

ATLANTIC STATES MARINE FISHERIES COMMISSION

Royal Pavilion Resort Atlantic Beach, North Carolina

ATLANTIC HERRING SECTION

May 17, 1999

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ATLANTIC STATES MARINE FISHERIES COMMISSION

Royal Pavilion Resort Atlantic Beach, North Carolina

ATLANTIC HERRING SECTION

May 17, 1999

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**Attendance**

Herring Section Members:

Lew Flagg, Maine DMR

Phil Coates, Massachusetts DMF

Dr. Lance Stewart, Connecticut Gov. Appte.

Rep. Dennis Abbott, New Hampshire Leg. Appte.

Brian Culhane, proxy for Sen. Johnson, NY Leg. Appte.

Dick Sisson, RI DEM, proxy for David Borden

Steven Driscoll, NH Gov. Appte.

Pat Augustine, NY Gov. Appte.

Bruce Freeman, New Jersey DFG&W

Tom Fote, NJ, proxy for Sen. Bassano

Bill Adler, Massachusetts Gov. Appte.

John Connell, New Jersey Gov. Appte.

Vito Calomo, MA, proxy for Sen. Verga

Ex-Officio Members:

Artie Odlin, AP Chair

Jeff Marston, NH, LEC Rep

Other Commissioners:

ASMFC Staff:

John H. Dunnigan

Dr. Joseph Desfosse

Guests:

Bob Ross, NMFS

Rob Winkel, NJ

**There may have been others in attendance who did not sign the attendance sheet.**

Atlantic Herring Section

May 17, 1999

**SUMMARY OF MOTIONS**

1. *Motion to approve the minutes of the January 11, 1999 meeting.*

Motion by Mr. Augustine, second by Mr. Adler, motion approved with no objection.

2. *Motion to approve the implementation plans for Maine, New Hampshire, Connecticut and New Jersey.*

Motion by Mr. Augustine, second by Mr. Connell; motion approved with no objection.

3. *Move motion to conditionally approve Massachusetts' (implementation) plan.*

Motion by Mr. Augustine, second by Rep. Abbott; motion withdrawn with no objection.

4. *Motion to recommend to the ISFMP Policy Board to approve initiation of an amendment to the Atlantic Herring FMP to include at a minimum a controlled access system. Motion by Mr. Augustine, seconded by Representative Abbott*

Motion by Mr. Augustine, second by Rep. Abbott; motion withdrawn with no objection.

5. *Motion stating that we, the Commission, move forward with establishing a control date for limited entry in (management area) 1A of 8/1/99.*

Motion by Mr. Augustine, second by Mr. Flagg;

Motion amended to read: *Move that it's the Commission's intention to notify the public that at its June 14th and 15th Section meeting it will discuss the need for a control date in the herring fishery.*

Motion perfected to read: *Moved that it is the Commission's Atlantic Herring Section's intention to notify the public that at its June 14th and 15th Section meeting, it will discuss the need for a control date for limited access.*

Motion passes with no objection and with Rhode Island abstaining..

ATLANTIC STATES MARINE FISHERIES COMMISSION  
Royal Pavilion Resort Atlantic Beach, North Carolina  
ATLANTIC HERRING SECTION MEETING  
May 17, 1999  
- - -

The Meeting of the Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Nassau Room of the Royal Pavilion Resort, Atlantic Beach, North Carolina, Monday afternoon, May 17, 1999, and was called to order at 1:15 o'clock p.m. by Executive Director John H. Dunnigan.

**WELCOME/INTRODUCTIONS**

EXECUTIVE DIRECTOR JOHN H. DUNNIGAN: Good afternoon. Welcome to the ASMFC Atlantic Herring Section. The chairman of the Section is David Borden. I won't tell you where David and Edith were last week, but he's not here yet today. If he gets here before we get too far into the meeting, I'm sure he'll come to the chair. The vice-chair is John Nelson, who is not with us either. The Commission's practice is if the chair and the vice-chair are not here, that the senior staff member in attendance runs the meeting, and so that's what I'm going to do. And at this point, I would like to ask Joe Desfosse to call the roll.

(Whereupon, the roll call was taken by Dr. Joseph C. Desfosse.)

DR. JOSEPH C. DESFOSSE: You have a quorum.

**APPROVAL OF AGENDA**

EXECUTIVE DIRECTOR DUNNIGAN: Thank you very much, Joe. The next issue on the agenda is the approval of the agenda. It is in your briefing books. The first page behind Tab 2 is the detailed agenda for this meeting. It's our intention to proceed with the agenda unless there are suggested changes. Are there any suggested changes or problems with the agenda as printed? **Is there any objection to adopting the agenda? Seeing none, so ordered.**

**APPROVAL OF MINUTES**

The next item is approval of minutes. These minutes are in your briefing book. I'm going to presume you've all had an opportunity to look at them. Is there any objection to approving the minutes? Mr. Augustine.

MR. PAT AUGUSTINE: **Move to approve**, sir.

MR. WILLIAM ADLER: **Second**.

EXECUTIVE DIRECTOR DUNNIGAN: Motion to approve seconded by Mr. Adler. Any comments, any objections? Without objection, the motion is approved.

**PUBLIC COMMENT**

The next item on the agenda is public comment. At this stage of our meetings, it is the Commission's practice to allow members of the public to make any statements on the record to the Section that they would like to. We will, if we can, during the course of discussion of the agenda, accept limited public comment. But at this time, I'd like to ask if there are any members of the public who would like to make a comment to the Section? Seeing none, we will proceed. Let me just state again that we will try to make opportunity, if we can, to allow members of the public to comment on individual agenda items as they are taken up.

**PLAN REVIEW TEAM REPORT**

The next agenda item is review and approve state plans to implement Amendment 1. For this I'm going to turn to a report from the Plan Review Team, Dr. Desfosse.

DR. DESFOSSE: The Plan Review Team drafted a report. It's dated May 12th. There are extra copies over on the side table. I tried to hand out copies to everyone as I saw them come in the room. There's also a copy of the state proposals that were received prior to the Plan Review Team meeting and also a copy of the Rhode Island proposal that was received subsequent to the Plan Review Team meeting.

The PRT met on May 6th at the New England Council office. Written proposals were received from four of the seven states. The deadline for receiving the proposals was April 1st, 1999. Proposals at that time were not received from Massachusetts, Rhode Island or New York. A draft proposal from the State of Massachusetts was reviewed at the meeting.

Findings of the PRT. All the *de minimis* states, with the exception of New York, have demonstrated their intent to enact regulations to meet compliance criteria in the plan. These are specifically Compliance Criteria 2, 3 and 4. These regulations would require the prohibition of Atlantic herring landings from areas or subareas where the TAC has been reached. The *de minimis* states specifically were New Hampshire, Connecticut and New Jersey.

The proposal submitted by Maine and the draft Massachusetts proposal were both reviewed favorably as meeting all the compliance criteria outlined in

Amendment 1. In particular, Massachusetts stated its intent to enforce the tolerance provision from all herring landed from the Gulf of Maine. This is the spawning tolerance measure.

The PRT identified two concerns: one dealing with spawning closures; the other dealing with the federal FMP. The first is that the PRT was concerned that a potential loophole might exist if New Hampshire did not enact regulations that were consistent with or more stringent than Maine and Massachusetts in terms of the tolerance provision. Subsequent to the PRT meeting, New Hampshire representatives indicated their intent to continue their existing regulations limiting the Atlantic herring landings during the spawning closure to 2,000 pounds. That's basically a bycatch limit. The Joint Plan Development Team and Herring Technical Committee also discussed modifying the spawning closure areas in federal waters, but agreed that if Maine and Massachusetts enforced the tolerance provision, that this would be unnecessary at this time, especially since it's the first year of the plan.

The other concern identified by the PRT was that if the federal FMP is not approved until later this year, will the Commission and states be in a position to implement the effort controls or close areas when the TAC is reached? Specifically, the National Marine Fisheries Service Northeast Region is monitoring 1999 catches so that they may act when the federal FMP is in place. Maine DMR has also volunteered to monitor Area 1 catches this year.

The PRT is unclear as to whether the Commission, through the states, can enact and implement effort controls or prohibit landings from areas where the TAC has been met in the absence of the federal FMP. The PRT did note that both Maine and Massachusetts should have regulations in place by September, which would allow those states to prohibit landings from the areas in question.

In closing, the Plan Review Team recommends approval of the implementation plans for the States of Maine, New Hampshire, Connecticut and New Jersey, and the PRT also recommends conditional approval of the implementation plan for the State of Massachusetts upon receipt of the official plan by the Commission.

Are there any questions?

EXECUTIVE DIRECTOR DUNNIGAN: Thank you very much. Let's see what questions we have for Dr. Desfosse. Mr. Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. Noted in Number 2, Byron and myself are going to speak on behalf of New York concerning our paperwork on the *de minimis* status. A letter is on its way and will be presented. As to question on the preliminary approval of the implementation plan for the State of Massachusetts,

their plan, you say, has been submitted?

DR. DESFOSSE: What the PRT reviewed was a draft proposal, and at that time they were told that the official copy would be sent to the Commission office. We just have not seen it yet.

MR. AUGUSTINE: Thank you.

MR. PHILIP G. COATES: It's on its way. The plan is in the mail.

MR. AUGUSTINE: If there are no further questions, I move we accept the report.

EXECUTIVE DIRECTOR DUNNIGAN: Well, let's hold off a second on that, Pat. Mr. Adler.

MR. ADLER: First of all, you say that if the Feds have not put in an FMP plan on time, that the states have to, or the states are going to put their own in or have their own on line that's basically going to enforce it, and you just asked if the thing closes down, that Massachusetts and Maine and these other states could all have rules that would stop the landing from federal waters of herring. Is there any state that would not have that ability to stop the landing, that the boats could then all go to that port to land from the federal water if the federal plan doesn't shut it down?

