they spawn instead of after.
- Mr. Pearlman expressed concern with Alternative C, as it is a research proposal and not well thought out. He supported Alternative D, but did not support A or B, because trip level thresholds would not control on how many vessels will fish in a given area.
- Mr. Moore provided the Committee an update on the Sustainable Fisheries Coalition proposal, which applies to Alternative C. The project is almost fully funded, with implementation to begin October 1, 2010, for the midwater trawl opening in Area 1A, and was to run for two years. MA DMF is to start training vessel crews in the protocols for collecting samples on the vessels, using observer protocol, with money for the captains which participate in sampling. Mr. Moore noted that similar project was being utilized on the

west coast and that the scallop/yellowtail flounder avoidance program was also similar and expressed hope that the bottom trawl vessels would replicate the project. He also noted that the thresholds for the move along rules needed to be determined, and that School for Marine Science and Technology would be developing a predictive model for separation of herring and river herring.

MOTION #9 CARRIED UNANIMOUSLY.

10. MOTION: SALLY MCGEE/GLENN LIBBY

To add an alternative to Section 3.3 that would prohibit directed fishing for Atlantic herring in river herring hotspots

Discussion on the Motion:

- Ms. McGee further explained that her motion was meant to fully expand the range of alternatives and is consistent with previous actions, in addition to giving the Committee the means to deal with bycatch, since bycatch caps have been eliminated from the document.
- Dr. Pierce and Ms. Steele asked to define what a “directed” fishery would mean, and Ms. Steele noted the need to define it before the September Council meeting, explaining that different permit categories could be influenced differently depending on the definition.
- Ms. Tooley did not support the motion, as she found the measure too extreme. She also pointed out that if an area was closed, no data could be collected on catch in that area, and therefore the Committee would be learning nothing about interaction with river herring and the industry would have no opportunity to manage the bycatch in the area
- Mr. Kaelin asked that the motion be clarified to include Category A, B, C, and D permits, explaining that bycatch should be reduced in all areas. He also noted that the Committee had already decided to not include closures for consideration.
- Mr. Crawford and Mr. Fleming supported the motion in order to add more substance to the document, and called for more analysis. Mr. Martens also supported the motion because it is not a final decision and will even out other things that had been deleted.
- Mr. Mullen did not support the motion, as it would hinder his ability to conduct the research project that Mr. Moore was describing.

MOTION #10 CARRIED 5-4.

Alternatives to Establish Criteria for Midwater Trawl Access to Groundfish Closed Areas

Ms. Steele presented a summary of the management alternatives to address midwater trawl access to groundfish closed areas in the discussion document (Section 4.0), with the intent of getting input from the Committee to develop the alternatives further. Following the overview several issues were discussed by the Herring Committee and audience members:

- Ms. Tooley requested that a description of the status quo be added to the discussion document, such as what the rules are for access to the closed area including CA I, in order to better determine what the Committee is trying to accomplish. She suggested that an alternative could be developed that mirrors the original criteria for access before the CA I provisions were established. She also felt that Alternative 2 is too complex and restrictive.

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- Dr. Pierce tried to clarify if the measures would apply to year-round closures or rolling closures, and suggested that they be applied to year-round closures.
 - Mr. Libby suggested an alternative that would require 100% observer coverage in the areas, as well as an alternative which would expand the CA I provisions to all of the groundfish closed areas.
 - Dr. Pierce commented that Alternatives 2 and 3 are too extreme, and added that he could think of a lot of stipulations which would complicate them.
 - Mr. Martin expressed concern about Alternative 1, as it seemed to be an enforcement action that would be executed without the opportunity for a hearing or an assessment as to whether the triggering action has occurred. He questioned where the payment for observer coverage would come from, and noted that it raises enforcement questions about whether a boat is being penalized without opportunity for a hearing or further consideration.
 - Mr. Fleming noted that he had helped with the alternatives, and the idea had not been to have a permanent Exempted Experimental Fisheries Permit (EFP) in place. The idea was to exclude the fishery from the groundfish closed areas but provide access under the EFP to do an experiment, and based on the results, decide how to give the fishery access. The bulleted points were intended to be options for the EFP, but that those could be determined at a later date. He also noted that Alternative 3 was intended to be a simpler version of Alternative 2, and that the intent was to collect data from existing electronics, not new ones.
 - Mr. Paquette expressed concern about the two Herring Alliance proposals, and felt that addressing this issue should be simplified into three options: option one would be status quo, option two would mean no fishing in the closed areas, and option three would mean CA I rules apply to all the year-round closures.
 - Mr. Rochford explained a haddock bycatch problem from 2005 in which groundfish fishermen helped provide insight into how to avoid the haddock by going into deeper waters at the end of the summer, which worked. He pointed out that if the management measures forced the fishermen into shallow waters, the haddock bycatch would be greater. He further explained that the closed areas have deeper waters, which allow the fish to separate.
 - Mr. Ellenton supported a status quo alternative and did not support putting in Alternatives 2 and 3 only to have more alternatives. He also noted that an EFP is for exemptions from rules which are already in effect, and that the alternatives seemed more like a proposal for an experiment, and questioned why the EFP was mentioned in the document.
 - Ms. Tooley clarified with Ms. Goodale that if an area is closed, anyone could come forward with an EFP request and that the conditions and standard do not need to be specified in the document. Ms. Steele noted that there would be no guarantee that any project would be approved, that funding would have to be secured for the project, and that in the end there is no guarantee that the area would open. Dr. Pierce commented that he felt uncomfortable with the options, and that they were not clearly defined or justified.

11. MOTION: DAVID PIERCE/MARY BETH TOOLEY

To recommend that Groundfish Closed Area Access Alternatives 2 and 3 be eliminated from consideration

Discussion on the Motion:

- Mr. Libby opposed the motion because he felt that leaving it in allowed the Committee to better define the alternative. Ms. Steele noted that the most important clarification so far had been that both alternatives would close the areas, with EFP options, which technically already existed. Mr. Fair suggested that it may be more appropriate to develop general rules for access to closed areas which would then make it more appropriate to use an LOA rather than EFP, as it would be more straightforward.
- Ms. Tooley supported the motion, pointing out that if the alternatives were left in the document, they would require a lot of work, and that the motion was choosing to move the Committee in a different direction, and allows better bycatch information to be collected.
- Mr. Rudolph opposed the motion, as did Mr. Libby, as he was in favor of an EFP. Ms. Spitfire opposed the motion, as she supported change in the fishery.
- Mr. Ellenton supported the motion, as did Mr. Rochford, noting that observers have not been available for CA I and therefore have restricted the fishery.
- Mr. Fleming expressed concern that if the alternatives were eliminated, then there would be no measure left to prohibit midwater trawling in the groundfish closed areas. He also voiced support for considering a range of alternatives that would analyze the criteria for access to closed areas.
- Mr. Kaelin questioned why, if the fishery is not targeting groundfish, and that there is no data that shows a biological problem, should the herring industry have to operate under the same standards as groundfish. He commented that the threshold for scallops in that industry is 5% cumulative effect on the species of concern, in this case yellowtail flounder. In the herring industry the standard is 1%.

MOTION #11 FAILED 2-4.

Tasking the Herring Advisory Panel

Ms. Steele asked the Herring Committee to guide the Advisory Panel on what sections of the discussion document to consider and discuss. The Committee had already recommended that the Advisory Panel discuss Section 2.5, measures to confirm accuracy of self-reporting. Another recommendation was to review CMCPs, as the Agency had expressed concern about it, and Advisory Panel members would be required to submit them on an annual basis. The Chairman, Mr. Ellenton, expressed interest in reviewing the entire document.