DR. DESFOSSE: The PRT has not reviewed the plan or the proposal from the State of Rhode Island yet, and that would be the other major port. The plan submitted by the *de minimis* states, New Jersey, Connecticut and New Hampshire, all have provisions where they say they would be able to close their fishery once the TAC is reached in a specific management area.

MR. ADLER: Okay. So if the federal plan is not in effect and if supposedly the area's closed and a boat comes in from EEZ waters, there is no port that it could land in or get drawn to because there's a loophole there? Is that what you're saying?

DR. DESFOSSE: I think the confusion exists because the National Marine Fisheries Service will be monitoring the catches, but there won't be anything in place on the federal side where they'd have the authority to close that area once the TAC is reached until that plan is adopted, which should be some time in September or October, if everything goes according to the schedule laid out to the Plan Review Team.

The question was if that's delayed in any manner and the TAC is reached, would the states be able to act under the Commission plan? I think it's a legal question, and I had not had a chance to --

MR. ADLER: Okay, but also whether there was any loophole in any of the state rules which would allow it to come in, and you said No, that they all cover it in other words.

DR. DESFOSSE: That's correct.

MR. ADLER: Okay. And are we now saying -- did I hear that New York was planning to come in with *de*

*minimis* status?

MR. AUGUSTINE: Yes, we are.

MR. ADLER: All right. So are we saying that there's only three states now here that are not *de minimis*?

DR. DESFOSSE: That's correct.

MR. ADLER: Only three. Okay. Thank you.

DR. DESFOSSE: *De minimis* qualification is one percent of the coastwide landings, and the four states were granted *de minimis* status, but they still had to adhere to Compliance Criteria 2, 3 and 4.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Freeman.

MR. BRUCE FREEMAN: Thank you, Mr. Chairman. I'd like to address an issue that Bill Adler raised relative to *de minimis*. We at the present time do not meet the quantity to have a directed fishery, Bill, but the reason we are asking for *de minimis* status is reporting requirements, because under the plan we'd be required to report weekly in a fixed gear fishery, and we do have fixed gear, although the catch of herring is very, very minimal, if at all. Nevertheless, that requirement would be something we'd have to comply with.

The other regulations -- so far as enforcement is concerned, we're in the process of either having in place or will have in place shortly. One could be a scenario, a vessel leaves from one of our ports, steams to the Gulf of Maine, fishes in Area 1A, which may be closed, steams back to New Jersey and offloads. What provision would we have, since there's nothing in the federal law, of preventing that vessel? Well, we have to put in a state law that would do it. More likely, in an area such as your vessels may be fishing, 1A is very close, so it's a very real issue. The probability of a vessel leaving from New Jersey fishing in a closed area, although remote, still could occur. So we -- I can speak for New Jersey as requesting *de minimis* status -- are still required to have laws in place that would prevent a vessel from fishing if a TAC's taken in any of the areas and also the spawning closure.

Technically, a vessel could go up and fish in a spawning closure and come back to New Jersey. Your vessels would not be able to do it; why should our vessels be able to do it and land? So all the regulatory aspects of it are as much a burden on us as they are on Massachusetts.

Again, the only reason we're requesting *de minimis* status is to get away from the weekly reporting, which is almost like nonexistent, but still we could be deemed out of compliance with the plan if we don't meet that requirement. So again, our fishermen are saying, "What the heck are we going through this process of preventing our boats from fishing in the Gulf of Maine when in all likelihood we don't have to go to the Gulf of Maine, we'll go into Georges which is open. We're not going to keep

steaming another day or two."

But still, we'll have regulations in place, either do or will, very shortly to prevent our vessels from doing something which could undercut the entire plan.

### Approval of State Implementation Plans

EXECUTIVE DIRECTOR DUNNIGAN: Any other questions for the PRT? All right. I'd like to sort of subdivide down where we are relative to the report of the Plan Review Team. There are three separate sections. One is the state implementation plans; the second one is the question of spawning closures that has been raised; and the third one is the question of the federal FMP and the states' ability to control landings therefrom.

So let's start with just the state proposals. There are seven states. Of those seven, there are four that have submitted proposals, and we have a recommendation from the Plan Review Team to accept those. So what I'd like to have now is a **motion to adopt that portion of the recommendation of the PRT**. Mr. Augustine.

MR. AUGUSTINE: **So move**, Mr. Chairman.

EXECUTIVE DIRECTOR DUNNIGAN: Is there a second?

MR. JOHN W. CONNELL: **Second**.

EXECUTIVE DIRECTOR DUNNIGAN: Is there any discussion on the motion? **The motion is to approve the implementation plans for Maine, New Hampshire, Connecticut and New Jersey**. Seeing none, are we ready to vote? Is there any objection from any state to that motion? Seeing no objection, the motion is passed.

The next one in order is the Commonwealth of Massachusetts, which has not submitted its final proposal yet, but has submitted a preliminary proposal that the Plan Review Team has reviewed and found favor with, and they've recommended that the Section conditionally approve that proposal.

For the record, I presume that "conditionally" means that it gets submitted and that it's not different from the one that was reviewed, and if it was in any way, the staff will have to bring that back to the Section. Is there a motion to accept that portion of the Plan Review Team's recommendation? Mr. Augustine.

MR. AUGUSTINE: **So move**, Mr. Chairman.

EXECUTIVE DIRECTOR DUNNIGAN: Is there a second?

REPRESENTATIVE DENNIS F. ABBOTT: **Second**.

EXECUTIVE DIRECTOR DUNNIGAN: Is there any discussion on the **motion to conditionally approve Massachusetts' plan**? Representative Abbott.

REP. ABBOTT: Thank you, Mr. Chairman. Is there a time frame for the final plan to be submitted by Massachusetts?

EXECUTIVE DIRECTOR DUNNIGAN: They were supposed to have been submitted by the 1st of April, I believe.

MR. COATES: I can go in the next room and find out.

EXECUTIVE DIRECTOR DUNNIGAN: Dr. Desfosse.

DR. DESFOSSE: I would just like to note that the Plan Development Team and Technical Committee/PRT is planning to meet the first week of June prior to the two-day meeting that's scheduled for the Joint Section and Herring Committee. So if the plans from New York and Massachusetts are available at that time, plus the proposal that was sent in by the State of Rhode Island, they could be reviewed at that time and then forwarded to the Section at their next meeting.

EXECUTIVE DIRECTOR DUNNIGAN: **Is there any objection to setting this motion aside for a few minutes** while Mr. Coates makes his telephone call and then we can come back to the motion? Okay.

Let's move ahead. The third group of states for state implementation plans would be Rhode Island and New York. Rhode Island has submitted a proposal. It is before us, but it has not yet been reviewed by the Plan Review Team. New York has not submitted a proposal yet but expects to very shortly. It seems to me that there isn't any action that the Section can take on these proposals today. Is there anything that anybody would like to suggest that we should do with respect to Rhode Island and New York this afternoon? Mr. Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. As long as the plans are going to be in prior to that meeting for review, we'll be able to vote on it at that point in time, so I would think we should hold in abeyance any further discussion on those two states, unless Mr. Coates comes back with an affirmative that theirs will be done soon.

EXECUTIVE DIRECTOR DUNNIGAN: He's talking about Massachusetts.

MR. AUGUSTINE: I'm sorry. Rhode Island and New York.

EXECUTIVE DIRECTOR DUNNIGAN: Talking about Rhode Island and New York.

MR. AUGUSTINE: I think we can hold them in abeyance until June. Do we need a motion for that? I'm not sure how --

EXECUTIVE DIRECTOR DUNNIGAN: Well, it will be reviewed by the Plan Review Team, and at that point the staff and the chair can decide how to bring that back to the Section.

MR. AUGUSTINE: I don't know how we could conditionally approve them because we haven't seen them. So therefore it would be ludicrous to suggest that we do that.

EXECUTIVE DIRECTOR DUNNIGAN: Mr.

Augustine is suggesting that we not act on these plans today, have the Plan Review Team review them at their meeting on June the 1st, and then the staff and the chair will decide how best to bring that back to the Section for approval. Is there a problem with doing it that way? Mr. Fote, you're looking very intent.

MR. TOM FOTE: I was just wondering when they're supposed to be in compliance by, and we're supposed to be in compliance. I was just wondering if we vote New York out of compliance.

EXECUTIVE DIRECTOR DUNNIGAN: You could do that.

MR. FOTE: Haven't done that in years.

EXECUTIVE DIRECTOR DUNNIGAN: Any other suggestions or comments? Is there any objection to proceeding that way? Seeing no objection, we will proceed that way, and the Plan Review Team will review the New York and Rhode Island proposals. The New York proposal will be in by then, within the next week?

MR. AUGUSTINE: We've been told it would be, yes.

EXECUTIVE DIRECTOR DUNNIGAN: Okay. So the Plan Review Team will have those for review on the 1st of June. Okay. Let's return to the motion, bring it back onto the floor, the motion to conditionally approve the Massachusetts plan. Mr. Coates.

MR. COATES: Thank you. I just talked to Dr. Pierce, and I assume that the document that he gave me, which outlines the requirements of the plan and then the response by the Commonwealth, is the document that the PRT reviewed and was the basis of their conditional approval. We have not yet implemented the rules, so I assume that -- and I'm not sure what these plans consist of. Do they -- consist of implemented actions, or do they consist of proposals to meet the time line of the -- is it the latter, Joe?

DR. DESFOSSE: Yes.

MR. COATES: Then we'll submit this imminently. We haven't actually gone through the rule-making process, but this is what we're going to do. So we have to actually go through the rule-making process to implement these by the -- the deadline is July 1st?

DR. DESFOSSE: June 1st.

MR. COATES: June 1st? Okay.

DR. DESFOSSE: It was a tight time line.

MR. COATES: I guess so. We won't have them done by June 1st for sure, as far as implemented actions. So maybe you ought to wait till June to hear about our plans. I'd just as soon -- you could withdraw the motion. I want to get this squared away.