The Herring Committee meeting adjourned at approximately 6:00 p.m. on July 28, 2010.



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DRAFT MEETING SUMMARY

Herring Committee Meeting (Two Days)

Sheraton Harborside, Portsmouth NH

September 1-2, 2010

The Herring Committee met on September 1 and 2, 2010 to: continue the development of the catch monitoring alternatives for inclusion in Amendment 5 to the Herring Fishery Management Plan (FMP) and to develop management alternatives to address river herring bycatch.

Meeting Attendance (both days combined): Doug Grout, Chairman; Frank Blount, Jim Fair, Glenn Libby, David Pierce, Terry Stockwell, Mary Beth Tooley, Mike Leary, Erling Berg (September 1 only), Howard King, Herring Committee members (Sally McGee, Mark Gibson, Rodney Avila absent); Dave Ellenton (Herring Advisory Panel Chair), Jeff Kaelin, Chris Weiner, Peter Mullen, Gib Brogan, Don Swanson, Herring Advisory Panel members; Lori Steele and Talia Bigelow, NEFMC staff; Carrie Nordeen, Hannah Goodale, Aja Peters-Mason, Lindsey Feldman, NMFS NERO; Matt Cieri (ME DMR), Sara Wetmore (NEFSC Observer Program), Jamie Cournane, Herring Plan Development Team Members; Rick Robbins (MAFMC Chairman), Roger Fleming (Herring Alliance), Gary Libby, Raymond Kane, Ben Martens and Tom Rudolph (CCCHFA), Steve Weiner, Sean Mahoney (CLF), Jud Crawford (Pew), Patrick Paquette, Glenn Robbins, and several other interested parties.

Wednesday, September 1, 2010 (Day 1)

The meeting began with a brief statement by the Chairman regarding the Council's policy for public comments during the meeting. The Committee members reviewed the agenda; Ms. Tooley suggested that the Committee consider discussing the haddock catch cap at some point during the meeting, and the Committee agreed to address that issue at the end of one of the two meeting days, depending on time.

Herring Advisory Panel Report

Mr. Ellenton, Herring Advisory Panel Chairman, provided the Committee with an overview of the August 25, 2010 Herring Advisory Panel meeting and a summary of the Advisory Panel (AP) recommendations regarding the management measures under consideration in Amendment 5. After the overview, Committee and audience members had a number of questions and comments:

- Mr. Stockwell asked if the AP had come to any conclusions regarding a standard unit of measure to apply to sealing and certifying vessels and/or trucks. Mr. Ellenton replied that there had not been a consensus and noted some difficulties in reaching any conclusions.
- Mr. Kaelin recommended that the focus of the measures to confirm the accuracy of self reporting should be on assuring the public that the amount of herring that is being captured is being reported; he supported consideration of truck weighing under these measures.
- Mr. Libby suggested random weighing of trucks as an option to deal with the high volume nature of the fishery.
- Ms. Steele clarified that the AP had voted in favor of removing the options which considered the weighing of trucks and supported the option to certifying the volume of trucks, similar to the way that vessels fish holds can be certified.
- Mr. Robbins noted that when the size of herring varies, the accuracy of a volume-to-weight conversion would be compromised.
- Mr. Mullen voiced concern over the lack of control over the herring once they are removed from his boat.

Measures to Confirm the Accuracy of Self-Reporting (Section 2.5)

Ms. Steele summarized the measures to confirm the accuracy of self reporting and the corresponding comments as they appeared in the Draft Amendment 5 Discussion Document. Some of the issues include: water weight in all scale measurements, certification and documentation issues, and where clarification and specification was needed in each option. Several Committee members asked questions and provided comments:

- Mr. Grout brought up a previous Committee motion, which stated that catch monitoring measures would apply to Category A, B and C vessels, and he noted that the motion assumes that all vessels pump fish into vessels holds, which was not always true, particularly for Category C vessels. Ms. Tooley agreed with his concerns about requiring vessels to adhere to measures which assume pumping when a vessel may not be pumping and also expressed concern over applying unilateral measures to the herring transport/trucking process, when it can be quite variable.
- Mr. Libby suggested that when fish totes are used, rather than holds, that the totes be measured when they arrive at the dock.
- Dr. Pierce asked for guidance from NMFS concerning the number of alternatives in the document, relative to the August 25, 2010 letter from Pat Kurkul, which he felt urges the Committee to include a large number of options for consideration, and he also noted the AP's recommendation to remove a number of options in this section of the document. Ms. Goodale responded that it is the Committee's judgment call. She pointed out that alternatives do not need to be considered if problems are identified, and she urged caution when eliminating alternatives that seem viable. She used truck certification as an example, noting that it could yield valuable information, but wondered how it would contribute to an effective catch monitoring program. Ms. Tooley clarified her understanding of the difference between "broad" and "reasonable", explaining she felt it would be misleading to bring unreasonable alternatives to the public. Ms. Goodale noted that the word "broad" in the letter was used purposefully, as everyone's definition of "reasonable" could be subjective.

- Mr. Stockwell asked Ms. Goodale comment on NMFS's opinion of the proposed Catch Monitoring and Control Plans (CMCPs). Ms Goodale felt that the CMCP options were too general and required a lot of additional work, particularly with respect to specifying the required components and requirements for vessels to submit plans as a part of the permitting process. She felt the options could work if there are a few specified ways for catch to be verified which could be selected between. Ms. Tooley questioned if the same thing couldn't be accomplished without CMCPs and noted that most fishermen would want other fishermen to be complying with the same set of rules.
- Mr. Rudolph expressed support for CMCPs, noting that variability in the fishery would allow fishermen to choose the best option for their vessels, and encouraged the Committee to specify a list of options in the CMCP section.
- Mr. Grout noted the need for an option to address vessels which do not utilize pumps or have a fish hold on board.

1. MOTION: MARY BETH TOOLEY/MIKE LEARY

That for the measures to confirm the accuracy of self-reporting, all limited access herring vessels would be required to place all fish either in a certified hold or a pre-measured container

Discussion on the Motion: Dr. Pierce questioned how the measure would be enforced and how and by whom a pre-measured container would be identified. Ms. Steele suggested that Category C vessels be addressed by the motion, rather than all vessels in the fishery. Mr. Libby thought that a standard container could be certified and marked with a tag, similar to the certification of all scales used for trade.

MAIN MOTION #1 PERFECTED:

That for the measures to confirm the accuracy of self-reporting, Category C vessels would be required to place all fish either in a certified hold or a pre-measured container

Further Discussion: Ms. Tooley was concerned about clarifying what a "pre-measured container" would be, and Mr. Grout suggested that Category C permit holders from the AP could clarify later. Ms. Goodale suggested that the entity which would certify vessel holds could also certify the containers. She also presented an example from the Surf Clam IFQ fishery, which is required in the FMP to be measured volumetrically using a unit of "cages". The cages used in the industry are certified and tagged but some boats are not large enough to carry them, and therefore the language was modified so that when the vessel lands it is required to place all clams into the cages to volumetrically measure them. Mr. Ellenton felt that the accuracy of the pre-measured containers would need to be determined, and Mr. Libby felt that weighing the containers could work better.

MAIN MOTION #1 CARRIED UNANIMOUSLY.

2. MOTION: MARY BETH TOOLEY /DAVID PIERCE

To eliminate the first two options in Section 2.5.3 re. Certifying Dealer Trucks and Transport Vehicles

Discussion on the Motion: Ms. Tooley did not feel it would be possible for all dealers to install truck scales, and noted that some dealers do not even own trucks. Some Committee members considered the specifics of weighing trucks in the remaining truck-weighing option, and Ms. Steele reminded them that some details could be specified during the Draft EIS process. Mr. Kaelin felt the third option should also be removed, as per the AP's comments, as the time between the loading of the herring onto the trucks and the weighing could allow for too much tampering, and Mr. Ellenton expressed concern over truck regulations that may be applied to dealers that do not own trucks. Some audience members opposed removing potential measures before analysis, and others noted that truck certification would still be considered if the motion passed. Ms. Steele noted that anything being left in the document for the Draft EIS and public comment would have to receive a full analysis, and encouraged the Committee to consider the scope of the draft with complicated measures.

MOTION #2 CARRIED 7-1-1.

Ms. Tooley asked Ms. Goodale to speak about the third truck option, which would require the weighing of trucks. Ms. Goodale explained that for the weighing to enhance catch monitoring, the weights would need to be tied to the fishing vessel, and that it was not clear how the process would work in the various ports. Linking vessel reports to the dealer reports is already difficult, and adding multiple tracks to each point would make it even more difficult. Ms. Goodale expressed uncertainty about the benefit for the amount of work the measure would involve. Mr. Blount expressed concern about the option.

3. MOTION: MARY BETH TOOLEY /ERLING BERG

To eliminate the third option under Section 2.5.3 for truck weighing

Discussion on the Motion: Ms. Tooley noted that her motion was consistent with the suggestions from the AP. Mr. Stockwell thought that developing a viable and comprehensive monitoring program would necessitate leaving the option in for the time being, and Dr. Pierce agreed.

MOTION #3 FAILED 2-7.

4. MOTION: MARY BETH TOOLEY /ERLING BERG

To eliminate Option 2.5.4 which would require flow scales on herring vessels or require offloading to a facility that has one

Discussion on the Motion: Ms. Tooley pointed out that if the scale option is removed, it would not be removed as an option under the CMCP approach. Mr. Grout noted that Category C vessels would need special consideration under the option if they do not pump fish and therefore could not use a flow scale.

MOTION #4 FAILED 2-7.

Presentation: An example of potential coverage rates for the directed herring fishery with respect to river herring, using SBRM

Dr. Cieri gave the Herring Committee a presentation updating the analysis in Amendment 5 that illustrates the levels of observer coverage that may be necessary to achieve the target levels of

precision identified by the Council, using the approach from the Standardized Bycatch Reporting Methodology (SBRM).

- Mr. Grout clarified that the amount of sampling needed to go from 30% to 20% to 10% CVs changed due to variability. He also noted the high variability on Georges Bank for midwater trawls. Ms. Tooley suggested that if the data from the area on the backside of Cape Cod were stratified differently, the results would change.
- Dr. Pierce noted that the analysis indicated that the CV adopted by the Committee was not achievable without significantly increasing the coverage in the fishery in particular areas and by gear types. Dr. Cieri explained that the estimates were based on precision.
- Mr. Stockwell asked Dr. Cieri asked what the decrease in trips, based on the current quota, would mean for his estimates. Dr. Cieri responded that his analysis was based on the previous year's coverage, and the decrease was not incorporated. He thought a 15% observer coverage rate would be needed as a baseline to determine what amount of coverage would be needed to achieve a 20% CV the next year in the areas which had no data.
- Mr. Rudolph inquired if the trend would continue if coverage levels continued to increase, but Dr. Cieri was uncertain as he would need to data to determine the answer. Dr. Cieri explained that there is a point at which precision is not gained by increasing sample size, but that point is unknown.
- Ms. Steele briefed the Committee on the PDT recommendations from the August 19, 2010 PDT report. She described the SBRM approach as being precision-based. She noted that some of the assumptions may not apply correctly when examining river herring, as the SBRM approach would mean an increase in sampling where there may be not river herring. She therefore suggested that the Committee add an option to the document that would look at the seasonal stratification of data and develop an approach that would consider it with respect to accuracy. Dr. Cieri clarified that it both base level coverage with additional seasonal effort and re-analyzing the data by quarters and areas could be done to develop a new approach. He also clarified that there was no way to know if accuracy would increase with the new approach, but that precision may.
- Ms. Tooley expressed concern over the grouping of Georges Bank and the backside of Cape Cod together, and Dr. Cieri suggested added coverage in that area for more accuracy, noting that the current analysis is based around management areas.
- Dr. Pierce supported the option from the PDT and was uncomfortable about increasing only precision and not accuracy, as the SBRM does. Mr. Berg questioned that if accuracy is not ultimately measurable, how it could be determined if the alternative method would be more efficient. Dr. Cieri questioned the definition of efficiency, and added that if more strata were considered, it was likely that more days at sea would be needed.

5. MOTION: DAVID PIERCE/HOWARD KING

To add an option for observer coverage levels based on seasonal stratification of river herring data intended to improve the accuracy and precision of river herring bycatch estimates

Discussion on the Motion: Mr. Rudolph urged the Committee to consider all bycatch species, not just river herring, and Dr. Pierce thought he would be receptive to a similar approach for haddock.

MOTION #5 CARRIED UNANIMOUSLY.

Development of Measures to Establish a Portside Sampling Program

Ms. Steele provided an overview of the measures to establish a portside sampling program but noted that some of the alternatives would change as the analysis continued. She also described how the current portside monitoring programs have been developed and administered by the States in which they were occurring, and she suggested that the ASMFC may want to consider developing a similar program by working with the States through the Interstate FMP for Herring. She explained that NMFS would likely require a separate entity to administer a Federal portside program, and that if it is a joint program, then the costs and responsibilities could be shared with the States.

Mr. Stockwell supported the idea of a collaborative approach but did not support remanding the portside sampling program to the ASMFC. Dr. Pierce noted that the states could not guarantee that the programs would continue, as their continuation is contingent on funding. Ms. Steele clarified that the Amendment would not force the states to administer and fund the program, but rather suggest collaboration. Dr. Pierce supported an option in the document that would have the state taking responsibility for the cost of the program, but only if the funds were available. Mr. Grout agreed with concerns of state budgets decreasing, and suggested that the Amendment could be an opportunity to lobby for full funding of the Atlantic Coastal Act or an increase in the ACCSP funding. Mr. Stockwell also agreed with funding concerns, and could not support a mandate to fund the program, but suggested that the Council should start to work with Commission staff and start thinking about some collaborative sampling approaches. That way, if the Commission does initiate an amendment to the Herring FMP, some discussion will have already occurred.

Ms. Tooley expressed concern that if the state programs were lost, the industry would suffer from lack of information for assessments and spawning closures, and noted that the programs were the most cost efficient way to sample the fishery. She suggested that a description be added to the Draft Amendment 5 Document that describes the states procedures, under the status quo alternatives, with some statements about working cooperatively together. This would encourage the Commission to consider and discuss the matter without mandating anything. Mr. Stockwell noted that the goals of accurate and timely monitoring are shared by the Commission, and asked that Ms. Steele bring this issue up at the next Herring Section meeting.

6. MOTION: DAVID PIERCE/TERRY STOCKWELL

That we include an option that States continue their portside sampling programs provided funds are found for the program, in support of the Council's priority for portside sampling coverage

Discussion on the Motion: Ms. Tooley questioned if there was a way to facilitate the state programs in the Amendment. Dr. Pierce stated that he had found good, continuous, robust checking of landings from the state program. Dr. Cieri explained how the catch at age matrix is

derived from portside sampling, and that the age structured model would not exist without it. He also noted that spawning tolerances are analyzed by portside sampling. Furthermore, he noted the differences between the portside sampling program and the at-sea observer program, and Dr. Pierce thought that there would be more discussion between the two programs in the future. Dr. Cieri also explained that information is collected from all areas, and analyzed as the Council and Commission directs, but that much of the data on individual sampling done in individual areas is confidential.