EXECUTIVE DIRECTOR DUNNIGAN: We haven't scheduled the Section meeting for June. Oh, excuse me. We have. We'll be meeting on the 14th. Okay.



MR. COATES: I'm comfortable waiting till June, and we'll be in the same category as New York and --

EXECUTIVE DIRECTOR DUNNIGAN: Any objection to withdrawing the motion from Mr. Augustine, Representative Abbott? Okay. **Without objection then, the motion will be withdrawn** and can be brought back before the Section at the meeting on June 14th and 15<sup>th</sup>. Are there any other questions or comments relative to state implementation plans for the Atlantic Herring FMP?

### Spawning Area Closures

Okay. Let's move ahead to the next item, which is labeled Number 1 towards the bottom of the first page of the PRT report. It's called "Spawning Area Closures." The PRT has pointed out a potential loophole that could exist, depending upon how New Hampshire implements its regulations relative to those of Massachusetts and Maine. Are there any comments or suggestions relative to the point that's been brought forward by the Plan Review Team?

DR. DESFOSSE: I would just like to say that, as is stated in here, subsequent to the meeting, New Hampshire officials were contacted. I don't think that this loophole exists now, because New Hampshire indicated its willingness to maintain its current regulations regarding spawning closures and limit landings to 2,000 pounds at that time.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Are there any other questions or comments on this issue then for Dr. Desfosse? Mr. Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. So the issue is actually closed? It will not be a problem?

DR. DESFOSSE: No problem.

MR. AUGUSTINE: Is a motion then in order to accept?

DR. DESFOSSE: So there should not be a loophole.

EXECUTIVE DIRECTOR DUNNIGAN: No. This doesn't need a motion or any particular action by the Section. This is just something that the Plan Review Team has brought forward for your consideration.

### Federal FMP Issues

The next item is the question of the federal FMP and the ability of the states to apply their regulations against fish that are harvested in an area of the EEZ that is closed because the TAC has been reached. Are there any comments or questions? Mr. Connell.

MR. CONNELL: Just to clarify, Jack. What you're saying is this does not remove the right of a state to close the fishery but does not obligate the state to do it?

DR. DESFOSSE: I'm not sure, John. I'm not sure what you mean by "obligate."

MR. CONNELL: In other words, if the state chose not to close the fishery, they wouldn't have to. The state has the right not to close the fishery as well as to close it, even if the TAC is reached.

DR. DESFOSSE: Well, I think the way the plan is written, Amendment 1, it says that the Regional Administrator will notify the states when the TAC has been reached. The Northeast Regional Office is going to monitor the landings this year, but the federal plan may not be adopted until late this year. So if the TAC is reached before then and the Regional Office says, "Well, the TAC is reached, but we can't tell you to close the fishery," can the states do that on their own?

EXECUTIVE DIRECTOR DUNNIGAN: I think Mr. Connell's question is, do the states have to do that under the terms of the plan? Is it mandatory on the states to close landings within their state from an area that is closed because the TAC has been met? I mean, that's just a question of interpreting our plan.

While Joe's looking at that, I suppose I might be able to comment. From a legal standpoint, if I were still a lawyer, I would say that there's nothing that stops a state from closing its ports to landing of fish from other areas unless there's some superceding federal interest, you know, if there was an affirmative federal interest to keep fishing open. Let's say it was a size limit, that the state wanted to have a 13-inch size limit and the Feds wanted to have a 14-inch size limit. There might be a problem there. But in this case, where it's just a question of there isn't any federal regulation at all, Section 306 of the statute says that a state may continue to regulate vessels registered in the state.

MR. CONNELL: And just to follow up, it also then means that if -- I'm not saying this would happen, but if a state chose to ignore the fact that the TAC has been reached, it could stay open and far exceed the TAC.

EXECUTIVE DIRECTOR DUNNIGAN: Well, I don't know that that's the case. Joe's looking at the particular language of the plan right now, and it may be that we'll have to get back to the Section with our views on what the plan provides. A state wouldn't have to close the waters unless our plan is that the states have approved it, specifically requires a state to do so.

MR. CONNELL: Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Any other questions or comments on this question of relationship with federal FMP? Joe.

DR. DESFOSSE: When we go into the regulatory requirements, the compliance criteria, if you look at Compliance Criteria 2, 3 and 4, Number 2 says each jurisdiction shall prohibit the landing of herring from a management area or subarea when the TAC has been attained in that area or subarea. It doesn't say when the Regional Administrator says that the fishery is closed. It

just says that when that TAC is reached, the fishery will be closed.

MR. CONNELL: Okay. Great!

EXECUTIVE DIRECTOR DUNNIGAN: That seems to me, then, that it's mandatory. States are required to close landings in their state from areas that are closed because the TAC has been reached. Is that our common understanding? Okay. Let's move ahead. Are there any other comments or questions on the report of the Plan Review Team? Mr. Driscoll.

MR. STEVEN J. DRISCOLL: This means any area that would be closed, you'd have to close the state? Is that one area or the whole area? The EEZ?

DR. DESFOSSE: You have to prohibit landings from the area that is closed. So if the TAC is reached in Area 1A, the inshore Gulf of Maine, that state will have to prohibit landings from that area.

MR. DRISCOLL: Right. And if they close on Georges, we'd have to prohibit landings from Georges.

DR. DESFOSSE: That's correct.

MR. DRISCOLL: That would be hard for us to know where the heck the guy went, wouldn't it?

DR. DESFOSSE: Right. The federal plan was supposed to have a requirement for a vessel monitoring system, but in the absence of the federal plan right now, we don't have that requirement, so you can't monitor where the boats are coming from.

MR. DRISCOLL: So there'd be another major loophole.

DR. DESFOSSE: It makes it problematic. But like I said, the federal FMP should be adopted or approved later this year. It's just a question of when.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I guess that's one of the reasons that we specifically have been suggesting vessel tracking monitoring systems for all commercial vessels.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Freeman.

MR. FREEMAN: Thank you, Mr. Chairman. Joe, isn't there a provision that the vessels will have observers? I know this issue is difficult. I think all the states recognize the fact that a management area could be closed. It would be obligated to close its landings of its vessels if it fished in that area. But in the absence of a federal plan, it's unlikely a state will be able to monitor where its vessels are fishing. But, if I recall, there was a provision, particularly in some of the offshore areas, where observers would be aboard the vessel, so a determination could be made, and as long as a state has that determination, it could take legal action.

DR. DESFOSSE: I don't think the requirement for observers was mandatory for 100% of the vessels. I think

it was if the vessel was chosen to carry, the vessel would have to -- I was trying to find the section in the plan here.

MR. FREEMAN: I can comment as well, Mr. Chairman, that this is an issue that concerned New Jersey in the fact that if the inshore area of the Gulf of Maine may be closed, our vessels could conceivably transit up to that area, fish in the closed area and come back. We would not be able to monitor that vessel to determine where in fact it fished. If we could, we'd certainly take action, and this is one of the reasons we thought the federal part of the plan would be absolutely necessary.

EXECUTIVE DIRECTOR DUNNIGAN: Other comments or questions? Seeing none, let's move ahead on the agenda. The next item, is an update of the recent New England Fishery Management Council Herring Oversight Committee discussions. Dr. Desfosse.

#### UPDATE OF RECENT MEETINGS

DR. DESFOSSE: There's three main topics that I wanted to present. First is to review the meetings that have been held since the last Section meeting, January 11th. I was going to review the status of the federal FMP, and then I was going to hit on specific issues that have been discussed and will be discussed in more detail at the Joint Section/Committee meeting in June.

First of all, the Herring Committee, the New England Council's Herring Committee, has met twice, once in January, once in April. The Plan Development Team/Technical Committee has met twice as well, most recently on the 6th of May in conjunction with the Plan Review Team. And the advisers met the following week, the 13th of May, last week. And Artie's going to provide an update of that meeting later on.

There's also been a Joint U.S./Canadian Herring meeting. It was conducted between NMFS and the Canadian Department of Fisheries and Oceans in Halifax, Nova Scotia on April 6th.

As I said, there's an upcoming two-day Joint Herring Section/Committee meeting scheduled for June 14th and 15th, and the tentative location is the Holiday Inn in Peabody, Massachusetts.

The status of the federal FMP. Council staff says that it was submitted in late March. The National Marine Fisheries Service has not formally acknowledged receipt of the documents yet, but it should be accepted for formal review within the next two weeks. If that's the case, then they're looking at formal approval of the plan some time in September, perhaps early October. And, as I said earlier, the National Marine Fisheries Service Northeast Regional Office will monitor landings in 1999 in the event that the federal FMP is approved and actions need to be taken in regards to TAC limitation or effort limits. Are there any questions so far?

EXECUTIVE DIRECTOR DUNNIGAN: Any questions? Bruce Freeman.

MR. FREEMAN: Is that the end of the New England report, or is there more coming?

DR. DESFOSSE: No, there's more coming. I was going to get into the specific issues.

MR. FREEMAN: Oh, yes. Relative to the discussion between the Service and Canada, are there any difficulties that were raised?

### **Joint US/Canada Industry Meeting**

DR. DESFOSSE: That was going to be the next item that I hit. There were six points that I wanted to bring up, brief everyone on. First of all, the Canadian scientists don't dispute the 1998 U.S. assessment of the herring coastal stock complex as they have in the past. They are in agreement now about our assessment methodologies.

The Canadian report on stock status which will be published some time this month will not include a restriction of 20,000 metric tons for Georges Bank as it has in the past.

There have also been some discussions concerning a joint U.S./Canadian herring assessment, which would be part of the TRAC process, the trans-boundary assessment -- I forget what the "c" stands for. But that would occur some time in the year 2000.