Mr. Swanson suggested that the end users should be paying for the program, and Mr. Libby felt the Committee should be recommending what coverage levels should be. Mr. Kaelin supported the motion and explained the industries success with the program so far, but expressed concerns over funding and urged the Committee to consider attainable measures. Ms. Goodale expressed concern that motion was not clear in terms of what the option would be in the amendment. Ms. Steele noted the legal problems with NMFS collecting money from the industry, and explained that the states may have more freedom and opportunity to explore alternative funding through the industry. Ms. Tooley suggested that Ms. Steele ask the Commission what the states need for the program.

MAIN MOTION #6 PERFECTED:

That we request that States continue and expand their portside sampling programs provided funds are found for the program, in support of the Council's priority for portside sampling coverage and that the Herring PDT and Technical Committee jointly meet to review the States shoreside monitoring programs in order to address the goals and objectives of Amendment 5

MOTION #6 (PERFECTED) CARRIED UNANIMOUSLY.

Measures to Require Electronic Monitoring (Section 2.9)

Ms. Steele provided an overview of the measures to require electronic monitoring and explained her concern over the lack of development of some of the options. She also expressed concern with hardwiring specific options into the Amendment prior to research being conducted regarding the technology requirements in the options. Dr. Pierce suggested that Sections 2.9.2 and 2.9.4 be combined, and once research had occurred, a Framework could apply the measure to the fishery. He also suggested that Section 2.9.3 be reconfigured for video monitoring technology. Mr. Stockwell agreed with Dr. Pierces suggestions, noting that the options have a lot of potential but require a lot of work. Ms. Tooley felt the language in Section 2.9.4 may be too restrictive and limit the research, and agreed with the recommendations for a video monitoring pilot program, but was not sure if the Council could require the Northeast Fisheries Science Center to conduct a pilot program.

Mr. Paquette suggested that the entire section regarding electronic monitoring (EM) be removed from the document, so that staff time could be better spent working on other elements of the Draft EIS. Mr. Weiner and Mr. Rudolph disagreed, and thought the measures should be considered and used to focus research, as they could ultimately provide independent estimates of weight of a net that is going to be dumped. Dr. Pierce suggested that a measure be developed to require bottom contact sensors, and asked how they were currently utilized in the fishery. Ms.

Tooley described the sensors currently used in the fishery, which are usually placed on the headrope to indicate how far off the bottom the net is. She expressed concern that if a sensor is required to be placed on the footrope, the equipment could be lost more regularly. Mr. Grout suggested that the details pertaining to collecting and monitoring the data from the sensors should be developed. Dr. Pierce questioned the cost and likelihood of loosing the sensors if placed on the bottom of the net, and Mr. Mullen thought that the equipment could be lost relatively easily if the gear gets caught on something. Dr. Pierce emphasized that the midwater trawls are not supposed to be fishing the bottom. He stated the importance of obtaining information on weather midwater trawls are being fished on the bottom, and asked if the information could be obtained through observer monitoring in the wheelhouse. Ms. Tooley believed that the observer program is not comfortable having the observers interpret what the captains are seeing on the computer screen in the wheelhouse. Mr. Stockwell questioned the information provided by the companies selling the electronic monitoring equipment, and asked if the Herring PDT could ground-truth the information. Ms. Steele replied that it could not be done until research had been conducted, and noted that the PDT and industry would need to work together to determine the best applications for the EM technology in the fishery.

The Herring Committee discussed the first three options in the EM section, and Ms. Steele pointed out that the data collection procedures for requiring net sensors are not clearly spelled out in the document. Ms. Tooley clarified that NMFS does not have any expertise on determining where a catch sensor should be placed on the net. She also did not think any of the net sensor options would be applicable to purse seine vessels. Dr. Pierce again expressed support for modifying Section 2.9.4 to be specific to bottom contact sensors and outlined two options – the E-sonar bottom contact sensors, or another strategy to take advantage of existing technology.

7. MOTION: DAVID PIERCE/TERRY STOCKWELL

To modify Section 2.9.3 so that it would read “this option would establish a top priority for use of the RSA to establish a video monitoring pilot program. Requirements for using a video monitoring system would be added to the list of items that can be implemented through a framework adjustment.” Also modify Section 2.9.4 to read “Option: Electronic Monitoring” – Require a Height or Bottom Contact Sensor for determining the amount of bottom contact of trawls during each tow

Discussion on the Motion: Dr. Pierce clarified that the intent is for NMFS to collect the data, and the data would be used by PDTs, specifically the Habitat PDT since the question is bottom contact of trawls. He noted that if it is determined that there is bottom contact occurring in the fishery, then the Council would be able to take action. Evaluation of the data collected by NMFS through the PDTs would be instructive and enable the Council to act on the data with regards to habitat protection and reducing bottom contact. Ms. Goodale asked that the Committee specify how the data would be collected/submitted. Ms. Tooley stated that not all vessels have the same equipment on board, and noted the need for more information on how the data would be reported. Mr. King asked for clarification regarding whether the research priorities should be specific to RSA funding.

MAIN MOTION #7 PERFECTED:

To modify Section 2.9.3 so that it would read “this option would establish a top priority for cooperative research to establish a video monitoring pilot program. Requirements for using a video monitoring system would be added to the list of items that can be implemented through a framework adjustment.” Also modify Section 2.9.4 to read “Option: Electronic Monitoring” – Require a Height or Bottom Contact Sensor for determining the amount of bottom contact of trawls during each tow (language in 2.9.2 will reflect top priority for cooperative research instead of RSA)

MOTION #7 (PERFECTED) CARRIED UNANIMOUSLY.

Catch Monitoring – Outstanding Issues/Development of Alternatives

Ms. Steele presented a summary document, which included a flow chart to illustrate how the catch monitoring alternatives could be constructed, as well as a series of tables updating the Committee on the status of each option under development in the draft amendment. The Committee then addressed some outstanding issues.

8. MOTION: MARY BETH TOOLEY /ERLING BERG

To eliminate Section 2.4.3.4 sub-option related to the length of carrier vessels and add Section 2.4.3.5.2 for a dual option for carrier vessels

Discussion on the Motion: None.

MOTION #8 CARRIED 7-0-1.

Ms. Steele reviewed the measures to address maximized retention (MR) more specifically. Ms. Tooley suggested that the Committee review the species list proposed for maximized retention to determine the feasibility of implementing such a program in this amendment (based on allowances and restrictions on landing certain species in the herring fishery). She suggested that Highly Migratory Species, striped bass, river herring and possibly menhaden be removed from the proposed MR list. Dr. Pierce asked for the rationale for excluding river herring, and Ms. Tooley explained that river herring were illegal to land in certain states, such as Rhode Island. Ms. Steele clarified that the idea behind the list was for the Council to pick and choose species that MR would apply to if the preferred alternative became maximized retention across the entire fishery. Ms. Tooley felt that a simpler approach would be to pare down the list at the present time. Mr. Grout noted that for striped bass to be landed, the Federal rule, an Executive Order, and a number of State rules would likely need to be amended.

9. MOTION: MARY BETH TOOLEY /JIM FAIR

That under Section 2.6.2.2, the following species be removed: highly migratory species, striped bass, river herring, and shad

Discussion on the Motion: Mr. Stockwell expressed concerns over removing river herring and shad, but asked that monkfish be removed as well.