David Borden and the Canadian officials have agreed to inform each other when the Georges Bank catch approaches 20,000 metric tons. The Canadians have expressed concern over estimates that have been used in the Amendment I and the federal FMP concerning the New Brunswick weir fishery. I wasn't at this meeting, so I'm not sure what the exact concern was.

And also the Canadians are trying to develop ways to manage herring with respect to forage fish and ecosystem issues.

Bruce, did you have any questions concerning those?

MR. FREEMAN: No. I'm just curious. I didn't have any questions specifically. I was just curious if there were problems, but now this issue of Georges Bank with the no restrictions of the 20,000 metric tons, what was the basis for that?

DR. DESFOSSE: Like I said, I wasn't at the meeting, so I don't know.

MR. FREEMAN: Well, my recollection of being at some of those meetings several years ago was the Canadians as well as the U.S. had concerns over what type of fishery would develop on Georges, i.e., food fish or an industrial fish meal, and then also the discussion of how the fish would be taken, trawls as opposed to large purse seines and so forth. And there was seemingly common agreement that catch restrictions should be placed on that, and now all of a sudden there's agreement

-- well, I'm not so sure it's so sudden, but now there's agreement there should not. I'm just curious what's the reason for that? It seems like we've just reversed ourselves.

DR. DESFOSSE: I think the Canadians in this case have reversed.

MR. FREEMAN: Well, the Canadians were extremely concerned about having restrictions. Their weir fishermen had a lot of concerns of what was going on. The Canadians were more apprehensive we were going to be more aggressive in that fishery. And they were the ones that appeared to be favoring some sort of catch restrictions, at least to slow this thing down. And that's all changed. I was just curious as to why.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Coates.

MR. COATES: Well, my recollection -- I think Bruce has characterized it correctly. The Canadians have been far more conservative in their approach about herring management and the levels of stock recovery, and that trigger, that 20,000 trigger, I guess, was identified as the level on Georges Bank which would be the basis by which the nations would reconfer if it's reached. And that's still in there, as I understand it, right?

As far as the assessments, I guess they just agreed that the assessment methodology used by the U.S., which would imply a much bigger stock size, was acceptable to them. And Bruce, to be honest with you, I can't recall the specifics on it. It was a very light conversation on herring generally. Why they suddenly said, "Oh, it's okay, never mind," but they did. So I would say that that's a signal that the Canadians perhaps do agree that the stock is more robust than they originally thought.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Freeman.

MR. FREEMAN: Is it possible that there's a report of that meeting? Is there going to be an official summary of it or something?

MR. COATES: These get-togethers are informal, and there's a very -- I'm trying to recall. There is a very superficial summary of the meetings, and there's probably something more rigorous on the Canadian side, because any time they meet with the Council, they're always -- well, I think they finally recognized that the Council is a viable management entity. Up until two years ago, they thought we were industry advisers. And, you know, their counterparts are always at these meetings, so they felt, "Oh, yes, that's good. We have the government, NMFS and government, DFO, and then we have the industry, Council and the industry from Canada." And their FRCC or whatever. And they've now recognized the presence of the Council is something other than just an industry advisory group.

So they've made that transition. That's promising.

But the summaries of the meetings, I think, are very light. Because it's not a formal government-to-government type of interaction.

MR. FREEMAN: I would suggest -- I know in the past either the chairman of our delegation or by common agreement, there were summaries of the meeting. They have been just one-page summaries. But I would suggest if there is something that does exist that we be sent copies. It's useful to keep track of changes in philosophy and reasons for that.

MR. COATES: If I could suggest, you might want to confer directly with the committee chairman. He was at this meeting, and I don't think you want to communicate with him in Bermuda, but maybe when he gets back to the States.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Adler.

MR. ADLER: The 20,000 has me confused now. It seems to me back when we were playing with all these numbers and we were in particular playing with the Gulf of Maine, there was a 20,000 figure that was assigned to Canada, if I'm not mistaken, when we were dividing up the pie.

Does that 20,000 -- when you said that Canada didn't include the 20,000 in something in their thing, where does the -- does that have anything to do with the 20,000 that we took off the Gulf of Maine stock and gave over to Canada or something?

DR. DESFOSSE: No. There's two different 20,000 --

MR. ADLER: Okay. That's what's got me confused here.

DR. DESFOSSE: One is for Georges Bank. That was the estimate of what the Canadians were going to catch. And then there's the 20,000 that estimates the landings in the New Brunswick weir fishery, which affects the Gulf of Maine TAC.

MR. ADLER: Yes. So that's still in somewhere?

DR. DESFOSSE: Right.

MR. ADLER: And you were talking about the Georges Bank group.

DR. DESFOSSE: This is Georges Bank. The only thing that the Canadians have said is that they're not going to limit their fishermen to 20,000 metric tons on Georges Bank. What they're going to do, though, is to continue to inform the U.S. if their catch reaches 20,000. Right now they have not had a fishery out there in I don't how many years.

MR. ADLER: Okay. So the 20,000 I was thinking about was a different 20,000. All right. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Other comments or questions on this issue? Let's move ahead, Dr. Desfosse.

## PDT/TC Meeting Issues

DR. DESFOSSE: Other issues that were taken up by the PDT/TC dealt with spawning closures. The PDT was asked to look at the appropriateness of the Gulf of Maine boundaries in federal waters, consistent with the goal to maintain maximum protection for spawning groups. The PDT recommends that there be no changes at this time in the boundaries or in the timing of the spawning closures as long as the states enforce the tolerance provision as proposed in their reports for implementing Amendment 1. There was one caveat. Dave Stevenson expressed some concern over the status of the Gulf of Maine component. Some rough estimates of F, fishing mortality on that stock component range from 0.3 to 0.5 now as opposed to the overall F which is somewhere less than 0.1.

The second issue taken up by the PDT was the midwater trawl bycatch of groundfish. The available observer data does not show significant groundfish bycatch. It was stated that Massachusetts intends to increase shoreside sampling in this regard. And a literature search is being conducted by the Council staff, Tom Nies, in regards to groundfish bycatch. David Borden has also suggested sending a letter to the National Marine Fisheries Service to encourage additional observer coverage in the herring fishery.

The issue of spiny dogfish predation on herring has been a hot topic for the PDT and the Herring Committee. At its March meeting, the PDT discussed this issue and concluded that rebuilding spiny dogfish stock structure as described in the Dogfish FMP would not impact herring TACs. Dr. Pierce has asked the PDT to elaborate on a few specific points, such as providing justification and examples for statements that eliminating a specific predator could destabilize the ecosystem and provide examples of how an ecosystem with large biomasses of both predators and prey would provide for healthy fisheries, stable catches and economic benefits over the long term. The PDT discussed this issue at its last meeting and will provide a formal report to the Herring Section and Committee at the June meeting.

The other issue that has taken up a lot of time has been the discussion of developing TAC set-asides with the Gulf of Maine fisheries. The New England Council's Herring Committee and the PDT in turn have been asked to examine the feasibility of setting aside portions of the Gulf of Maine Area 1A TAC for certain sectors of the fishery.

The PDT is examining changes in the trip limits, changes to the current fishing year, delaying the release of the Area 1 TAC until March or April, effort control adjustments, limited entry and controlled access, and also an option for no change in any of the measures at this time. Again, the PDT will identify the pros and cons of

each of these and report to the Section and committee in June. Before I ask Artie to give an update on the advisers, does anyone have a question on the PDT discussions?

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Driscoll.

MR. DRISCOLL: The PDT believes that predation of all other species that feed on herring won't have any effect on the catch of herring whatsoever then? That's the -- in spite of the "bazillions" of pounds of fish that the fish feed on?

DR. DESFOSSE: That's correct. I think what they're basing that assumption on is that the ASPIC model predicts what the MSY should be for this herring stock, and the TACs have been developed with the MSY in mind. The MSY and the ASPIC production model in particular take into account changes in abundance of all the predators of herring as to when they were high and when they've been low.

MR. DRISCOLL: How do they have a clue of how many fish they eat?

DR. DESFOSSE: I can't answer that question right now. Need a Technical Committee member here.

MR. DRISCOLL: I certainly wouldn't want to go on the stand anywhere and say anything about something I wouldn't really know about.

DR. DESFOSSE: I'm giving you a generalized answer.

MR. DRISCOLL: Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Other questions or comments on the PDT issues that are being worked on? Mr. Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. Has the Advisory Panel been involved with any of this process along the way, or is it too soon for them to get back into the role of acting as an Advisory Panel?

DR. DESFOSSE: The advisers had a meeting May 13th, but some of them have been attending the meetings of the Herring Oversight Committee and also the Plan Development Team, so they've been involved there. But they had their own meeting last week.

MR. AUGUSTINE: Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: And that sounds like a segue into the report from the Chair of the Advisory Panel. Mr. Odlin.

#### ADVISORY PANEL REPORT

MR. ART ODLIN: Thank you, Mr. Chairman. The committee did meet on the 13th in Peabody, Mass., and pursuant to the charge from the Section and the Committee, three motions were made. The charge was for us to look at limited entry, controlled access permits.

The first motion was: Recommend that the Herring Committee/Section begin developing a limited or

controlled access system for Area 1A while keeping an open access system in Areas 1B, 2 and 3. This passed by five Yes, four No, and one abstention.

The second motion was: Recommend to the New England Fisheries Management Council that a control date of August 1, 1999 be established for the Atlantic herring fisheries, commensurate with publication in the Federal Register. This passed six Yes, three No, and one abstention.

The third motion was: Recommend that the New England Fisheries Management Council with the Mid-Atlantic Fisheries Management Council, to the greatest extent possible, regarding the criteria that are being developed for participation in both the herring and mackerel fisheries. This was voted by voice vote unanimous.

That concludes my report, Mr. Chairman.

EXECUTIVE DIRECTOR DUNNIGAN: Can I ask you to restate what that third motion was that the Advisory Panel approved?

MR. ODLIN: It was to recommend that the New England Fisheries Management Council coordinate with the Mid-Atlantic Fisheries Management Council to the greatest extent possible regarding the criteria that are to be developed for participation in both the herring and mackerel fisheries.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you very much. Questions and comments? Representative Abbott.

REP. ABBOTT: Yes. I didn't hear the second motion. Would you repeat the second motion?

MR. ODLIN: Recommend to the New England Fisheries Management Council that a control date of August 1, 1999 be established for the Atlantic herring fisheries, commensurate with publication in the Federal Register.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you very much, Mr. Odlin. Are there any other questions and comments on the report of the advisers? Mr. Freeman.

MR. FREEMAN: Thank you, Mr. Chairman. Artie, the last item that you reported on, the coordination between the New England and Mid-Atlantic, what exactly did your committee have in mind?

MR. ODLIN: Well, the Mid-Atlantic now is working on mackerel controlled access.

MR. FREEMAN: Right.

MR. ODLIN: And the Council has -- I don't know what they call them now -- the Mid-Atlantic Plans Committee. And we're hoping that that committee could meet with the Mid-Atlantic Committee and somehow coordinate what the mackerel fisheries will look like and what the herring fisheries will look like. Because all the boats are intertwined with both fisheries.

MR. FREEMAN: So your point is, a vessel that's going to enter the mackerel fishery would also likely be involved in the herring fishery; therefore, if there's going to be two plans, they have to be coordinated to some extent. Otherwise, it's going to be virtually impossible to have a business plan to understand what's going on.

MR. ODLIN: That's correct.

EXECUTIVE DIRECTOR DUNNIGAN: Other questions or comments regarding the report of the advisers? Mr. Driscoll.

MR. DRISCOLL: This means there would be limited entry in 1A only?

MR. ODLIN: That's correct.

MR. DRISCOLL: What is the theory behind that?

MR. ODLIN: The theory is because the TACs in the other two areas are so large that it'll probably be some time before the fisheries develop enough to warrant any TAC (closures) in those areas. There was some discussion of going to all three areas, but to make it a little bit cleaner and a little bit quicker probably was the way that I believe the committee was looking at it.

MR. DRISCOLL: So this would mean the small bait fisheries and stuff that go on, there'd be what? Criteria hopefully developed or something, where there'd be entry into the fishery would be like either a directed or a bycatch fishery or so forth and so on? Is that what you're looking at?

MR. ODLIN: We had a real good presentation from the Fisheries Center on control permits and development permits, which is a two-tier approach as opposed to the Mid-Atlantic's three-tier approach. And basically the control -- a control permit would be anybody who had caught a herring would be in, and then the development permits would follow along behind. Anybody could get one, but they would be put on notice that if it became a problem with the resource, then the last one would be the first one out basically.

MR. DRISCOLL: I understand. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Freeman and then Mr. Augustine.

MR. FREEMAN: If I may, just a comment on the tiered system that the Mid-Atlantic is speaking about on mackerel. It really isn't too terribly different, Artie, in that although it's three tiers, we look at one tier as being an incidental catch. In other words, a vessel that would be fishing for some other directed species may catch herring. There'll probably be a minimum amount they'll be able to land without a permit.

And then the two other tiers, one that are actively fishing and secondly those that may want to get in but don't have an existing catch yet, or very small catch. So in reality, the tiers may not be too far apart at all.

MR. ODLIN: Well, that's why they made that motion, hoping we could blend some of the --

MR. FREEMAN: Yes. Well, it does make sense certainly to try to develop these two, I mean, the Mid-Atlantic Council's responsibility on mackerel, the New England on herring, and quite frankly there has to be very close coordination so these plans come out reasonably close, because it is our last so-called under-utilized fisheries, and if this isn't done right, there's not going to be another chance.

MR. ODLIN: Right. I agree.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. The question that's then raised, what would prevent people from going out and getting those permits for the areas that are not under the limited entry control factor now in the event that some other fishery that they're in collapses or they're not able to participate in that fishery? Would there not be a rush for permits?

MR. ODLIN: I think there's going to be a rush for permits anyway, because the plan will be implemented before any of this that we're talking about now. This probably will not be implemented till the year 2001. So we're going to have 3,000 permits, whether we like it or not. It's what do we do after that.

MR. AUGUSTINE: I wish I had the answer. I think we all do.

EXECUTIVE DIRECTOR DUNNIGAN: Any other questions or comments? Mr. Calomo.

MR. VITO CALOMO: I think, just to add a little information on the advisory plan, going along with the meeting, was to work -- I think you hit it on the head, Mr. Freeman -- work side by side or jointly with the Mid-Atlantic on mackerel and herring, because a lot of times, you know, chasing mackerel, you run into herring, and chasing herring, we ran into mackerel this year. So that's where you got the unanimous vote. Everybody wants to shake hands and go forward. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Other questions or comments? Mr. Adler.

MR. ADLER: Thank you. This August 1, 1999 control date recommendation, when would that be acted on if you're not going to work on changing these rules till the year 2000? Can you have an August 1, 1999 control date if you don't talk about it till the year 2000?

MR. ODLIN: Well, there'll be discussions from this moment on, but a control date, if I'm correct, can be implemented any time, and all it does is say you may or may not be allowed in the fisheries.

MR. ADLER: Can you go back retro? Can you go back? Or do you have to -- the day that you vote it is the day of the control date?

EXECUTIVE DIRECTOR DUNNIGAN: Actually, the way the Federal Government works it typically, it's as soon as they can get it published in the Federal Register.

MR. ODLIN: That's why the language was put in there, because I think it was the sense of the committee they didn't want to leave without having some date, because they were afraid that the Council may delay and delay and delay. So this was just putting a little heat on the Council to come up with the appropriate or timely control date.

MR. ADLER: So you are hoping then that the Council will, at a meeting around that time, August 1, 1999, will set a control date and then continue on with other business?

MR. ODLIN: Yes.

EXECUTIVE DIRECTOR DUNNIGAN: Dr. Desfosse.

DR. DESFOSSE: Just to answer that question, the New England Council has a meeting scheduled for mid-July. I forget the exact date. But that meeting is specifically designated to address herring issues for the upcoming years, the annual review process. And it was the assumption that the New England Council could act on that request at that time. And then it would not be a retroactive control date.

EXECUTIVE DIRECTOR DUNNIGAN: July 13<sup>th</sup> and 14<sup>th</sup>. Other questions or comments on the report from the advisers? Mr. Augustine.

MR. AUGUSTINE: One question, Mr. Chairman. Should we then make a motion from this Commission requesting that that be forwarded, that we do support that date from our Advisory Panel? I'm not sure that's appropriate, but I think it sounds like we should take some action as long as our Advisory Panel did make a report and a recommendation to move forward with a specific action.

EXECUTIVE DIRECTOR DUNNIGAN: That is a specific -- it's a Joint Advisory Panel, so it's a specific recommendation that the advisers have made to the New England Fishery Management Council. I guess there's no reason why the Section couldn't recommend that the Council do that.

**The other issue, though, that the Section needs to be thinking about is the first recommendation that came from the advisers, which is that the Section begin developing a limited control access system for Area 1A, which clearly would be a plan amendment, and would require authorization before proceeding from the Policy Board.**

So there's one question about what to do with their recommendations to the Federal Government. The other question before the Section is what do you want to do about the recommendation they've made to you? Mr. Freeman.

MR. FREEMAN: Jack, relative to control dates, we do have them in the Lobster Plan, for example. But have we -- it seems to me it may be necessary to put a control

date in our plan for limited access in that, I guess, a state could develop a fishery in its state waters and have a controlled access in federal waters but an open access in state waters.

It would seem that would be needed to amend the plan if in fact or when in fact -- if and when the New England Council put a control date that we would have the same date in the Commission's plan. Do you see a reason why we shouldn't?

EXECUTIVE DIRECTOR DUNNIGAN: Well, if you're going to have a controlled access measure in your plan, you are implicitly going to have to have some date that it starts on. There's no question about that.

MR. FREEMAN: But I know -- perhaps the dates I'm thinking are just implementation dates. I can't think of any plans we have in place where there is a limited access fishery in our Commission plans. But in this instance it seems something we should do. I don't see a reason why we shouldn't, but I see a lot of reasons why we should. And I'm just kind of thinking out loud how we would do it. And obviously, it should be the same as the action taken by the New England Council.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Odlin.

MR. ODLIN: Thank you, Jack. That was one of the questions we had, and we really didn't know. But you mentioned this would have to be an amendment? We didn't know whether that could be adaptive management and in the Council framework. It appears now from what you said, it will both have to be an amendment, amendment in the Atlantic States Marine Fisheries Commission and amendment through the Council?

EXECUTIVE DIRECTOR DUNNIGAN: That's the advice that I'm getting here from staff.

MR. ODLIN: Okay. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Adler.

MR. ADLER: You mean every time that the Council would put in a control date, that I heard they'd vote a control date at a Council meeting, that wasn't taking place, even though I heard it take place, until they put it in some amendment down the road? I mean, I've seen them just vote it.

EXECUTIVE DIRECTOR DUNNIGAN: That's correct. What a control date does is it puts fishermen on notice that if you're not in the fishery by that date, you are subject to being shut out at some point down the road. It does not shut anybody out of itself.

MR. ADLER: Right, and it could be changed as well. That's how a control date works.

EXECUTIVE DIRECTOR DUNNIGAN: Technically, councils have had a lot of trouble trying to change control dates. It's not an easy thing to do, but technically it can be done.

MR. ADLER: Yes, but, I mean, you don't have to have an amendment to put a control date in.

EXECUTIVE DIRECTOR DUNNIGAN: No. You would have to have an amendment, though, to actually use the control date to limit participation in the fishery.

MR. ADLER: All right. So the Council or actually us here could vote for a control date to be on notice without formally going through an amendment process to a plan, correct?

EXECUTIVE DIRECTOR DUNNIGAN: I believe so.