MAIN MOTION #9 PERFECTED:

That under Section 2.6.2.2, the following species be removed: highly migratory species, striped bass, and monkfish

Further Discussion: Mr. Blount expressed concern that river herring are being landed despite prohibitions, and noted that it is typically difficult to avoid river herring anyway. Ms. Tooley clarified that vessels are not allowed to retain dogfish according to the LOA, but noted that enforcement cannot ensure that the vessels are discarding every dogfish. She suggested that the species allowed under the herring LOA be revisited since they originated from the groundfish regulations.

MOTION #9 (PERFECTED) CARRIED UNANIMOUSLY.

Ms. Steele explained that if the maximized retention is going to be considered fishery wide, then big issues that still need to be addressed include if and how video monitoring would be used and if and how the phase-in options would work.

10. MOTION: TERRY STOCKWELL/ERLING BERG

To include Section 2.6.4.2 new option for disposal of non-permitted catch

Discussion on the Motion: Ms. Tooley expressed concern that the motion would not adequately address disposal issues, noting that after the required 12 hours, most boats take the catch back out to sea and dispose of it. She also questioned how else to dispose of the species that aren't marketable, and noted that bringing in herring to be sampled may lead to driving prices down in the market due to too many fish being landed. Mr. Libby felt that with the low quotas, there wouldn't be too many fish that would be unmarketable. Ms. Tooley further explained that a vessel may have an idea of how many fish need to be landed to fill a certain number of tanks, but that with maximized retention, all the extra fish would need to be loaded into spare tanks, and to avoid instability the entire tank would need to be filled, bringing in more fish than they originally intended. Mr. Mullen confirmed that the herring market can change quickly. Mr. Kaelin pointed out that certain fish will deteriorate an entire tank of catch if pumped in, and thought that a vessel should be able to let those fish go and record what was discarded.

MOTION #10 CARRIED UNANIMOUSLY.

Mr. Stockwell stated that he was not prepared to make a motion about video based electronic monitoring, but that he was supportive of the concept and thought the section was in need of more discussion and development. Ms. Tooley asked clarifying questions about how maximized retention would apply in the different options. Ms. Steele explained that maximized retention could apply three ways: fishery wide, only when an observer was present, or not at all. Ms. Steele asked that the Committee address the permit categories to which the EM provisions may apply. She also asked the Committee to clarify who would collect the video camera data, who would analyze it, and how the enforcement process would work. She noted that video technology currently may not exist to confirm species-based maximized retention in the fishery.

Mr. Stockwell expressed concern that the maximized retention measures are not ready to move forward yet and was torn over deleting them from the document or potentially delaying progress on the amendment. Mr. Grout agreed that the decision needed to be made. Mr. Blount expressed

support for continuing to consider video monitoring, although he was uncertain about the details. Ms. Steele encouraged the Committee to make decisions, and reminded them that the measures would be moving into the EIS phase, not the final decisions phase. She asked that the amendment remain realistic, and that if questions could not be answered, that the option be taken out. She also suggested that the maximized retention options could be brought forward to the Council as-is, acknowledging that the details need to be developed, but that if they are not developed by the time the Draft EIS is completed, then the decision will need to be made about whether to eliminate them. Dr Pierce and Mr. Stockwell agreed and thought bringing the issue to the Council would be a good idea.

Mr. Grout and Ms. Steele discussed the concerns that the PDT had over the option that requires levels to meet target CVs in the portside sampling section, and Ms. Steele noted that the PDT may not even be able to apply the observer criteria to the portside sampling program.

11. MOTION: MARY BETH TOOLEY/TERRY STOCKWELL

To eliminate Section 2.8.4.2.4 under options for portside sampling coverage levels

Discussion on the Motion: Ms. Tooley pointed out that the original idea was to combine the observer and portside sampling data to help guide the option, but that the more the PDT analyzed, the more difficult the task became. She stated a need to line up events that have overlap between portside sampling and observer sampling to learn more about both the observer and portside data. She also noted that trying to meet the CV levels would be very problematic based on the current data. Ms. Steele clarified that significant analysis would need to be undertaken to make the option work; it would have to mirror what was done with the observer program but be modified for the portside sampling program.

MOTION #11 CARRIED UNANIMOUSLY.

Opportunity for Public Comment

Mr. Robbins, of the F/V Western Sea and speaking on behalf of the seiners, pointed out that the fishing was at the worst he had ever seen, and that there were no fish left. He described a joint project with Pew that involved a video camera on his boat. He pointed out that the price of lobster had dropped and that the lobstermen are bearing the brunt of the herring fishery woes. He was also concerned about the efficiency of trawling, and noted that it was not allowed in Canada. He suggested that trawlers not be allowed in Areas 1A and 1B, and thought pair trawlers should be banned entirely. He believes that they are too efficient in areas such as the backside of Cape Cod, where seiners cannot go. He expressed concern over harvesting spawning fish and recommend that the Committee consider rules to keep the trawlers out when the herring are spawning on Georges Bank, such as spawning closure areas. He suggested that the penalty structure for catching spawning fish should be first a warning, second a fine of \$50,000, and third, removal from the fishery.

Day 1 of the Herring Committee meeting adjourned at approximately 7:00 p.m.

Thursday, September 2, 2010 (Day 2)

Prior to the start of the day's agenda, Rick Robbins, Mid-Atlantic Council Chairman, made a statement to the Herring Committee. He briefed the Committee on the initiation of Amendment 14 to the Squid, Mackerel and Butterfish FMP, which overlaps with the actions proposed in Amendment 5 to the Herring FMP. There are many goals for the amendment, including: evaluation of river herring and shad catch, creation of an effective monitoring program for fisheries, consideration of alternatives to minimize bycatch, development of alternatives to reduce river herring/shad catch, and consideration of management integration issues. He reported that the Mid-Atlantic Council also tabled a discussion about an Anadromous FMP, and had a discussion about the integration of management. He told the Committee that there would be an October 6, 2010 informational meeting for the Squid, Mackerel, and Butterfish Committee, and he encouraged continued cooperation between the two Councils.

Presentation, Discussion, and Development of Recommendations: Identification of River Herring Hotspots At-Sea Using Multiple Fisheries Dependent and Independent Datasets

Dr. Jamie Cournane from the Herring PDT presented an updated analysis that can be used to select a range of alternatives for river herring hotspots in Amendment 5. After the presentation several Committee and audience members had questions and comments:

- Mr. Stockwell asked for clarification on the overlay between the observer bycatch data, the PDT's new approach for identifying hotspots, and the Bottom Trawl Survey (BTS). Dr. Cournane explained the differences between the BTS data and the observer data and suggested that if the BTS is not operating in the same place where the fishery is operating during some time of the year, the observer data can help identify additional candidate hotspots.
- Dr. Cournane explained to Mr. Grout that the analysis stratified the data at a given point (such as the mean, median, or 75th percentile) and then combined it with a metric of percent occurrence, with the intent to look at catch frequency and move beyond rare events.
- Dr. Pierce inquired why there is no hotspot identified on the back of Cape Cod. Dr. Cournane responded that the BTS provides a framework upon which the Committee can build, including adding (and subtracting) hotspots based on the operation of the fishery. She encouraged the use of multiple sources of data for making decisions.
- Dr. Pierce noted that the nature of the fishery has changed and that catch from small mesh bottom trawls has become especially important in the winter and spring months. He asked if it would be possible to conduct similar research on the mackerel and squid fisheries, as the MAFMC was moving forward with measures for river herring bycatch. Dr. Cournane mentioned that she had been discussing this with the MAFMC.
- Ms. Tooley expressed concern over the potential management approaches to be considered in the candidate hotspots, and the potential for movement of effort into adjacent blocks if a block was closed, which could increase mortality incidentally. Ms. Steele suggested that the Committee select hotspots based on the management objectives.
- Mr. Paquette inquired if the data included the Maine or Massachusetts portside sampling program, and if the analysis includes incidental catch, and not just discards. Dr. Cournane

responded that incidental catch was included, but that the portside data are not available in the right format at this time.

- Mr. Crawford asked if it is possible for the observer data to be combined with the quarter degree squares while addressing confidentiality issues. Ms. Wetmore explained that the observer program would have to follow the same rules that Dr. Cournane had to use with respect to confidentiality. Dr. Cournane and Ms. Wetmore agreed that this could be explored further if the Committee is interested.
- Mr. Kaelin expressed concern that the fishery data had been combined for all years in the analysis and noted that although the fleet had changed its behavior in response to river herring bycatch, it is not possible to determine if the changes have had an effect because the data are grouped. He also suggested that the analysis be broken down by gear type, and stated that he thought it was premature to use the data in the current form. Dr. Cournane explained that the PDT had discussed some of the issues, and had plans to look at the gear types more closely in the EIS. Mr. Kaelin noted that the AP supports including Category D vessels in the river herring management measures, and felt that if the data considered gear types individually, then this would be important. He also asked for an update on the river herring stock assessment.
- Ms. Goodale described the general guidance she had been given from NMFS Enforcement in regards to management area sizes; area management bounds should be specified in regular shapes and at least two nautical miles. There was some discussion regarding the size of a quarter degree square.
- Mr. Rudolph asked Dr. Cournane how the 75th percentile was chosen as a threshold, if State surveys were included, how the Herring PDT saw the measures moving forward, and if there was consideration of herring "NK" in the analysis. Dr. Cournane replied that the 75th percentile was chosen to isolate the high values, and noted that other thresholds could be chosen. She explained problems with adding data from the state surveys at this time but noted that the PDT may examine these data further in the Draft EIS. She explained that the PDT had agreed that the quarter degree square approach produces similar results to the statistical area approach; at this time, the PDT has put forward several methods for identifying hotspots with some general advice and recommendations for the Committee to consider. She explained that herring NK were not included in the analysis, but could potentially be looked at in the future.
- Mr. Grout pointed out that a hotspot that appears in the fall could be quite different than a hotspot in the winter or spring because the magnitude of catch from the trawl surveys and the amount of percent occurrence is different seasonally. Dr. Cieri urged caution in comparing surveys, because they are stratified differently, use different gear types, and have different magnitudes.

12. **MOTION: DAVID PIERCE/JIM FAIR**

That, as one alternative, river herring hotspots will be based on ¼ degree squares where NEFOP river herring weights have been greater than 40 pounds for at least one tow from 2005-2009. Hotspots will vary seasonally (bi-monthly) and be based on the PDT analyses. NMFS BTS candidate river herring hotspots based on the 75th quartile identified by the PDT will become actual seasonal hotspots (survey seasons) when NEFOP data document river herring catch greater than 40 pounds in any tow. As a

second alternative, river herring hotspots will be based on ¼ degree squares where NEFOP river herring weights have been greater than 129 pounds for at least one tow from 2005-2009. NMFS BTS candidate river herring hotspots based on the 75th quartile identified by the PDT will become actual seasonal hotspots when NEFOP data document river herring catch greater than 129 pounds in any tow.

Discussion on the Motion: Dr. Peirce pointed out that the motion would allow the Committee to utilize the PDT approach while still utilizing available observer data. Ms. Steele clarified that the hotspots would vary bimonthly, and that candidate areas would vary seasonally. Dr. Cieri urged caution in setting management thresholds based on the observer data, as it represents an extrapolation from ten basket samples. Dr. Pierce expressed confidence in the observer protocol.

MOTION #12 CARRIED 6-0-2.

Ms. Steele asked the Committee to consider how the motion would apply to the management measures under consideration, and more specifically how it would apply to the move along rules and closed areas. She also noted that if an area was closed, then observer data would not be collected from the areas, and she asked if only the original hotspots identified by the Committee would apply to a closed area alternative (the Committee confirmed). If move along rules are applied, she suggested that the thresholds be at the trip level, so that the observer could communicate the catch information to NMFS at the end of the trip.

Mr. Grout suggested that with the move along rule, the numbers from the motion be set as the thresholds for consideration, and that vessels would be required to move out of the area for a specified amount of time. Mr. Stockwell supported the idea, but was not sure how long the vessels would need to leave the area. Ms. Steele clarified that the PDT would not be able to provide recommendations regarding time requirements based on any available data. Mr. Grout suggested two options for the closure time, one week and the entire duration of the hotspot (two months). Dr. Pierce felt that preliminary results from the Sustainable Fisheries Coalition project should be able to inform the decision regarding move along time. He also felt that it is important that the triggers be on a tow-by-tow basis, to be communicated through the mechanisms being investigated by the project. Ms. Wetmore noted that the observers don't currently report on a tow by tow basis but that the data are available at this level following completion of the trip.

Mr. Stockwell expressed concern over observers acting as enforcers, and felt that the turnaround from triggering a hotspot to having it implemented would be at least one week. He noted that the longer the implementation takes, the more likely the fish are to have moved out of the areas and into the open areas where fishing effort would shift. Mr. Fair felt the measure could work cooperatively like the scallop yellowtail flounder avoidance program, providing that the fleet has an incentive to stay away from the river herring.

13. MOTION: DAVID PIERCE/TERRY STOCKWELL

That the threshold for river herring bycatch that would trigger move along strategies would be either greater than 40 pounds per trip or 129 pounds per trip and that the time vessels would be required to remain out of the quarter degree squares where the trigger was reached would be either one week or two weeks

Discussion on the Motion: Mr. Leary was concerned that the numbers in the motion may be too low, and that they may encourage the fisherman to stay in the area and catch as much as possible on the trip, knowing the area will eventually be shut down. Ms. Tooley agreed that the numbers may be too low. Dr. Pierce clarified that only the quarter degree square in which the fish are caught should be shut down when the trigger is reached. Ms. Steele noted that vessels may be fishing in multiple quarter degree squares and would not be able to separate out where the fish were caught, so the move along would need to apply to any hotspot squares in which the vessel is fishing. Ms. Tooley noted that the small mesh bottom trawls have a high rate of catching river herring, and she expressed concern that one gear type would be impacting the entire fishery. She further noted the different catch rates for different gears in the same area, and expressed concern about the fishery-wide effect of some gears. Mr. Stockwell expressed concern over the numbers in the motion, and Mr. Grout suggested that a high threshold be included in the motion, to provide a range for the analysis.

MOTION #13 PERFECTED:

That the threshold for river herring bycatch that would trigger move along strategies would be either greater than 40 pounds per trip or 129 pounds per trip and that the time vessels would be required to remain out of the quarter degree squares where the trigger was reached would be either one week or two weeks. As another alternative, the thresholds would be either an average of greater than 40 pounds per tow per trip or an average of greater than 129 pounds per tow per trip.

Further Discussion: A few people expressed further concern over the threshold numbers in the motion. Ms. Steele questioned the permit categories to which the measures would apply.

MOTION #13 WAS WITHDRAWN BY ITS MAKER.

14. MOTION: TERRY STOCKWELL/DAVID PIERCE

That the threshold for river herring bycatch that would trigger move along strategies would be either greater than 500 pounds on a trip or 2,000 pounds on a trip, and that the time vessels would be required to remain out of the quarter degree squares where the trigger was reached would be either one week or two weeks

Discussion on the Motion: Ms. Goodale affirmed that NMFS would probably need one week to implement the closed areas/move alongs, and that then there would need to be time to contact the industry. She noted that her office would need to think through the implementation once the maps have been created. She suggested that the scale and timeframe be broadened.