MR. ADLER: And the Council can do the same.

EXECUTIVE DIRECTOR DUNNIGAN: Yes, sir.

MR. ADLER: All right.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Driscoll.

MR. DRISCOLL: I don't want to say anything too bad, but the control date is important because there was no control date, and the Atlantic Star wasn't allowed in, even though there was no control date, through legislation and everything else. So I think myself that that whole operation didn't go the way it should have gone anyways, and a control date would eliminate some kind of fiasco like that from happening again to anybody. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Mr. Freeman.

MR. FREEMAN: It would seem reasonable -- again, thinking out loud -- that since the New England Council will be discussing this issue because it was a joint advisory group, and may take action to put a notice in the Federal Register of a control date, it would seem reasonable that this Commission publish some notice to the public indicating that it is considering limited entry into the herring fishery and may take action on that at its next meeting.

And I'm just wondering, Jack, from, not as the chairman's perspective, but as if you were an attorney perspective --

EXECUTIVE DIRECTOR DUNNIGAN: If I was.

MR. FREEMAN: -- if you were an attorney, wouldn't you think that to be reasonable? Again, I mean, my point is, let's give the public as much notice from the Commission's side as we possibly can, so that at some later date someone doesn't come back and argue that it wasn't clear what the intent of the Commission was and that we could be restricting fishermen from a given fishery, when indeed our intent was to notify them of such action.

EXECUTIVE DIRECTOR DUNNIGAN: I guess my question, if I were an attorney, to you would be, is that what you intend to do? Does the Section intend to get permission from the Policy Board and move ahead with an amendment that includes the possibility of a limited access system? If that's what you really want to

proceed with, then you should tell the public clearly that that's what you're going to do.

MR. FREEMAN: Well, I would suggest that that's certainly an action we may consider. I think part of this is going to depend on the discussion at the New England Council. I mean, the issue is we're restricting a fishery in a limited geographical area. It seems apparent from the report from Artie that there are a number of people who believe this is necessary. It wasn't unanimous. There's a lot of people who don't. And yet, if that action is taken without the coordinated action of the Commission, I think it would be a very confused issue. Bear in mind that Area 1 has a tremendous -- perhaps half of that is state waters. There are federal waters, but there's a large portion of state waters.

So it becomes an issue only because of the way the area's defined, and that if it were to occur only on the federal side, I see this as being a very confused issue. I think the Commission here has to weigh in on that.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Calomo.

MR. CALOMO: Mr. Freeman, I enjoy your conversation. It's not all of us, as you said, wanted limited access, limited entry, control dates, and it was a five-four vote. If we were protecting the species because it was endangered, my hand would fly. I'm not so sure that's the reason, because it is the biggest biomass ever recorded by the scientists, the same scientists that record almost everything in every fisheries management plan that is controlled by the managers. But it's there might be a sector allocation which bothers me tremendously. And I'm not saying that I'm a scientist either, but I have been in this fishery for a long, long, long time, and I see a real conflict of the biomass and the user groups and an allocation to an area that's very troublesome.

This hasn't flown before. This has been brought up time and time again. So I'm not so sure you want to rush into things. I'm not so sure we should not be trying to promote this fisheries for the American public. And as you so stated and I so listened, it is one of the last frontiers left, the mackerel and the herring, and it is a possibility that some of our other fisheries, while they're in trouble and rebuilding, could escape and try to fish this biomass.

The problem you have here is the markets. You know, the markets are so small that if we scare people from getting in this and we put restrictions on them, we may never develop it. And as you know, for the many years that you've been around, I worry about our own government trading off this fishery to other nations, because they're always petitioning to come here to fish on our pelagics.

So I'd try to not have limited entry and control dates, controlled access and sector allocations. I'd like to see



stimulation of this fishery for our American fishermen. So I kind of walk very tenderly along all these controls, and I just put this foot forward because this has been my mainstay for many, many years. Thank you, Mr. Chairman.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Freeman.

MR. FREEMAN: I respect, you know, your comments, and I'm not prejudging whether we should have limited entry or not. I'm just indicating that that discussion needs to come forward, because I'm sure there's arguments on both sides. My only concern here, that if the New England is going to take or is going to look at taking an action, it seems like we ought to be poised to do the same. It may be a diametrically opposed action. And I need to understand all the implications, which I don't.

But again, my concern is relative to the comments that New England and Mid-Atlantic should coordinate between herring, and my point is I think the Commission and the Council need to coordinate if they're going to take some action. And both groups need to weigh in, and that discussion needs to occur, and I want it to occur, because I need to understand this much better than what I do.

And again, I'm not prejudging it should occur. I'm just saying, if there's action going to be taken on one side, it should be noticed there may be action -- and again, New England doesn't necessarily mean it's going to take action, but that discussion will occur. And all I'm suggesting is that same notice be given on the Commission side. And there may not be any action taken.

EXECUTIVE DIRECTOR DUNNIGAN: All right. Let me help you understand where you are. In the Commission's rules, the Policy Board makes the decision about whether we'll proceed with a plan or an amendment, because they have the responsibility for prioritizing and making sure the Commission's overall resources are well utilized. The Policy Board is meeting here this week, so if the Section wants -- and this is relevant to this agenda item as well as the next one -- if the Section wants to be able to proceed right now with an amendment process to the Herring Plan, regardless of what may be in it, this might be a good time to bring that issue to the Policy Board.

If you're going to do that, I would suggest that you need to indicate to the Policy Board those kinds of items that you're proposing so that they'll understand the types of resource commitments that are implied. So I guess what we need to do to bring this around is to see if anybody wants to make a motion that the Section recommend to the Policy Board that it approve the initiation of an amendment to the fishery management plan to include at least a controlled access system.

MR. DRISCOLL: Controlled access or just a control

date?

EXECUTIVE DIRECTOR DUNNIGAN: Controlled access system.

MR. DRISCOLL: The whole system?

EXECUTIVE DIRECTOR DUNNIGAN: Right. Because that has to be in the amendment, and then you can decide what date you'd be looking at. I'm just suggesting that might be the motion someone might want to make. Mr. Fote.

MR. FOTE: I was just listening to Vito, and, you know, we have scientists telling us for the last seven or eight years that the mackerel stocks are the largest they've ever been in a long time, and we're supposed to see more mackerel than we've ever. In New Jersey inshore areas from, like, 20 miles in, we have seen probably in the last ten years the worst mackerel fishery that we've ever had as far as the party boats, charter boats, recreational sector. And they keep telling us -- as a matter of fact we went through long deliberations in '94 or '95 actually countering that information, trying to get statistics that would say -- you're telling us there's more mackerel out there, you're telling us all this, and there wasn't.

So, you know, I don't trust, when they say these huge biomasses of mackerel and herring are all what they say are. We're dealing with estimates that are based on models that have, to me, a lot of problems and a lot of inherent overestimating the stocks in there. So, when they say to me that these stocks are more than they've ever been by the scientists, I'm saying I'm still waiting to see those mackerel over the years that we've seen inshore that we haven't seen in 10 or 15 years.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Adler.

MR. ADLER: These are the same scientists that say we're overfished, too, right?

MR. FOTE: Yes.

MR. ADLER: We believe them when they're overfished, but we don't believe them when they're not overfished.

MR. FOTE: I looked at each -- through the Chair, I always question their science. It's depending on the models. The science when you deal with fisheries, as we all know who sit around this table, is not an exact science. There's a wide variance of confidence levels. And on some species there's bigger confidence levels than others. And we really should look at the confidence levels when we make stock estimations on those and whether they're not as -- you know, whether it's four points or five points.

MR. ADLER: If I may, Mr. Chairman, I sometimes question whether we're in shock perhaps when a scientist says, "No, this fishery's wonderful," and you go, "No, can't be. Nothing else is. This can't be." And I sometimes wonder if we get ourselves into that particular mode.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Augustine.

MR. AUGUSTINE: Mr. Chairman, if you would restate the wording of that motion, I'd like to move it forward to the next step. I'd like to make a motion that we take that necessary action. You said it so eloquently, so if you would briefly state that again for the record, sir.

EXECUTIVE DIRECTOR DUNNIGAN: Why don't you see what we have up on the board and see if that meets what you would like to have. I think after the word "amendment" add in "to the Atlantic Herring FMP." Is that your motion, Pat?

MR. AUGUSTINE: That's the basis of it, unless someone would like to try some more word-smithing to include one or two of the other items that the chairman of the Advisory Panel --

EXECUTIVE DIRECTOR DUNNIGAN: Well, the other recommendations from the Advisory Panel were not to us; they were to the Federal Government.

MR. AUGUSTINE: Okay. Then I would like to let it stand as stated.

EXECUTIVE DIRECTOR DUNNIGAN: Is there a second to the motion? Representative Abbott seconds the motion. **The motion is to recommend to the ISFMP Policy Board to approve initiation of an amendment to the Atlantic Herring FMP to include at a minimum a controlled access system. Motion by Mr. Augustine, seconded by Representative Abbott.** Mr. Fote.

MR. FOTE: I have to agree with Vito. I don't see at this time that we need this. I mean, this is not -- you know, I don't know whether we want an inshore fishery in New Jersey or not. I mean, I'm not sure we're going to limit my people at this time to basically estimate what the stocks -- I mean, I can't support this at this present time.

EXECUTIVE DIRECTOR DUNNIGAN: And the issue, of course, is not approving the amendment; it's raising the issue. Representative Abbott, Mr. Adler, Mr. Freeman and Mr. Driscoll.

REP. ABBOTT: Thank you. Having seconded the motion, I'm not sure that I like the wording in the motion. I think that probably we should recommend to the Policy Board that we may need to initiate an amendment, but I don't think we should go any further than that. I think that the proposal of an amendment would be developed and whatever would come into it would come into it. **I don't think that it has to have language saying that "at a minimum it should have". I think that predetermines what will be in the amendment, and for that reason I would like to have it stricken.**

MR. ADLER: I think that we had at the last Section meeting a debate on the issue of whether we should have an amendment to this plan for all the good reasons and the bad reasons. We went through this, and I thought that we decided not to, at this time, pursue an amendment

process. And that was in Portsmouth. Was that herring? That was herring, wasn't it?