Mr. Kaelin asked if the Draft EIS would analyze the conservation benefits of the measures on river herring. Ms. Steele noted that this would be addressed in the analysis to the extent possible, but that the measures are not being proposed primarily to reduce bycatch in the fishery. A few Committee members felt that the measures are also proposed for river herring conservation. Ms. Steele noted that there is currently no river herring assessment, and therefore no mechanism to estimate how much mortality would be reduced by the proposed measures. Ms. Tooley explained that river herring are not bycatch, but are incidental catch. Mr. Leavenworth, from the University of New Hampshire's Gulf of Maine project, noted that historically, river herring were not caught along with sea herring, and were more a part of the trophic system.

Mr. Brogan noted the need for river herring to become a stock in the Atlantic Herring FMP, for the purposes of implementing ACLs, and so that the Science Center would need to create a benchmark to measure the fishery against. Mr. Fleming asked for a lower threshold in the motion, to be consistent with the previous motion and also supported river herring becoming a stock in the Atlantic herring fishery. Ms. Tooley did not agree with the suggestion to make river herring a stock in the fishery, as river herring does not meet the definition of bycatch, and she added that such an approach would not be consistent with other fisheries FMPs. Dr. Crawford provided some information about upcoming river-specific stock assessments, noting that soon the management would be of a river herring stock complex. He also suggested considering an alternative that would use an approach based on sequential tows for a trigger, to detect repeated river herring encounters.

MOTION #14 PERFECTED:

That the threshold for river herring bycatch that would trigger move along strategies would be either greater than 50 pounds on a trip, 500 pounds on a trip, or 2,000 pounds on a trip, and that the time vessels would be required to remain out of the quarter degree squares where the trigger was reached would be either one week or two weeks.

Further Discussion: None.

MOTION #14 CARRIED 7-1.

15. MOTION: TERRY STOCKWELL/FRANK BLOUNT

To add a third alternative for an upper threshold of greater than 1,233 pounds for identifying hotspots. Under this alternative, river herring hotspots will be based on $\frac{1}{4}$ degree squares where NEFOP river herring weights have been greater than 1,233 pounds for at least one tow from 2005-2009. Hotspots will vary seasonally (bi-monthly) and be based on the PDT analyses. NMFS BTS candidate river herring hotspots based on the 75th quartile identified by the PDT will become actual seasonal hotspots (survey seasons) when NEFOP data document river herring catch greater than 1,233 pounds in any tow

Discussion on the Motion: Mr. Stockwell noted that the motion would allow for a larger range of triggers to be considered for identifying hotspots.

MOTION #15 CARRIED 6-0-1.

Mr. Grout asked how the Committee wanted to address the closed area alternative for the river herring hotspots. Some general cleanup of the Draft Document was considered by the Committee, and it was agreed that the closed area alternative would apply only to "stage 1" hotspots, i.e., those identified by the Committee as the initial hotspots.

16. MOTION: MARY BETH TOOLEY/TERRY STOCKWELL

To add an alternative that would apply the Closed Area I Final Rule provisions when an observer is on board the vessel

Discussion on the Motion: Mr. Kaelin expressed support for the motion, and noted that a meeting for the Sustainable Fisheries Coalition would be taking place on October 1, 2010. Some

audience members opposed the motion as it did not get at complete information collection, and one member felt the industry should be paying for the observer coverage.

MOTION #16 CARRIED UNANIMOUSLY.

Mr. Leary questioned what would happen if a vessel had already started a trip, and the area closed.

17. MOTION: MIKE LEARY/MARY BETH TOOLEY

For a hotspot closure (from the move alongs), that all fishing ceases upon the date/time that the closure is established

Discussion on the Motion: None.

MOTION #17 CARRIED UNANIMOUSLY.

18. MOTION: TERRY STOCKWELL/JIM FAIR

For Alternative 7 (river herring closed areas), to include all permit categories A, B, C, and D

Discussion on the Motion: Mr. Leary clarified that the areas would be closed to all permitted herring vessels. Mr. Blount noted that a Category D permit holder could be fishing for groundfish with 6.5 inch mesh and still be prohibited from fishing in the areas. He asked to clarify if the restriction would be for all gears capable of catching herring, or just the Category A-D permit holders. Mr. Rudolph suggested that the language be changed to address “directed fishing for herring”, but Ms. Steele pointed out the difficulties associated with writing a regulation specific to “directed fishing.” Mr. Kaelin supported the motion and asked that the move along rules apply to Category D permit holders as well, noting that the number of vessels with VMS needs to be researched to see if they need to be required in the amendment.

Mr. Libby asked if, as a Category D permit holder, he could surrender his permit and then reapply later to get it back. Ms. Goodale responded that the permit could be given up, but that it couldn't be reissued until the beginning of the next fishing year. Mr. Blount felt the definition for the closure should be reconsidered, as many latent permit holders would be brought into a punitive situation. Ms. Steele suggested that the Committee should be consistent in its approach to closed areas and reminded them of the measures to address midwater trawl access to groundfish areas. Mr. Kaelin suggested utilizing an LOA, so that the small mesh bottom trawl fleet is addressed specifically. Mr. Blount did not think it was appropriate to require groundfishermen to give up their herring permits because of the proposed closures. Mr. Stockwell disagreed, and noted that only some hotspots would be closed, not the entire fishing area. Mr. Leary asked if the restriction would apply to lobster or tuna fishermen in the area who may have herring on board as bait. Ms. Goodale clarified that 5.5 inches separated small mesh and large mesh gear in the SBRM.

MOTION #18 PERFECTED:

For Alternative 7 (closed areas), to include all permit categories A, B, C, and D; and to exempt vessels using mesh greater than or equal to 5.5 inches

Further Discussion: Dr. Cieri noted discrepancy between the intent of the motion and the analysis conducted thus far by the Herring PDT. Mr. Rudolph suggested the alternative approach of limiting all vessels to 2,000 pounds in the areas of concern. Mr. Blount noted that the motion would restrict all gear capable of catching herring. Ms. Peters-Mason read the regulatory text that states a fishermen is allowed to possess bait on board by limiting gear with it, and suggested adding in the gears the Committee does not want fishing in the hotspots and paring them with mesh size.

MOTION #18 CARRIED 5-1.

Ms. Steele asked to clarify what category permit holders would be considered with the move along rules and other measures to address river herring bycatch. Ms. Tooley expressed concern about applying some of the measures to all permit holders, noting that a small boat should not be able to restrict the entire fishery. Applying the measures unilaterally to all permit holders appealed to her too, as it would open up discussion on different gear types. Mr. Stockwell pointed out that the AP recommended the same thing. Ms. Steele noted that at this stage in the process, the most restrictive action could be considered, and the Council could choose a less restrictive option later. She noted that it would significantly expand the program and increase costs and scope and increase the difficulties in implementing the notification system for the move along rule.

19. MOTION: TERRY STOCKWELL/MARY BETH TOOLEY

With the exception of Section 3.3.4 (Alt 7), measures to address river herring bycatch in Amendment 5 would apply to (option 1) A, B, and C vessels; and (option 2) A, B, C, and D vessels

Discussion on the Motion: Ms. Tooley felt the measures should go to public comment so the implications could be discussed. Mr. Weiner noted that many tuna fishermen may rely on their Category D permits during some time of the year.

MOTION #19 CARRIED UNANIMOUSLY.

Establishing Criteria for Midwater Trawl Vessel Access to Groundfish Closed Areas

Ms. Steele described some potential mechanisms for establishing criteria for midwater trawl vessel access to groundfish closed areas. The first was to implement the alternatives through a groundfish action, possibly a framework adjustment. The second was to implement the alternatives through action with the Groundfish Committee. The third mechanism would require adopting the groundfish closed areas into the Atlantic Herring FMP. She noted that in all three cases, the Groundfish and Herring PDTs and Committees would likely need to coordinate work.

Mr. Stockwell explained that the Groundfish Committee was finishing Framework 45, and therefore it is too late to include the measures in that action. He suggested instead that a recommendation be made to the Groundfish Committee to develop a complimentary action. Ms. Tooley noted that the Framework contained specifications for both the US and Canada, and therefore could not be slowed down. She suggested that a full council discussion was needed, with the intention to include the measures in a future framework.

Mr. Libby supported keeping the options in the Amendment 5 document. Mr. Blount understood the need to keep the options in the document, but did not see the use of them without a groundfish action. He suggested that perhaps the Groundfish FMP could be modified to allow the Atlantic Herring FMP implement measures. Ms. Goodale confirmed that there would need to be a groundfish action even if the measures were implemented through the Atlantic Herring FMP. Ms. Steele noted that the most straightforward options would be to make Amendment 5 a joint framework with the Groundfish Committee or just simply do a groundfish framework adjustment. Ms. Tooley pointed out that both PDT's would need to be involved, and she therefore thought that input was needed from the full Council.

20. MOTION: TERRY STOCKWELL/MARY BETH TOOLEY

That the Council prioritize a joint Groundfish/Herring Action (as part of Herring Amendment 5) to establish criteria for midwater trawl vessel access to the groundfish closed areas

Discussion on the Motion: Ms. Tooley thought the Council should make this decision. Mr. Fleming stated that he does not think that a joint action was needed, and that criteria could be set up in the FMP to regulate the herring fishery, so that there would not be a need for further delay. Several audience members wanted the options to move forward in some way.

MOTION #20 CARRIED UNANIMOUSLY.

Measures to Address Interactions with the Mackerel Fishery

Ms. Steele described the measures to address interactions with the mackerel fishery. She noted the measures are proposed to address mackerel that did not qualify for limited access herring permits and may be discarding large amounts of herring, as the Category D permit holders are only allowed 6,600 pounds. Ms. Tooley described Amendment 11 to the Mackerel FMP and noted that it was open for comments until October 12, 2010, and that the MAFMC was trying to align herring and mackerel measures. She suggested that Amendment 5 mirror the mackerel amendment and noted that one alternative in the mackerel amendment would allow for 20,000 pounds if the herring vessels doesn't qualify for a limited access mackerel permit. She therefore suggested that Amendment 5 also consider an allowance of 20,000 pounds for mackerel vessels that do not qualify for a limited access herring permit.

21. MOTION: MARY BETH TOOLEY/MIKE LEARY

To amend Section 5.1.3 (Mackerel Alternative 3) that would increase the open access possession limit to 20,000 pounds in Areas 2/3 only for vessels that also possess a limited access mackerel permit

Discussion on the Motion: Mr. Fair asked if there were control dates in use in the mackerel plan, and Ms. Tooley responded that there were, but that none could be described easily. Ms. Tooley noted that if the motion passed, there would be three options in the document, one for 10,000 pounds, one for 20,000 pounds and another for 25 mt. Ms. Steele explained that this option that would be directly tied to limited access mackerel permit holders, and suggested that the other options be modified to include this connection. Mr. Kaelin explained his involvement with the mackerel amendment and pointed out that only about 128 Category D vessels have mackerel permits, and none of them are taking close to 25 metric tons. He also noted that there

would be an open access mackerel permit and suggested that there be the same allowance for the open access permit holders participating in the mackerel fishery.

MOTION #21 CARRIED UNANIMOUSLY.

Measures to Protect Spawning Fish

Ms. Steele explained that no work had been done on options to protect spawning fish since the Executive Committee/Council added the issue to the amendment. She asked for Committee guidance on how to proceed in addressing it. Mr. Stockwell recognized that the past year had been difficult for the fishery, despite Area 1A spawning protection. He also recognized the need to protect the spawning fish in the other areas for the future and strongly supported keeping the measure in the amendment. He proposed taking it to the Council to make sure it's still a priority with the understanding that if it is, then moving alternatives forward for the Draft EIS would have to wait until at least the November meeting. Mr. Libby agreed with keeping it in the document. Mr. Grout asked if there was any data to determine spawning activity on Georges Bank, and Ms. Tooley replied that NMFS scientists had difficulty identifying spawning times for the acoustic survey.

Ms. Steele asked the Committee to be reasonable about the time frame and the work that needed to be done, noting that the PDT had not done any analysis yet. She also noted that the analysis would be a large undertaking. Dr. Cieri thought that the work would take around three months to complete, because the same GIS maps as the herring hotspot analysis would need to be produced. He explained that an ASMFC action addressed the same issue from inshore, and took two scientist a half a year to analyze. Mr. Grout thought it would delay the amendment by at least a year, because timelines and how many spawning fish to save would also need to be determined.

Mr. Robbins felt the issue was simple, that herring should be protected when spawning by a three-tier punishment system similar to his comments from the previous night. Mr. Paquette suggested that the same move along rules from the hotspot section be applied the spawning fish section, with a simple benchmark for the move along and thresholds. Mr. Kaelin agreed that the dates would be difficult and should not be glossed over, and described the Canadian effort on spawning fish.

Ms. Steele drew attention to a Cape Cod Commercial Hook Fishermen's Association letter in the correspondence packet, relevant to the issue. Mr. Rudolph expressed hope that the Committee could take action to request some more information at this meeting. He suggested that explanation of the existing regulations and information about spawning is important and should come forward to the next Council meeting. He felt that action on the issue was critical, and that public information was lacking. He suggested that the management boundaries be reconsidered and sited the possibility of multiple stocks on Georges Bank. Dr. Cieri requested that the Committee be specific about goals and objectives, as well as the time and area strata that they wanted, as it would speed up the analysis. Mr. Ellenton supported removing the section from the document until the goals became clear. The Committee took no specific action on this issue and agreed to move it forward for further discussion by the Council in September.

Ms. Steele asked the Committee to clarify how it wanted the Amendment 5 document to move forward. Mr. Grout recommended that each section of the document be presented with each of the items that are in it, and that the places that need development be outlined. That way, the Council could decide what to do with the document – move forward a part of it, send it back for further development, or any other option.

Outstanding Issues, Other Business, Public Comment

Ms. Tooley mentioned recent concerns about the haddock catch cap. A letter provided by NMFS brought the Committee up to date with the status of the current catch cap, and Ms. Tooley noted that this is an issue for the Groundfish Committee to consider.

Mr. Paquette, representing the Recreational Fishing Alliance, informed the Committee of his intent to stage a protest at the next Council meeting against how the herring fleet is being managed off the Cape Cod. He described a recent incident in which many herring were present on the backside of Cape Cod before Memorial Day, and were feeding the striped bass, and that they were depleted in one week by five boats from the herring fishery. When the herring left, the pollock and bass left too, and a dead humpback whale arrived in the area, although the cause of death is unknown. He noted the financial importance of the recreational fishery in that area, and asked for help. Ms. Tooley brought up some conversations she had with the vessels working in that area, in which the vessel operators suggested that the observer coverage was very high. She suggested that Mr. Paquette talk to the observer program to determine if juvenile fish were being landed, as he had suggested.

Mr. Robbins felt that draggers should be removed from the industry, as seiners do not catch haddock, but are punished by the cap regardless.

The Herring Committee meeting adjourned at approximately 5:45 p.m. on September 2, 2010.