EXECUTIVE DIRECTOR DUNNIGAN: Dr. Desfosse, do you want to answer that?

DR. DESFOSSE: The last Herring Section meeting was held in Alexandria in January. You may be referring to a New England Council meeting.

MR. ADLER: No. It was in a shrimp meeting. Excuse me.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Freeman.

MR. FREEMAN: Firstly, relative to the original motion -- I'm not sure if Dennis' comment to a friendly amendment has been accepted, but I agree relative to his comments that this would set us on a course to put a controlled access system in, and my point would be we need that discussion. I don't necessarily conclude it's a given, and I wasn't trying to argue for one. My concern is that we need to look at that issue. But this motion would simply say we're going to do it without that discussion, and I don't support that.

And then I would also suggest in that motion, was there a need to modify the plan, aspects of the plan for other reasons? I mean, was this only intended for controlled access? I don't recall us needing to do anything to modify the plan in any way up until we had this discussion. Maybe I missed something.

Joe, there is no -- I mean, this essentially would be for controlled access, and the wording could give us latitude to do more, but it was really for controlled access. Then I would oppose the motion as it originally was stated, only because I don't want to conclude we're going to have a limited access system without that discussion.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Driscoll.

MR. DRISCOLL: Yes. I wouldn't be satisfied with the controlled access system. I mean, I can see putting a control date, that at a minimum we would have a control date. But as it stands, I would have to vote against it.

EXECUTIVE DIRECTOR DUNNIGAN: Other comments? Mr. Connell.

MR. CONNELL: I certainly agree, Jack, that if we do recommend something to the Policy Board, we should give all of the reasons. I can't see an amendment just to go forward with an amendment. I can't see us going into an amendment for controlled access following up with what Bruce said without a full discussion. This is a very contentious issue. We haven't discussed it. There's been a recommendation, not by majority vote, very split vote.

I could see, if for no other reason, we should put this question off until the next meeting so that we could get some input both from the advisers, the Technical Committee, some time for us to think through this issue before we haphazardly jump ahead. I just don't see it

right now.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I would have to ask the chairman of the Advisory Panel, is it absolutely essential to go with a limited entry date of, I think you said August 1st of 1999? What was the critical nature of that date?

MR. ODLIN: There was some worry that the Council would not do this in a timely manner if there was not -- I hate to use the word -- "drop-dead" date. And in discussions with the staff, that seemed to meld in with the progress we'll be taking on the next step towards that. And I'm a little uneasy with the wording up there, too, because they just said that -- they had the date of August 1 in there, and I think that was the key part. It started in July, and then when the staff kept telling everybody how the system's going to work and take the time, then it wound up in August.

So, you know, if this motion does go through, I think it needs a little massaging, and I would like to see the date in there too, please.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Augustine.

MR. AUGUSTINE: Mr. Chairman, with the seconder's approval, I would like to amend my own motion somehow to put in there to include a control date of August 1, 1999 in addition to an expanded control access system. That may be a little wordy. And I'll take friendly advice and word-smithing to help me on that.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Abbott, do you want to help us word-smith?

REP. ABBOTT: Well, first of all, if the motion were to have that date in it, the ISFMP Board would say, "Well, we can't do that, because we're going to approve the beginning of an amendment. But by the time the amendment gets somewhere, the August '99 date will be far in arrears, and therefore it won't work."

I also would suggest that you could put a control date in right now, right here, without that motion or without an amendment. You can set a control date, just set it. That's all you've got to do. You don't need that motion, and you don't need an amendment right now to set a control date.

EXECUTIVE DIRECTOR DUNNIGAN: That's correct.

MR. DRISCOLL: It would be in federal waters, though, not in state waters.

EXECUTIVE DIRECTOR DUNNIGAN: It would only be within whatever jurisdiction the states have. You know, if there's any -- the states can control their own vessels. But I think the major issue on people's minds is if there is a control date -- excuse me, if there is limited access in the federal EEZ, shouldn't there also be something correlative within state waters.

MR. DRISCOLL: Well, if it was done by amendment, when would the amendment be done? It'd be long after the control date, wouldn't it?

EXECUTIVE DIRECTOR DUNNIGAN: They always are. The control date just puts people on notice. The amendment is done much later, and at that point is retroactive to the control date. That's why you establish it.

MR. DRISCOLL: Okay. So in other words, we vote on a control date in a Herring Section meeting, and that's potentially the control date once the amendment goes in?

EXECUTIVE DIRECTOR DUNNIGAN: Correct. Mr. Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I'd like to make two moves. **With the approval of my second, I would like to withdraw my motion** and create another motion.

EXECUTIVE DIRECTOR DUNNIGAN: Any objection? Without objection, so ordered. Mr. Augustine, go ahead.

MR. AUGUSTINE: Okay. So let's make a simple **motion stating that we, the Commission, move forward with establishing a control date for limited entry in 1A of 8/1/99**. Is that better?

EXECUTIVE DIRECTOR DUNNIGAN: Is there a second to the motion?

MR. LEWIS FLAGG: **Second** the motion.

EXECUTIVE DIRECTOR DUNNIGAN: Seconded by Mr. Flagg. And I've been holding off Mr. Flagg for a little while, so let me go there next.

MR. FLAGG: The comments I had are pretty much satisfied by Pat's new motion, because I think the issue has always been not so much the issue of controlled access to the herring fishery throughout the range, but basically a concern about Area 1A, and I think this motion will take care of that issue.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Connell.

MR. CONNELL: I guess I have to go back to some of the things that were said before, that for us to take this action without any public comment, I think, is presumptuous on our part, and that the best thing we could do would be something similar to what Bruce recommended earlier, and that is to provide a statement to the public that this Section is considering moving into the area of controlled access, and that at a later date we may take some action in this regard.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Coates.

MR. COATES: Having had some experience in the establishment of control dates and limited access, today's discussion will precipitate a number of movements by a number of sectors in regard to trying to make sure that they aren't precluded from possible access to the fishery.

This is the inevitable consequence of any discussion regarding potential actions you might want to take.

So the die has been cast, so you can -- one thing you could consider doing is say it is now the Section's intention to vote on a control date as of, say, the June Section meeting, because that gives people two more months. I don't know what date -- you're talking about August, okay. So you're talking about August for the control date. All right. So that gives people four months in advance.

I'll tell you that usually the purpose of a control date is to -- and, you know, people have different feelings about this -- but try and do these things before you get the major shifts in effort and redirection, so that you don't end up with a lot more effort than you've got. But the die has been cast, and I guess the motion will establish that far of a lead time, and I can guarantee you there's going to be a lot more participants in this fishery than you really wanted. But, you know, that's the consequences of these kinds of actions.

But the shorter the time frame you make the control date implementation -- you can always move it back if you so see fit, but once you've set a date that you're going to do it, then you're going to have a lot of redirection, a lot of new interests, a lot of people shifting their fishing strategy so that they're not precluded from this fishery.

EXECUTIVE DIRECTOR DUNNIGAN: Are you suggesting that that date should be moved back from August 1st?

MR. COATES: Yes.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Coates.

MR. COATES: However, since you haven't even announced that you were going to -- is this on the agenda? You know, you are down in North Carolina talking about a New England issue. I think you're bound to at least provide enough advance notice so that you talk about it at the next Section meeting. Whatever the date of the next Section meeting might be appropriate for the purposes of discussing the establishment of a control date.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Odlin.

MR. ODLIN: A question for Phil. Phil, what do you mean, "there would be a rush"? Rush to do what? There's no permits to get. Nobody's going to --

MR. COATES: You're talking about an ASMFC fishery?

MR. ODLIN: Yes.

MR. COATES: We have a herring permit.

MR. ODLIN: In place now?

MR. COATES: Yes.

MR. ADLER: How many are there?

MR. COATES: I couldn't tell you.

MR. ADLER: Roughly.

MR. COATES: I couldn't tell you roughly. I think there's probably about -- well, probably 15 or 20. I don't know. David Pierce would know. It's too bad he's in the other room.

MR. ADLER: We'll have 300 by August 1st.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Driscoll.

MR. DRISCOLL: In thinking about what John said, I think this should be an agenda item for the next Herring Section meeting so that we can give advance notice so that the public can participate. Thank you, Mr. Chairman.

EXECUTIVE DIRECTOR DUNNIGAN: Okay. And I saw a lot of heads sort of shaking in agreement as that comment was being made. Before we leave it, though, and we do need to leave it and get on to our last agenda item, I wonder if you want to do something with this recommendation that Mr. Coates raised about August 1st.

You know, your next meeting is going to be June 14th and 15th. We are not, as states, tied to the same kind of procedural rigor that the Federal Government is, and the August 1st date, as Mr. Odlin said, was selected as a fail-safe sort of a "drop-dead" date to make sure that they did something.

You could do this virtually immediately if you wanted to. You could make that date June the 15th, or you could make it July the 1st. And if what we're trying to do is to give the public notice of what we're going to be talking about at the next Section meeting, I wonder if that August 1st date maybe doesn't create the wrong impression. Mr. Freeman.

MR. FREEMAN: I would offer a friendly amendment to indicate that it's the Commission's intention to notify the public that at its next Section meeting, it will discuss the possibility of limited entry into the herring fishery. That would be the friendly amendment.

EXECUTIVE DIRECTOR DUNNIGAN: Could you restate that, please?

MR. FREEMAN: I would **offer as a friendly amendment** that the motioner and seconder agree to **that it's the Commission's intention to notify the public that at its next Section meeting** -- just wait a minute, Tina. Is it definitely set for June 14th and 15th?

DR. DESFOSSE: Yes.

MR. FREEMAN: **That at its June 14th and 15th Section meeting it will discuss the need for a control date in the herring fishery.** Now, I leave it broad in that --

EXECUTIVE DIRECTOR DUNNIGAN: Hold on. Mr. Augustine, is that okay with you?

MR. AUGUSTINE: Yes, that's fine, Mr. Chairman.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Flagg.

MR. FLAGG: Yes.

EXECUTIVE DIRECTOR DUNNIGAN: It's accepted by the mover and seconder. **Without objection, the motion is amended.**

MS. TINA BERGER: Is Area 1A to be --

MR. FREEMAN: No. I intentionally left it broad, Tina, so that discussion can take place and give the option to the Board to do what it pleases so far as area and --

EXECUTIVE DIRECTOR DUNNIGAN: And we don't need 8/1/99.

MR. FREEMAN: Right. I tried to make this as broad as possible.

EXECUTIVE DIRECTOR DUNNIGAN: And **in that first line "Commission" should say "Atlantic Herring Section."**

MR. FREEMAN: Yes, yes.

EXECUTIVE DIRECTOR DUNNIGAN: Go ahead, Mr. Freeman.

MR. FREEMAN: Now, Jack, relative to doing this, do we need to make that motion to the Policy Board, or can we just make it --

EXECUTIVE DIRECTOR DUNNIGAN: No. This is just an agenda item for the Herring Section, and --

MR. FREEMAN: That's fine.

EXECUTIVE DIRECTOR DUNNIGAN: -- you can do that on your own. Mr. Augustine.

MR. AUGUSTINE: Mr. Chairman, I just had a question. The Policy Board will have had the report from the Advisory Panel that specifically had asked for this to be in effect some time -- in this case, they talked about August 1st. But they specifically called out Area 1A for some justifiable reasons. And it seems to me that if we're making a recommendation to the Policy Board to do this, and they asked for that specific date, it's not in there.

EXECUTIVE DIRECTOR DUNNIGAN: But that's not what this motion does. This motion isn't a recommendation to the Policy Board any more. This is notification to the public that the Section is going to give this serious consideration at its next meeting.

MR. FREEMAN: And also, to Captain Vito, it would also notify those who don't think that's a good idea to weigh in at that time.

EXECUTIVE DIRECTOR DUNNIGAN: Okay. I think we've been around this motion on the floor that's on the board. Let me restate it for the record: **Moved that it is the Commission's Atlantic Herring Section's intention to notify the public that at its June 14th and 15th Section meeting, it will discuss the need for a control date for limited access.** The motion is on the floor. Are we ready to vote? Mr. Flagg.

MR. FLAGG: Well, I'm still a little concerned about this because I don't think it was the intention of the advisers at all to establish a control date for limited access for sea herring throughout the range. It was merely focused on Area 1A. And I'm just wondering if we leave

this too general, it really doesn't reflect the intent of the Advisory Committee's recommendation at all.

And frankly, I just don't really see the need to establish a control date for limited access for sea herring throughout the range, so I think it really should reflect the fact that we're looking at Area 1A specifically.

EXECUTIVE DIRECTOR DUNNIGAN: Dr. Desfosse, do you have a comment on that?

DR. DESFOSSE: The advisers discussed that. The original motion for the control date was to address just Area 1A, and then it was broadened to address the whole fishery. There was a friendly amendment, and they voted on the control date for the whole fishery.

MR. FREEMAN: Mr. Chairman, to that point, if I may.

EXECUTIVE DIRECTOR DUNNIGAN: To that point, Mr. Freeman.

MR. FREEMAN: I specifically did that, Lew, so that the discussion could focus on the fishery. It may be the determination that indeed if limited entry is needed, it's needed for area 1A, but I think that discussion needs to occur, and the public needs to be involved in that as well as the advisers.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Mr. Augustine. And then we need to vote. Mr. Augustine, did you have another comment?

MR. AUGUSTINE: The only follow-up I have was to that point. As I recall, the Advisory Panels were established to indeed assist the whole group and coming forward with a solid recommendation that would meet the needs of industry and all user groups. And in this particular case, by not having the dates in there, the recommendations that they had discussed in accord with and reached with their scientific people, I think we're missing the point. And that's the point I would like to make.

I do agree with Mr. Flagg. If they requested a particular date and a particular area, I think it's incumbent upon us representing our states to take that very seriously, because that's what they're put together for. Here we are, we're skidding around an issue again. And I know it's difficult to do this. It may not help us in New York, or it may not hurt us in New York.

But the fact of the matter is, they're an Advisory Panel, and that's what they're there for. Their recommendation specifically was date, 8/1/99, and it was strictly for Area 1A. So I would like to see that back in there.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Fote.

MR. FOTE: They are an Advisory Panel, and I've seen a lot of examples where Advisory Panels, people on there all of a sudden get caught up in the momentum of the Advisory Panel and don't represent all the people that they're there to represent.

And a lot of times what we see -- I just saw it in sharks. They don't represent all the fishermen in their state. They represent what their interests are sitting at the table, which can be entirely different from the whole group of fishermen there. And when we're basically going out, we have to find out what all the fishermen feel like, not just the members of the Advisory Panel. And that's what our job is as commissioners, that's why we put out a notice. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Representative Abbott, would you like the last word?

REP. ABBOTT: Thank you, Mr. Chairman. I just think we've listened to what the advisers have offered, and I think that we've agreed to discuss it in June, and all options would be open in June, as they should be for the Section to go about its business. And we'll make determinations at that meeting based on the inputs and our good judgment. Move that we move the question.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. Are we ready to move to a vote? Is there any objection from any state to the motion that is on the board? Rhode Island objects, so we'll take --

MR. RICHARD SISSON: Rhode Island will abstain.

EXECUTIVE DIRECTOR DUNNIGAN: Rhode Island wants to abstain. Is there any other objection to the motion? **Without objection, then, the motion passes with Rhode Island abstaining.** The next item on the agenda is a discussion of other potential changes to management measures for the year 2000. Dr. Desfosse.

#### POTENTIAL PLAN ADJUSTMENTS FOR 2000

DR. DESFOSSE: I don't have anything specific prepared for this. It was just a general discussion as to what measures might need to be adjusted for the coming year. I believe that this issue will be addressed in more detail at the upcoming joint meeting. I know right now the Plan Development Team does not have any recommendations for changes to the plan, especially since this is the first year of the plan and the federal plan has not even been approved yet. I don't know if you need further discussion on this, if there's certain issues that any of the Section members would like the PDT to look into prior to the next joint meeting. I leave that up to the Section.

EXECUTIVE DIRECTOR DUNNIGAN: The question for the Section is whether or not there are specific issues that you want the Plan Development Team to look into as they prepare in coordination with the New England Council for changes to the regulatory scheme for the year 2000? Anything that you've run across in your implementation or anything that's going on in the fishery right now that you want them to pay particular attention to? No comment? Mr. Freeman.

MR. FREEMAN: Thank you, Mr. Chairman. A question relative to -- and I don't have the plan with me, but relative to the plan, Joe, didn't we have a provision to require a vessel tracking system? How was that stated?

DR. DESFOSSE: I think that was an element of the federal plan. I think it was included in our Amendment 1 as an informational section only, that was going to be a requirement for federal waters.

MR. FREEMAN: I'm thinking back to this issue of a vessel traversing a large section of the ocean and fishing in a closed area then coming out. If in fact the vessel tracking system was required, then that would take care of that issue in absence of a federal plan. And I'm just -- if it's in the plan now, that's probably something we didn't consider earlier in this meeting but perhaps should be. But it's voluntary.

DR. DESFOSSE: It's supposed to be addressed under the Council's plan, and it was supposed to be a certain level --

MR. FREEMAN: But again, I'm thinking of our discussion. In absence of a federal plan, that would be one way of controlling or prohibiting entry into a closed area by anybody. I don't know how quickly the federal plan would be put in place, but perhaps it's one thing that the Commission should consider if we're worried about the enforcement. That would cover that problem. I would suggest that we give it consideration.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you. We'll have the Plan Development Team make sure that they work on that as one of the issues to bring back to you. Thank you. Any other suggestions or concerns that you want the PDT to make sure that they look at? PRT. Okay. Thank you very much.

#### OTHER BUSINESS

Moving on to the next agenda item, other business. Does anybody have any other questions or comments that need to come before the Section at this time?

I have one, and this is just a notice item, and, you know, look around the table and see who's not here. The chairman of the Section is also now the chairman of the Commission, and it has been our practice in the past that the chairman of the Commission not serve actually as the chair of any of our management boards. David Borden and I had discussed this, but he has not yet decided how he wants to handle that in this circumstance. So let me put all of you on notice that David may be, because he's chairman of the Commission, stepping aside as management board chair.

Under our normal practice, you would probably elect the vice-chair, John Nelson, to be the chair, and then one of you would be looked to to be the next vice-chair, with the anticipation of moving ahead to be chairman after Mr.

Nelson. So be aware that that's a decision that you may have to make at your next meeting. Any other -- Mr. Fote?

MR. FOTE: Just on a personal note. On my 21st, my 22nd and my 23rd -- I'm now in my 25th; you managed to skip my 24th -- we've scheduled the Commission meetings on May 17th. My wife is very understanding. That happens to be our anniversary, her birthday and my birthday. So I'm asking -- she says she doesn't want to be like Al Goetz and his wife celebrating their 50th. So could you please recommend to the Policy Committee in the year 2024 that we don't have it May 17th? That's all I'm asking on a personal note.

EXECUTIVE DIRECTOR DUNNIGAN: The recommendation is so noted for the record. Are there any other comments or questions? Any other business to come before the Atlantic Herring Section? Seeing none, this meeting is adjourned. (Whereupon, the meeting adjourned at 2:55 o'clock p.m., May 17, 1999.)

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